

# IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



## Action Ispat and Power Pvt. Ltd. vs Shyam Metalics and Energy Limited and Ors.

### **Brief Facts**

In the abovementioned case, The Respondent Shyam Metalics & Energy Ltd. filed a winding up petition under Sections 433(e) and 433(f) of the Companies Act, 1956. The winding up petition was admitted by the Ld. Company Judge and a OL was appointed.

During the pendency of the petition, Respondent No. 2 (SBI), A secured creditor of the appellant company made an application under Section 7 of the Code before NCLT seeking CIRP vis-à-vis the appellant company. The application was admitted by the NCLT.

SBI filed an application before the Ld. Company Judge, seeking transfer of the winding up proceedings to the NCLT. Subsequently, SBI filed an impleadment application in the pending winding up petition. The Company Judge allowed the transfer of the winding up petition to NCLT. The appeal was preferred by the Managing Director of the appellant company, to assail the order passed by the Learned Company Judge revoking the appointment of OL in a winding up petition and allowing the transfer of the said petition to the NCLT.

## **Decision**

- a.** The high court upheld the impugned order passed by the company judge revoking the appointment of the OL and transferring the winding up petition to the NCLT and dismissed the appeal preferred by the appellant. **[Para 43]**
- b.** The hon'ble High Court reiterated that the courts must be sensitive to the scheme, object and special nature of the Code. Running of parallel proceedings in the NCLT and high court will indeed be futile, create chaos and confusion. **[Para 42]**
- c.** The Court clarified that all the options to revive and restore the company shall be explored unless irrevocable steps towards liquidation have been undertaken. **[Para 39]**

## **Link of the Order**

**<https://ibbi.gov.in/uploads/order/fe0847ae462b5419ffdb414d58e583c4.pdf>**



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