

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO/1/2026
WITH
CP/117/1979
IA NO: ACO/2/2026

NOMURA INVESTMENT AND FINANCE PRIVATE LIMITED
VS
OFFICIAL LIQUIDATOR

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
And

The Hon'ble JUSTICE SUPRATIM BHATTACHARYYA
Date : March 25, 2026.

Appearance:

Mr. Siddhartha Mitra, Sr. Adv.
Ms. Gargi Goswami, Adv.
Ms. Antara Biswas, Adv.
..for the appellant

Mr. Abhijeet Chatterjee, Sr. Adv.
Mr. Rajratna Sen, Adv.
Mr. Rudradev Chowdhury, Adv.
Ms. Akanksha Mukherjee, Adv.
Ms. Sudrani Mukherjee, Adv.
..for Mr. Arun Kumar Agarwal, Adv.

Mr. Swatarup Banerjee, Adv.
Mr. Shaunak Ghosh, Adv.
Mr. Sariful Haque, Adv.
Mr. Rajib Mullick, Adv.
Mr. Biswaroop Ghosh, Adv.
..for Mr. Kailash Agarwala

Mr. Debnath Ghosh, Sr. Adv.
Mr. Manoj Kumar Tiwari, Adv.
Mr. Sarosij Dasgupta, Adv.
Mr. Biswaroop Mukherjee, Adv.
Ms. Arpita Dey, Adv.
..for Manish Kumar Agarwala

Mr. Subhankar Nag, Adv.
Mr. Avishek Guha, Adv.
Ms. Sonal Agarwal, Adv.
Mr. Ankush Majumdar, Adv.
..for Sanjay Agarwala

Mr. Debashis Saha, Adv.
Mr. Avirup Roy Sanyal, Adv.
Ms. Sucheta Pal, Adv.
Mr. Jyotishman Sarkar, Adv.
..for SBI

Mr. Anirban Kar, Adv.
Mr. Munshi Ashiq Elahi, Adv.
Mr. Rohit Mahato, Adv.
..for Special Officer

1. The Court: The matter is taken up on urgent basis on being mentioned by the appellant in APOT/304/2025, namely one Nomura Investment and Finance Private Limited, for the purpose of adjudication on the prayer of the appellant for stay of operation of the judgment impugned in the appeal, dated November 20, 2025, deciding several applications in connection with a company petition.

2. The plinth of the challenge, as it transpires upon hearing learned senior counsel and learned counsel appearing for the parties, is that the learned Single Judge, in the capacity of a Company Court, did not have the jurisdiction to pass the impugned order, in view of the specific provisions of Section 434 of the Companies Act, 2013 mandating transfer of all such proceedings pertaining to winding up of companies to the National Company Law Tribunal (NCLT).

3. Secondly, it is contended that the challenge preferred before the learned Single Judge was taken out after a period of more than three decades from the winding up order, which was affirmed by a Division Bench of this Court. It is argued that in the appeal preferred against the winding up order dated November 5, 1979, several observations were made

against the erstwhile management of the company (in liquidation). It is contended that, by its order dated April 21, 1983, the Division Bench dismissed the appeal and confirmed the order of winding up.

4. Thus, it is argued that the learned Single Judge, as a Company Court, did not have the jurisdiction to reverse the winding up order, thereby traversing the specific findings and conclusions of the Division Bench in appeal.

5. It is further contended on behalf of the appellant that in view of the operation of the Insolvency and Bankruptcy Code, 2016 (IBC), the liquidation proceedings in respect of the company (in liquidation) are governed by the said Statute and it is beyond the jurisdiction of the Company Court, which operated under the provisions of the Companies Act, 1956 (now, Companies Act, 2013) to pass any order in the nature of the impugned judgment.

6. The said contentions are refuted by the respondents primarily on the premise that in view of the palpable fraudulent actions of Mr. Arun Kumar Agarwal, one of the Special Officers who was appointed by an order dated December 12, 1991 in the liquidation proceedings, which indicated that he acted solely in his own interest to siphon off the assets of the company (in liquidation) and become the majority shareholder having controlling interest in the said company, the interference by the learned Single Judge was justified. Moreover, it is contended that fraud vitiates all and the Company Court had ample power to undo whatever wrong was done under the aegis of a company petition.

7. It is also contended, by placing reliance on certain documents which, although not a part of the present application, are a part of the records in

the main appeal, that there were several communications and correspondence issued by the said Mr. Arun Kumar Agarwal, which clearly go on to show that the said Special Officer abused his office as a Special Officer and as such, the acts done with the blessings of the orders of this Court appointing such Special Officer ought to have been undone.

