

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 310 of 2017

IN THE MATTER OF:

Anra Pharmaceuticals Pvt. Ltd. & Ors.

... Appellants

Versus

A. Ramasubbu

... Respondent

**Present: For Appellants: Shri Jayant K. Mehta, Shri Aditya Verma
and Shri Rahul Kukreja, Advocates**

**For Respondent: Shri M.A. Chinnasamy, Shri M. Anbalagan
and Shri V. Senthil Kumar, Advocates**

ORDER

13.11.2017 Respondent, Mr. A. Ramasubbu, filed a petition under Sections 397, 398, 433, 439 and 450 of the Companies Act, 1956 before the erstwhile Company Law Board (hereinafter referred to as 'CLB') with the following prayers :

"IX. FINAL RELIEF :

- a. *The 1st respondent's ANRA Pharmaceuticals Pvt. Limited, order to be wound up by appoint(ing) of Receiver/Official Liquidator to take over Management with all assets*
- b. *direct the official liquidator to bring the public auction of the company properties and*

- c. *pay the petitioner share of property and R. Andandhakrishnan's share of the property to the petitioner.*
- d. *To declare the 05.01.2007 sale deed in Document No. 96/2007 and 97/2007 and mortgage deed in Document No. 286 of 2009 are null and void.*
- e. *Any other relief deem fit and proper in the circumstances of the case.*
- X. *Particulars of Bank Draft Evidence payment of Fee for the Petition Made.*
 - i. *Bank of which drawn : State Bank of India*
 - ii. *Name of the issuing branch : Palanganatham, Madurai*
 - iii. *Date : 03.03.2016*
 - iv. *Amount : Rs. 7500/-*
 - v. *Demand Draft No. 782982.*

Dated at Madurai on this day of March, 2016."

2. In exercise of powers conferred under Clause (a) of sub-Section (1) of Section 434 of the Companies Act, 2013, the petition pending before the CLB was transferred to the National Company Law Tribunal (hereinafter referred to as 'Tribunal') for adjudication. After transfer of the case, the appellant-respondent objected to the maintainability of the petition under Sections 433, 439 and 450 of the Companies Act, 1956 on the ground that the CLB had no jurisdiction to entertain such petition. However, the Tribunal by impugned

order dated 20th June, 2017 passed in T.C.P. No. 206 of 2016 (C.P. No. 19 of 2015), rejected the objection raised by the respondent (appellant herein) and held that the learned Adjudicating Authority is competent to try the company petition treating the petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code'). The said order is under challenge in this appeal.

3. Learned counsel for the appellant/respondent submits that the petition under Sections 433, 439 and 450 of the Companies Act, 1956 was not maintainable before the Tribunal. Therefore, the question of initiation of winding up proceedings in terms with the I&B Code does not arise.

4. On the other hand, according to learned counsel for the respondent/petitioner after transfer of the case, the Adjudicating Authority (Tribunal) has jurisdiction to initiate insolvency resolution process against the appellant.

5. To decide the issue, it is desirable to refer to the rules framed by the Central Government in terms with the provisions of Section 434 of the Companies Act, 2013 and Section 239 of the I&B Code.

6. Clause (a) of sub-Section (1) of Section 434 of the Companies Act, 2013 while deals with the transfer of cases pending before the Company Law Board to the Tribunal, Clause (c) of sub-Section (1) of Section 434 relates to transfer of cases from the Hon'ble High Courts to Tribunal, as apparent from the provisions and quoted below :

“Sec. 434. Transfer of certain pending proceedings.— (1) *On such date as may be notified by the Central Government in this behalf,—*

- (a) *all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956 (1 of 1956), immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act;*
- (b) *any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:*

Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days; and

- (c) *all proceedings under the Companies Act, 1956 (1 of 1956), including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer.*

Provided that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government :

[Provided further that only such proceedings relating to cases other than winding-up, for which orders for allowing or otherwise of the proceedings are not reserved by the High Court shall be transferred to the Tribunal :

Provided further that —

- (i) *all proceedings under the Companies Act, 1956 other than the cases relating to winding-up of companies that are reserved for orders for allowing or otherwise such proceedings; or*

(ii) the proceedings relating to winding-up of companies which have not been transferred from the High Courts;

shall be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.]

(2) The Central Government may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section.]”

7. The Central Government, in exercise of powers conferred under Clause (a) of sub-Section (1) of Section 434, transferred the cases from the Company Law Board to the Tribunal. Subsequently also, in exercise of powers conferred under sub-Sections (1) and (2) of Section 434 of the Companies Act, 2013 read with sub-Section (1) of Section 239 of the I&B Code, the Central Government framed Rules known as “The Companies (Transfer of Pending Proceedings) Rules, 2016” (hereinafter referred to as ‘Transfer Rules’), which relates to transfer of cases from the Hon’ble High Court to the Tribunal/Adjudicating Authority. Rule 5 therein reads as follows :

“5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts.- (1) *All petitions relating to winding up under clause (e) of section 433 of the*

Act on the ground of inability to pay its debts pending before a High Court, and where the petition has not been served on the respondent as required under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of section 419 of the Act, exercising territorial jurisdiction and such petitions shall be treated as applications under sections 7, 8 or 9 of the Code, as the case may be, and dealt with in accordance with Part II of the Code:

Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with Rule 7, required for admission of the petition under sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal within sixty days from date of this notification, failing which the petition shall abate.

(2) All cases where opinion has been forwarded by Board for Industrial and Financial Reconstruction, for winding up of a company to a High Court and where no appeal is pending, the proceedings for winding up initiated under the Act, pursuant to section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall continue to

be dealt with by such High Court in accordance with the provisions of the Act.”

8. Admittedly, no petition under Sections 433, 439 and 450 of the Companies Act, 1956 was maintainable before the erstwhile Company Law Board and it was maintainable before the Hon'ble High Court. For the said reason, the case pending before the Hon'ble High Court under Section 433 were transferred to the Adjudicating Authority (Tribunal). On the other hand, the cases under other provisions of the Companies Act, 1956 such as Sections 397 and 398 were transferred from the Company Law Board to the Tribunal, not to the Adjudicating Authority.

9. In view of discussion aforesaid, we hold that the petition under Sections 433, 439 and 450 of the Companies Act, 1956 was not maintainable before the Company Law Board. Therefore, the question of treating the case under the I&B Code does not arise. Further, as the Rule 5 relates to transfer of cases from the Hon'ble High Court, we hold that the Rule 5 cannot be made applicable to the cases transferred from Company Law Board.

10. In view of the discussion made above, we have no option but to set-aside the impugned order dated 20th June, 2017 passed by the Tribunal in T.C.P. No. 206 of 2017 (C.P. No. 19 of 2015). The said order is set aside with liberty to the Tribunal to try the Company Petition No. 19 of 2016 as a petition under Sections 397 and 398 of the Companies Act, 1956 (Now Section 241 of

the Companies Act, 2013) and to decide the same in accordance with law after notice and hearing of the parties.

11. The appeal is allowed with the aforesaid observations and directions. However, in the facts and circumstances, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

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