

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH**

T.P.No.04/GB/2017
(C.P.No.08/2013)

Under Section 434 of the Companies Act, 1956

In the matter of:

M/s Lafarge India Pvt. Ltd.	... Petitioner
-Versus-	
M/s Gargi & Associates Pvt. Ltd.	... Respondents

Date of Order: 6th July 2017

Coram:

Hon'ble Mr Justice P K Saikia, Member(J)

For the petitioner:	None present
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For the respondent/company:	None present
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ORDER

The learned counsel for the petitioner has prayed for some time vide email dated 05.07.2017 since they are out of station and will not be available in station till 08.07.2017.

2. In that connection, I have perused the Notification dated 29.06.2017 issued by the Ministry of Corporate Affairs, New Delhi. For ready reference, same is reproduced below:

GSR (E). - In exercise of the powers conferred under sub-sections (1) and (2) of section 434 of the Companies Act, 2013 (18 of 2013) read with sub-section (1) of section 239 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016) (hereinafter referred to as the Code), the Central Government hereby

makes the following rules further to amend the Companies (Transfer of Pending Proceedings) Rules, 2016, namely: -

1. Short title and Commencement. - (1) These rules may be called the Companies (Transfer of Pending Proceedings) Second Amendment Rules, 2017.

(2) Save as otherwise provided they shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Transfer of Pending Proceedings) Rules, 2016 (hereafter referred to as principal rules), for rule 4, the following rule shall be substituted, namely: -

"4. Pending proceeding relating to voluntary winding up. - All proceedings relating to voluntary winding up of a company where notice of the resolution by advertisement has been given under sub-section (1) of section 485 of the Act but the company has not been dissolved before the 1st day of April, 2017 shall continue to be dealt with in accordance with provisions of the Act."

3. In the principal rules, for rule 5, the following rule shall be substituted and shall be deemed to have been substituted with effect from the 16th day of June, 2017, namely: -

"5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts.- (1) All petitions relating to winding up of a company 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 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 Companies Act, 2013 exercising territorial jurisdiction to be dealt with in accordance with Part II of the Code:

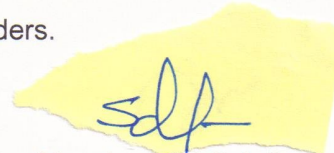
Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with rule 7, required for admission of the petition under sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal upto 15th day of July, 2017, failing which the petition shall stand abated:

Provided further that any party or parties to the petitions shall, after the 15th day of July, 2017, be eligible to file fresh applications under sections 7 or 8 or 9 of the Code, as the case may be, in accordance with the provisions of the Code:

Provided also that where a petition relating to winding up of a company is not transferred to the Tribunal under this rule and remains in the High Court and where there is another petition under clause (e) of section 433 of the Act for winding up against the same company pending as on 15th December, 2016, such other petition shall not be transferred to the Tribunal, even if the petition has not been served on the respondent."

3. In view of the above, petitioner is directed to comply with the direction rendered in Rule 5 aforesaid immediately.

4. List this matter on 10.07.2017 for further orders.



Member (Judicial)
National Company Law Tribunal,
Guwahati Bench, Guwahati.

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