8. By placing reliance on the provisions of the Companies Act, 1956, in particular Sections 456 and Section 460(6) thereof, it is argued by the respondents that the Company Court has ample jurisdiction to reverse or modify the act or decision done or taken by a Liquidator, if the Court finds it just in the circumstances. In the present case, it is pointed out, the function of the Official Liquidator was virtually delegated to the two Special Officers appointed by the Company Court vide order dated December 12, 1991. As such, any acts contrary to the law and against the interest of the company (in liquidation) committed by them come within the purview of acts which are amenable to the jurisdiction of the Company Court under Section 460(2) of the 1956 Act.

9. It is further argued that under Section 456 of the 1956 Act, all the property and effects of the company (in liquidation) shall be deemed to be in the custody of the Court as from the date of the order for the winding up of the company.

10. At this point, we make it clear that the arguments advanced by the parties were elaborate and only the crux of such arguments are being narrated here, in order to avoid unnecessary surplusage in the present order, which is confined to a consideration of an ad interim prayer for stay, particularly since the matter has been assigned to this Bench for a limited

period and the main appeal is pending for adjudication before the regular Bench, where all the issues involved are under consideration.

11. Upon hearing learned counsel for the contesting parties, the Court comes to the following conclusions:

12. Insofar as the question of jurisdiction is concerned, it was held in *Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited*, reported at (2021)2 SCC 641, which is relied on by both sides, that given the scheme of winding up under Chapter XX of the Companies Act, 2013, it is clear that several stages are contemplated, with the Tribunal retaining the power to control the proceedings in a winding up petition even after it is admitted. A distinction was drawn by the Hon'ble Supreme Court in the said judgment between the stage prior to admission of a winding up proceeding and the post-admission stage. Regarding the latter, it was observed that post admission of an winding up petition and after the assets of the company sought to be wound up become *in custodia legis* and are taken over by the Company Liquidator, Section 290 of the Companies Act, 2013 would indicate that the Company Liquidator may carry on the business of the Company so far as may be necessary for the beneficial winding up of the company and may even sell the company as a going concern. So long as no actual sales of the movable and/or immovable property have taken place, nothing irreversible is done which would warrant a company Court staying its hands on a transfer application made to it by a creditor or any party to the proceedings. It was further stressed by the Hon'ble Supreme Court that it is only where the winding up proceedings have reached a stage where it would be irreversible, making it impossible to set the clock back, that the Company Court must proceed

with the winding up, instead of transferring the proceedings to the NCLT to now be decided in accordance with the provisions of the Code (IBC).

13. In the present case, it is evident that subsequent to the winding up order dated November 5, 1979, as affirmed by the Appellate Bench on April 21, 1983, the parties concerned agreed to the winding up order dated November 5, 1979 and all proceedings thereunder to be stayed until further orders of the Court.

14. Thus, the argument that the winding up order comes in the way of preferring a challenge before the Company Court and/or of the learned Single Judge, in the impugned order, having overridden the winding up order becomes rather academic.

15. Since the order dated December 12, 1991, passed on consent, categorically stayed all further proceeding in connection with the winding up order as well as the order itself, the said argument cannot be raised as a bogey to interdict the jurisdiction of the Company Court to look into the propriety of such order.

That apart, we cannot but take notice of the fact that by dint of the said order dated December 12, 1991 and the consequential further orders dated June 11, 1993, June 18, 1993 and June 28, 1993, the Special Officers, who were virtually clothed with the powers of the Official Liquidator, were given the right to supervise the functioning of a Board of Management which was directed to be formed to deal with the affairs of the company (in liquidation). The Official Liquidator was even directed to hand over books, records and papers of the company to such Board of Management, thereby denuding the Official Liquidator of his statutory obligations as mandated under the scheme of the 1956 Act.

Under Section 456 of the said Act, all the property and effects of the company are deemed to be in the custody of the Court as from the date of the order of the winding up of the company. Section 457, on the other hand, provides that the Liquidator in a winding up by the Court shall have power, with the sanction of the Court, to represent the company (in liquidation) in various capacities.

16. Even otherwise, Section 460 of the 1956 Act confers the Court with the power to confirm, to reverse or modify any act or decision taken by the Liquidator, if the Court thinks it fit and just in the circumstances.

