

NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.P NO. 926/2016
CA NO.

CORAM:

PRESENT: CHIEF JUSTICE M. M. KUMAR
Hon'ble President

SH. R.VARADHARAJAN
Hon'ble Member (J)

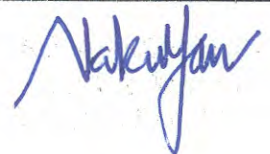
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF PRINCIPAL BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 02.03.2017

NAME OF THE COMPANY: Sudhir Sales ET Service Pvt. Ltd.
V/S
Comfort Net Traders Pvt. Ltd

SECTION OF THE COMPANIES ACT: 433(e)(f)&434

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
-------	------	-------------	----------------	-----------

1)	NAKUL JAIN,	Advocate		
----	-------------	----------	--	--



ORDER

This petition has been transferred by the Hon'ble Delhi High Court and is received in the NCLT on 01.03.2017. Accordingly it has been placed before us.

The petitioner has invoked the provisions of Section 433(e) & 434 of the Companies Act, 1956 read with Rules 6 & 9 of the Companies (Courts) Rules, 1959 with a prayer for winding up the respondent company. For the view we are taking, adjudication of the petition on merit would not be necessary and we skip from giving any detailed fact.

Contd.....



The Ministry of Corporate Affairs issued a notification on 07.12.2016 notifying Rules known as Companies (Transfer of pending proceedings) Rules, 2016 (for brevity 'Transfer Rules'). These 'Transfer Rules' have been enforced with effect from 15.12.2016. According to Rule 5 the proceedings for winding up on the ground of inability of the Company to pay debts are to be transferred to the ^{NCLT.} NCLT. The transfer process is regulated the 'Transfer Rules' Rule 5 which is relevant reads 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 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 as required 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 Act, exercising territorial jurisdiction and such petitions shall be treated as applications under sections 7, 8 or 9 of the Code, as the case may be, and dealt with in accordance with Part II or 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 within sixty days from date of this notification, failing which the petition shall abate."

Contd....

A bare perusal of the Rule 5 would show that all petitions relating to winding up filed u/s 433(e) of the 1956 Act, on the ground of inability to pay its debts which were pending before the High Court, were required to be transferred to this Tribunal. The proviso further postulate that the petitioner is to submit all information required for admission of the petition u/s 7, 8 or 9 of the Code, as the case may be, including the details of the proposed insolvency professional to the Tribunal within sixty days from the date of the notification. If the information is not furnished, the petition is to abate. In a number of cases the information in terms of proviso to Rule 5 has not been furnished and we have allowed the withdrawal of the petition with liberty to file fresh petition in accordance with the provisions of the Code and the new dispensation. Even otherwise we felt that filing of comprehensive petition would be preferable course as the provisions of Section 433(e) and those of the code substantially differ in their contents. Even otherwise conceptually winding up is absolutely different than insolvency and bankruptcy.

In the present case, learned counsel for the petitioner expressed his inability to withdraw the petition as he has no instructions. Learned counsel has advanced arguments stating that if the notification dated 07.12.2016 is construed so as to count period of sixty days from the date of its issuance or its enforcement then the period of sixty days in the present case have come to an end during the pendency in the High Court and before the petition was transferred. According to the learned counsel the petition has been transferred on 01.03.2017 whereas period of sixty days expired on 5th Feb, 2017 if taken from the date of notification i.e. 07.12.2016 or 13th Feb, 2017 if taken from the date of its enforcement. According to the learned counsel there was no possibility of filing any additional information to save the abatement of the proceedings in the present petition as the petition was still pending before the High Court after Feb, 7 and Feb, 15. Another argument advanced by the learned counsel is that Rule 5 runs counter to the provisions of Section 434(2) and therefore need to be read down.

A handwritten signature and initials are present at the bottom left of the page. The signature appears to be 'M' and the initials are 'A'.

We have thoughtfully considered the submissions made by the learned counsel and are of the view that the instant petition has abated. The Ministry of Corporate Affairs has framed rules keeping in view the sole object of enforcing the provisions of the Code. Section 7 read with Section 5 (7)(8) unroll the new concepts of Financial Creditors vis-à-vis Financial Debt. It also postulates the concept of Operational Creditors u/s 8 & Operation Debt as defined in Section 5(20) & (21). These processes are to be carried by an Insolvency Professional. All that is required by Rule 5 is that adequate information to the Tribunal u/s 7, 8 or 9 be furnished within sixty days from the date of notification, failing which the petition will not be considered ripe for admission and it is to abate. We do not read any compulsion of filing the information required for admission of the petition u/s 7, 8 or 9 of the Code. The rule is very specific and is not dependent on the date of transfer for filing of the information within the period of sixty days from the date of the notification. The intention of the framers of the Rules appears to be that if there is a delay of more than sixty days either in furnishing the information or even otherwise then such petition would abate. If we read the 8th schedule of the Code which modifies the provisions of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 then it would be revealed that the proceeding pending before the BFIR or the Appellate Authority under the Sick Industrial Companies (Special Provisions) Act, 1985 are deemed to be abated and within one hundred and eighty days a reference may be made to this Tribunal under the Code. Thus the intention of the legislature is to give effect to the provisions of the Code and usher in a new dispensation expeditiously. Therefore, to argue that sixty days time has already come to an end before the transfer of the case to this Tribunal would suffer from this basic fallacy. Accordingly we hold that the period of sixty days has been fixed irrespective of transfer or without transfer.

Contd.....

The other argument that the rule violates the provisions of Section 434(2) of the Companies Act has also failed to impress us because we are unable to find that incongruity between the provisions of Section 434(2) & Rule 5 particularly in view of our opinion expressed in respect of the first argument.

As a sequel to the above discussion this petition fails and the same is dismissed. However we grant liberty to the petitioner to file a fresh petition on the same cause of action under IBC and in accordance with the provisions of new dispensation. It is needless to say that the opinion expressed in this order shall not prejudice the rights of the petitioner in any manner whatsoever.

The petitioner stands disposed of.

Sd/-

(CHIEF JUSTICE M.M. KUMAR)

PRESIDENT

Sd/-

(R. VARADHARAJAN)

MEMBER (J)