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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CO.PET. 570/2014 & CO.APPL. 2077/2014**

LAFARGE AGGREGATES & CONCRETE INDIA PRIVATE LIMITED

..... Petitioner

Through:

versus

VXL REALTORS PRIVATE LIMITED & ORS.

..... Respondents

Through: Mr. Rajendra Singhvi, Mr.
K.K.L. Gautam & Ms.
Arundhati Chakraborty,
Advocates.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

15.02.2024

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1. This company petition has been instituted under Section 433(e), 434 and 439 of the Companies Act, 1956 seeking winding up of the respondent company – VXL Realtors Private Limited, predicated on the non-payment of an outstanding amount of Rs. 18,11,972.00/- along with due interest @ 24% per annum.

2. A conspectus of the present matter is that the petitioner company supplied Ready Mix Concrete (RMC) to the respondent company over a period from October 2011 to July 2013, and maintained a running account of the same. It is stated on behalf of the petitioner that it supplied RMC to the tune of Rs. 1,68,40,103.00/- to the respondent company and that the respondent only made part-



payments to the tune of 1,50,28,131/-, such that an amount of Rs. 18,11,972/- is outstanding and payable. Despite repeated oral and written requests and reminders, the respondent company failed to make payment of the due amount and therefore, the petitioner was constrained to serve a statutory legal notice upon the respondent company at its registered office on 14.07.2014 calling upon them to repay the outstanding amount along with due interest.

3. It is but evident that the respondent company has failed to pay its debt in the normal and ordinary course of its business, hence, the present petition has been filed. However, from a perusal of the record, it is borne out that the present company petition is a complete non-starter, in so far that neither a Provisional Liquidator nor an Official Liquidator has yet been appointed in the present petition.

4. Given that the Insolvency and Bankruptcy Code, 2016 as well as the Companies Act, 2013, have since been enacted during the pendency of these proceedings, it is the opinion of this court that the present petition does not deserve to continue before this court, and it would be appropriate for the same to be transferred to the National Company Law Tribunal¹. In this regard, due consideration of Section 434 of the Companies Act, 2013 is necessary, which provides for the transfer of proceedings relating to winding up, pending before High Courts, to the NCLT, and reads as under:

“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

¹ NCLT



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

(b)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 Courts shall be transferred to the Tribunal [Provided also 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.]

Provided also that proceedings relating to cases of voluntary winding up of a company where notice of the resolution by advertisement has been given under subsection (1) of section 485 of the Companies Act, 1956 but the Company has not been dissolved before the 1st April, 2017 shall continue to be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.”

5. It is also apposite to place reliance on the decision of the Supreme Court in the case titled **Action Ispat and Power Private Limited v. Shyam Metalics and Energy Limited²**, whereby it was held that those winding up proceedings pending before High Courts, which have not progressed to an advanced stage, ought to be transferred



to the NCLT. The relevant extract of the said decision is as follows:

“22. Given the aforesaid 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. Thus, in a winding up proceeding where the petition has not been served in terms of Rule 26 of the Companies (Court) Rules, 1959 at a preadmission stage, given the beneficial result of the application of the Code, such winding up proceeding is compulsorily transferable to the NCLT to be resolved under the Code. Even post issue of notice and pre admission, the same result would ensue. However, post admission of a 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 immovable or movable properties 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 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. Whether this stage is reached would depend upon the facts and circumstances of each case.”

6. This above noted decision of the Supreme Court has been relied upon by this court in **Citicorp International Limited v. Shiv-Vani Oil & Gas Exploration Services Limited**³, wherein it was held that winding up proceedings pending before High Courts, which are at a nascent stage and have not progressed to an advanced stage, ought to be transferred to the NCLT. In view of the above, the present company petition as well as pending applications, if any, are accordingly disposed of.

² (2021) 2 SCC 641

³ CO.PET. 446/2013



7. Hence, the instant petition is transferred to the NCLT. Parties to appear before the NCLT on 01.04.2024. The interim orders passed by this Court in these petitions, if any, shall continue till the said date.

8. It is left to the NCLT to consider the matter and pass appropriate orders in accordance with law.

9. The electronic record of the instant petition be transmitted to the NCLT within a period of one week by the Registry. List before the NCLT on 01.04.2024.

DHARMESH SHARMA, J.

FEBRUARY 15, 2024/sm