17. Thus, the eco-system contemplated within the scheme of the 1956 Act envisages that upon winding up, the property of the Company (in liquidation) shall be protected, along with the interests of its shareholders and other interested parties, by the legal fiction that the property will vest in the Court, which is to exercise its powers vis-à-vis the assets of the company through the Official Liquidator.

18. It is evident, at least *prima facie*, that by the order dated December 12, 1991, the said eco-system was obviated by handing over the powers of the Official Liquidator and, in a sense, the control of the Court, to the discretion of two Special Officers who were, in turn, permitted to act through a Board of Management constituted by subsequent orders.

19. The premise of the application before the learned Single Judge in the present case was that there was egregious misappropriation of the assets and funds of the company under the aegis of the Special Officers, particularly at the behest of Mr. Arun Kumar Agarwal, one of the Special Officers. The winding up petition having already culminated in a final order of winding up, the matter had already reached an irreversible stage within

the contemplation of *Action Ispat (supra)*. Thus, it was the Company Court which retained jurisdiction, more so in the context of its powers under Section 460 of the 1956 Act.

20. Thus, in the circumstances of the present case, there was no manner of jurisdiction vested in the NCLT to take up such proceeding.

21. In the event a winding up proceeding does not reach an irreversible stage, the NCLT retains jurisdiction. However, in the present case, the winding up petition not only reached an advanced stage, but had already culminated in an order of winding up, which was virtually undone by the order dated December 12, 1991 and by the subsequent orders passed by the Company Court.

22. Moreover, at no point of time did any of the concerned parties raise any objection to the exercise of jurisdiction by the Company Court in passing such post winding up orders. Thus, it cannot be said that in the present case, applying the ratio laid down in *Action Ispat (Supra)*, the learned Single Judge was mandated in law to transfer the matter to the NCLT.

23. Hence, prima facie, the objection as to jurisdiction of the learned Single Judge cannot be accepted.

24. Insofar as the allegation of long delay is concerned, it prima facie appears that there was no direct proof of knowledge of the Directors or the erstwhile management of the company about the winding up proceeding or the winding up order. Although, under normal circumstances, it would be rather absurd to hold that the management, who were removed by several orders in an winding up proceeding, did not have any knowledge thereof at all, in the present case, there are categorical findings of the learned Single

Judge in the impugned judgment, to the effect that no Annual General Meeting of the company (in liquidation) was held throughout the relevant period from the appointment of the Special Officers onwards. That apart, it was also observed by the learned Single Judge that the last available Annual Report of the company, as evident from the report of the Registrar of Companies, was dated June 30, 1970. Thus, in the teeth of the factual observations made by the learned Single Judge to the effect that precious nothing was done for the benefit of the company (in liquidation) throughout the period starting from the appointment of the Special Officers, the question of delay becomes insignificant, since the underlying refrain of the impugned order was that all actions undertaken pursuant to the post winding up orders, appointing the Special Officer and consequential thereto, were vitiated by fraud.

25. Apart from the general proposition that fraud vitiates all, which does not in all cases exempt an applicant from satisfying the conscience of the Court regarding the delay, it is found that by the very nature of the challenge in the instant case, based on subsequent actions taken in furtherance of the order dated December 12, 1991 and the orders passed by the Company Court thereafter, the cause of action is in the nature of a continuing one, arising *de die in diem*.

26. Hence, it cannot be strictly said that the challenge to such actions and to the very orders which were the root of the alleged misdeeds was palpably barred by limitation. At best, in the circumstances of the case, it may be said that the question of limitation is a mixed question of law and fact, which is to be decided at the final hearing of the appeal.

27. With regard to the arguments that the trappings of the IBC are applicable and as such, the Company Court ought not have exercised jurisdiction, it is surprising that the entire liquidation process, after being taken out of the control of the Company Court (as exercised through the Official Liquidator) was vested in Special Officers, that too on consent, which is beyond the scheme of Company Jurisprudence in India and operated detrimental to the interest of the company (in liquidation).

28. That apart, it is nobody's case that any proceeding was initiated for corporate insolvency resolution under the scheme of the IBC vis-à-vis the company (in liquidation) at any point of time.

29. In fact, the absence of any proper proceedings being initiated in accordance with law, either under the IBC or otherwise, regarding the management of the company (in liquidation) and its assets post vesting in the Special Officers and the Board of Management appointed by Court orders, is one of the germane premises of the allegation of fraudulent action in respect of dealings with the assets of the company.

30. Thus, the operation of the IBC cannot come in the way of the Company Court exercising its jurisdiction.

31. On a more cardinal and basic premise, the learned Single Judge specifically referred to Rule 9 of the Company Court Rules, 1959 to invoke the wide inherent powers of the Company Court to pass any directions or orders for the ends of justice or to prevent abuse of the process of Court.

