

**NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH**

**CP NO.188/2016  
RT CP (IB) NO.102/Chd/Pb/2017**

India Infoline Finance Ltd.

...Petitioner

Versus.

MRG Auto Pvt. Ltd.

...Respondent

Present: Mr.Irshan Singh Kakkar, Advocate for petitioner  
Ms. Anjali Moudgil, Advocate for Mr.Shekhar  
Verma, Advocate for respondent.

This petition was filed in the Hon'ble Punjab and Haryana High Court, Chandigarh under Section 433 (e) of the Companies Act 1956 for winding up of respondent-company on the ground of its inability to pay the debt due to the petitioner. The matter was listed before the Hon'ble High Court on 02.12.2016 and notice was directed to be issued to the respondent-company for 27.03.2017 to show cause as to why this petition be not admitted. In the meanwhile, on promulgation of the Companies (Transfer of Pending Proceedings) Rules, 2016 which came into force w.e.f. 15.12.2016 this petition has been transferred by the Hon'ble High Court to the Tribunal.

When the matter was listed on 26.04.2017 the learned counsel for petitioner filed his own affidavit stating therein that while the matter was pending in the Hon'ble High Court the notice was despatched on 06.12.2016 and it was delivered to respondent-company on 08.12.2016 along with the postal receipt of despatch of notice by Registered Post and Track Report of Postal Department attached in support of the contention that notice was delivered on 08.12.2016. Copy of the affidavit was supplied to the learned counsel for respondent. The matter was fixed for today for the respondent-company to file affidavit clearly



specifying the date on which service of the notice was effected. Learned counsel for respondent has stated that the contents of the affidavit filed by the learned counsel for petitioner are correct and it is admitted that the respondent-company was served on 08.12.2016.

This petition has been transferred to the Tribunal in terms of the Rule (5) of the aforesaid Rules which reads as under:-

*"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 application under sections 7, 8 or 9 of the Code, as the case may be, and 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 within sixty days from date of this notification, failing which the petition shall abate."*

It is thus concluded that the petition could be transferred to the Tribunal only if the respondent had not been served before 15.12.2016. The learned counsel for petitioner relies upon the judgement of Hon'ble Bombay High Court in the *Company Petition No.331 of 2016: West Hills Realty Private Ltd. versus Neelkamal Realtors Towers Pvt. Ltd.* in which *Company Application (L) No.766 of 2016* was decided on 23.12.2016. In paragraph 8 of the judgement it was observed that service of petition implies service on the respondent or other

person, as the case may be, of a copy of the petition, whereas notice of the petition connotes notice of the hearing of the petition before the court. Rule 26 of the Companies (Court) Rules, 1959 provides for service of petition, whilst Rule 27 provides for notice of petition. Rule 28 provides for the manner in which service is to be effected on the company, whereas Rule 29 casts the responsibility for all services required to be effected by the Rules or by orders of court or Registrar on the petitioner. It was held by the Hon'ble Bombay High Court that all petitions relating to winding up before admission pending before the High Court in which respondent has been served as required by Rule 26 of the Companies (Court) Rules, 1959 shall continue to remain in the High Court pending their adjudication while the petitions having not been served are to be transferred to the Tribunal for adjudication under Sections 7, 8 or 9 of the Insolvency and Bankruptcy Code, 2016. Learned counsel for the respondent has also conceded the above proposition and does not dispute the contention that the instant petition is required to be returned to the Hon'ble Punjab and Haryana High Court for further proceedings since the respondent was served before 15.12.2016 when the Companies (Transfer of Pending Proceedings) Rules, 2016 came into force. The instant petition be thus returned to the Hon'ble Punjab and Haryana High Court for further proceedings.

— Sd/ —  
(Justice R.P. Nagrath)  
Member(Judicial)

May 24, 2017  
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