# IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## ORDINARY ORIGINAL CIVIL JURISDICTION

## APPEAL (L) NO.6326 OF 2026

## WITH

## INTERIM APPLICATION (L) NO.6779 OF 2026

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| Omkara Assets Reconstruction Pvt Ltd | ] | |
| a Company incorporated under the | ] | |
| Companies Act, 1956 and registered | ] | |
| with Reeserve Bank of India as an | ] | |
| Asset Reconstruction Company under | ] | |
| Section 3 of the SARFAESI Act, 2002 | ] | |
| and having its Corporate Office at | ] | |
| Kohinoor Square, 47th Floor, N C Kelkar | ] | |
| Marg, RG Gadkari Chowk, Dadar | ] | |
| (West), Mumbai 400 028 | ] | … Appellant |

**V/s.**

| | | |
|---|---|---|
| Sahjun Impex Trading Pvt Ltd | ] | |
| A company incorporate under the | ] | |
| Companies Act, 1956 and having its | ] | |
| registered address at 330, Nana Peth, | ] | |
| Laxmi Road, Pune – 411 002 | ] | … Orig. Applicant |

**<u>In the matter between</u>:**

| | | |
|---|---|---|
| KSL & industries Ltd. | ] | |
| A company incorporated under the | ] | |
| Companies Act, 1956, having its | ] | |
| corporate office at Kamat Industrial | ] | |
| Estate, Veer Savarkar Marg, | ] | |
| Prabhadevi, Mumbai – 400 025 | ] | … Petitioner |



**V/s.**

| | |
|---|---|
| Patheja Forging & Auto Parts | ] |
| Manufacturing Ltd (In Liquidation) | ] |

through the Official Liquidator ]
Having its registered office at E-20, ]
MIDC Industrial Area, Bhoisar, ]
Pune – 411 026. ] … Respondent

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Mr. Prakash Shinde a/w Ms. Niyati Merchant, Ms. Rajlaxmi Pawar i/by MDP Legal for the Appellant.

Mr. Zubin Behramkamdin, senior counsel a/w Ms. Sakshi Kashyap i/by Ms. Kaizeen Mistry for the Respondent.

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**CORAM : A. S. GADKARI AND KAMAL KHATA, JJ.**

**RESERVED ON : 22nd July, 2026**

**PRONOUNCED ON : 20th August, 2026.**

**Judgment (Per : Kamal Khata, J.):-**

1) By the present Appeal, the Appellant seeks to set aside the Order dated 3rd February, 2026, passed by the learned Single Judge in the Company Application filed by the Applicant seeking transfer of the captioned Company Petition to the Hon'ble National Company Law Tribunal under the provisions of Section 434(1)(c) of the Companies Act, 2013. By the impugned Order, the learned Single Judge has allowed the transfer of the captioned Company Petition to N.C.L.T.

2) Mr. Shinde, learned counsel appearing on behalf of the Appellant submits that, the Appellant intervened in the Application, objecting to the transfer of the Petition to N.C.L.T. mainly on the ground that the steps taken by the official liquidator in the company liquidation were irreversible. He

contends that the learned Judge erroneously applied the test of ‘corporate death’ to the present case.

3) He further submits that, the learned Single Judge failed to consider that, the company had been in winding up since 2008, with its net worth having eroded as early as 1997. The Board for Industrial and Financial Reconstruction (B.I.F.R.) affirmed the direction to wind up under Section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985, finding that the company was no longer a going concern and lacked functional manufacturing units or operational assets. The impugned Order proceeded on a mere theoretical possibility of revival, contrary to the material on record, which establishes that the company had crossed the point of no return. He contends that any revival is illusory and speculative.

4) Mr. Shinde submitted that, irreversible steps had been taken, including the sale of core industrial and factory assets at Aurangabad (Walunj) and Chakan / Bhosari / Pimpri, Pune through the D.R.T. proceedings, whereby the base assets have been extinguished. These sales were confirmed by statutory authorities, and there is no possibility of reversal. He further submits that the learned Judge misread and misapplied the Supreme Court decisions in *A. Navinchandra Steels Private Limited vs. SREI Equipment Finance Limited and Others,* reported in 2021 4 SCC 435, and *Action Ispat and Power Pvt Ltd vs. Shyam Metalics and Energy Limited* reported in 2021 2 SCC 641 particularly paragraph 25 thereof. The learned

single Judge also failed to undertake a fact-intensive enquiry mandated in *A. Navinchandra Steels Pvt Ltd* (supra), resulting in unsettlement of the concluded proceedings.

5) He further submits that the conduct of the Applicant was also overlooked. In particular, the Applicant had suppressed the ongoing and concluded D.R.T. proceedings, and material subsequent developments were not placed on record. The Applicant failed to disclose the sale of critical assets, which would have rendered the entire C.I.R.P. proceedings meaningless. He contends that impugned Order disregarded the statutory rights of the secured creditors. He reiterates that, with core assets having been sold, there remains no possibility of the company's revival or transfer to N.C.L.T.

6) *Per contra*, Mr. Behramkamdin, senior counsel appearing on behalf of the Respondent, submits that there is no justification for refusing to revive the company, particularly as the Applicant now represents more than 50 percent of the total financial debt owed by the company and stands as an erstwhile financial creditors entitled to seek revival. He submits that the Application was filed in accordance with law under Section 434 (1)(c) of the Companies Act and that the learned Single Judge correctly appreciated both the law and the facts, warranting dismissal of the Appeal.

7) We have heard the learned counsel for the Appellant as well as the Respondent and have carefully examined the impugned Order and the

entire record.

8) We find merit in the submissions of Mr. Behramkamdin, representing the erstwhile financial creditors now holding more than 50 percent of the company's financial debt. A financial creditor is entitled in law to seek a transfer of proceedings to N.C.L.T. for the revival of the company. We find no justifiable reason to reject such an Application by an erstwhile financial creditor, particularly where the Applicant seeks to do the same in a time bound manner and within the rehabilitative framework provided under the I.B.C.

9) The Supreme Court in *Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited* (supra), held that the power of the company Court to transfer winding up proceedings to the N.C.L.T. under Section 434(1)(c) of the Companies Act must be exercised by examining whether winding up has reached an irreversible stage. Mere admission of a winding-up Petition and appointment of a provisional liquidator, or even the liquidator taking possession of the assets, does not by itself constitute an irreversible position.

10) In our view, the Appellant's case is not that no assets exists to enable company's revival. It is for the investors to decide whether revival would be beneficial to their interest. Consequently, if there exists a possibility to revive the company under the IBC framework, the sale of assets by the secured creditors standing outside the winding-up proceedings

does not by itself constitute an irreversible step warranting refusal of transfer. We are fortified by the decision of the Supreme Court in *A. Navin Chandra Steels Pvt. Ltd.* (supra).

11) The record shows that the company possesses assets located at Thane, Bangalore and Pune, currently in the custody of the receiver appointed by the Debt Recovery Tribunal (the D.R.T.). There are also certain plots at Aurangabad and Pune that were sold outside the winding up proceedings; certain other assets located at Pune and Gujarat remain in the custody of the official liquidator. The record indicates that the Official Liquidator took only limited steps, which cannot be characterized as irreversible or amounting to corporate death. We find the impugned Order to be well-reasoned, having considered all material facts and applicable law, and see no justifiable reason to set it aside.

12) The Appeal accordingly is dismissed with no order as to costs.

13) In view of disposal of Appeal, Interim Application does not survive and is accordingly disposed off.

**(KAMAL KHATA, J.)** **(A.S. GADKARI, J.)**