32. The Company Court, within the scheme of the 1956 Act, has wide powers pertaining to assets and management of a company (in liquidation).

33. In any event, a Constitutional Court, being a Court of records, within the contemplation of Article 215 of the Constitution of India and the Letters

Patent (in case of a Chartered High Court), always has the power vested in it implicitly to correct all wrongs done by it.

34. Looked at from such perspective, it cannot be said *ex facie* that the learned Single Judge, acting as a Company Court, lacked jurisdiction to entertain the complaints and pass the judgment impugned herein, in order to undo the erroneous orders passed by the Company Court itself, resulting in perceived mismanagement of the company (in liquidation) and siphoning off of its funds.

35. On the balance of convenience and inconvenience pertaining to the order of stay now sought, although it has been alleged that by dint of the impugned judgment, the management of the company would now be vested in the very persons, due to the mismanagement of whom the winding up order was passed and affirmed by the appellate Court in the first place, this Court is unable to accept such contention.

36. In the present case, by virtue of the impugned judgment, the management would go to the Board of Directors, which would be comprised of all branches of the Agarwal family, which, as a family, had majority shareholding and pervasive control over the company (in liquidation).

37. It is also to be noted that Mr. Arun Kumar Agarwal, the Special Officer against whom serious allegations have been made, is a part of one of the branches of the Agarwal family; thus, his interest in such capacity would not be hampered as such by the impugned judgment.

38. From a different perspective, although the winding up order was passed and affirmed apparently on the premise of mismanagement by the erstwhile management of the company (in liquidation), in view of the far

more serious and grave allegations made with regard to the allegedly clandestine dealings undertaken by Mr. Arun Kumar Agarwal, one of the Special Officers, even on a *prima facie* footing, it appears to this Court to be risky to interdict with the impugned judgment at this stage, since such stay order would tantamount to retaining the management of the company with the said Special Officer, against whom there is a judgment of a competent Court (the impugned judgment) operating at present.

39. Unless such judgment is set aside in appeal, it retains its force and cannot be brushed aside. Doing so would tantamount to allowing the appeal itself at this premature stage, before the same is heard out on merits.

40. We hasten to add that nothing in the above observations should be construed as a vindication of the allegations levelled against the said Mr. Arun Kumar Agarwal, who would be at liberty to canvas all points raised by him against the impugned judgment in his independent appeal which is also pending, having been assigned before this Bench.

41. The above findings, it is further clarified, are tentative in nature and shall not in any manner be binding on the parties at any subsequent stage of the present appeal and/or any other litigation and have been arrived at only for the purpose of adjudicating the prayer for ad interim stay.

42. We would be failing in our duty unless we mention that at a previous stage of the appeal, a similar prayer for stay had been made. Although not specifically refused, the regular Bench taking up the appeal had abstained from passing any ad interim order, permitting the appellant to renew such prayer “if required”.

43. Evidently, the expression “if required” would indicate an element of change of circumstance. The appellant merely alleges that upon having written a letter and not getting any reply thereto, the appellant apprehends that the Board of Directors have already been formed and have been vested with the management of the company pursuant to the directions passed in the impugned judgment.

44. However, such direction was implicit in the impugned judgment itself and was available to be argued by the appellant before the regular Bench even on the date when the previous prayer for ad interim stay was not granted.

45. We do not find any change of circumstance worth the name having taken place in the interregnum, merely by the appellant writing and not receiving a reply from the respondents on such count.

46. Hence, in the absence of any change of circumstance, for the sake of judicial propriety, it would not be appropriate for this Court to pass an order of ad interim stay which was not granted earlier by the regular Bench taking up the appeal.

47. In view of the above, the ad interim prayer for stay of the impugned judgment, as prayed for, is refused.

48. Let the file, including the pending application(s), be now placed before the regular Bench having determination to hear the main appeal.

49. The respondents shall file their affidavits-in-opposition to the stay application, bearing ACO/2/2026, within three weeks from date. Replies thereto, if any, shall be filed within a fortnight thereafter.

50. The application shall also be placed along with the appeal before the regular Bench after the above timeline for filing of affidavits is over.

51. The parties and all concerned shall act on the server copy of this order, without insisting upon prior production of a certified copy, for the purpose of compliance.

(SABYASACHI BHATTACHARYYA, J.)

(SUPRATIM BHATTACHARYA, J.)

bp./sp3