

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI

PRINCIPAL BENCH

C.P. No. 551/2016

IN THE MATTER OF:

Ador Welding Limited

.....Petitioner

v.

Apex Buildsys Limited

.....Respondent

SECTION : UNDER SECTION 433(e) & 434 of the Companies Act

Order delivered on 18.07.2017

Coram:

CHIEF JUSTICE M.M. KUMAR

Hon'ble President

Deepa Krishan

Hon'ble Member (T)

For the Petitioner(s) : Shri Rohit Singh, Advocate

For the Petitioner(s) : Ms. Vijaya Singh, Advocate

ORDER

This petition filed under Section 433 (e) of the erstwhile Companies Act, 1956 was transferred by the Hon'ble Delhi High Court to this Tribunal in pursuance of the notification dated 07.12.2016. In accordance with proviso to Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016 the cases where the service on the respondent was not effected were required to be transferred to the National Company Law Tribunal. In the aforesaid notification, there was no mention with regard to continuation of proceeding in the Hon'ble High Courts in cases of the aforesaid nature if some other petition(s) after notice were pending before the learned Company Judge of the Hon'ble High Court.

However, on 29.06.2017 a notification has been issued amending Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016 and the same read as under:-

"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 pan 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."

The last proviso to Rule 5 makes it abundantly clear that once the petition for winding up of a particular company is pending before the Hon'ble High Court which has not been transferred to the National Company Law Tribunal than the petition like the present one also need^s₄ to be heard by the Hon'ble High Court. In view, thereof the present petition needs to be dealt with under the last proviso of amended rule as per the notification issued on 29.06.2017.

The Petitioner has filed an additional affidavit on 14.07.2017. In para 6 a specific averment has been made disclosing that Company Petition No. 846/2016 titled as IFCI Factors Limited v. Apex Buildsys Limited & another Company Petition No. 775/2016 titled as NTC Logistics India (P) Limited v. Apex Buildsys Limited are pending before the Hon'ble Delhi High Court and the next date of hearing is 18.09.2017 & 09.08.2017 respectively. Therefore, the present petition would also

require to be heard by the Hon'ble Delhi High Court alongwith already pending petition namely Company Petition No. 846/2016 & Company Petition No. 775/2016.

As a sequel to the above discussion, we transfer the petition back to the Hon'ble Delhi High Court so that it may be heard along with already pending Company Petition No. 846/2016 titled as IFCI Factors Limited v. Apex Buildsys Limited & another Company Petition No. 775/2016 titled as NTC Logistics India (P) Limited v. Apex Buildsys Limited.

Accordingly, we direct the office to send back paper book along with all the applications to the Hon'ble Delhi High Court as early as possible.

Sd/-
(CHIEF JUSTICE M.M. KUMAR)
PRESIDENT

Sd/-
(DEEPA KRISHAN)
(MEMBER TECHNICAL)

18.07.2017
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