

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
CP NO. 34/2014**

Gobind Enterprises

...Petitioner.

Versus

A.S.T. Paper Mills Ltd.

...Respondent

Present: Mr. Rakesh Bhatia, Advocate for petitioner.
None for respondent.

This case has been received by transfer from the Hon'ble Punjab & Haryana High Court, Chandigarh. It be entered in the relevant register. Learned counsel for the petitioner has pointed out that the affidavit of service of respondent was filed and it was recorded by the Hon'ble High Court on 07.08.2015 that no one had put in appearance on behalf of respondent and the matter was adjourned for the next date for consideration. Rule 5 of the Companies (Transfer of Pending Proceedings), Rules 2016, 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 applications 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.

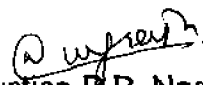
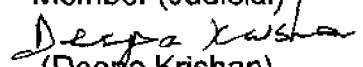
Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with Rule 7, required for admission of the petition under sections 7,8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal within sixty days from date of this notification, failing which the petition shall abate.

(2) All cases where opinion has been forwarded by Board for Industrial and Financial Reconstruction, for winding up of a company to a High Court and where no appeal is pending, the proceedings for winding up initiated under the Act, pursuant to section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall continue to be dealt with by such High Court in accordance with the provisions of the Act."

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Therefore, only the cases in which the petition has not been served upon the respondent are to be referred to the Tribunal. Learned counsel for the petitioner submits that in fact there were six cases relating to the respondent company and its sister concerns and in three of such cases the order was for effecting service of the respondent.

The instant case be sent back to the Hon'ble High Court as the same is not covered by the provisions of Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016.


(Justice R.P. Nagrath)
Member (Judicial)

(Deepa Krishna)
Member (Technical)

January 27, 2017
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