

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

CP NO. 140/2016

Dated: 21.02.2017

**Coram: Hon'ble Mr. Justice R.P.Nagrath, Member(Judicial)
Hon'ble Deepa Krishan, Member(Technical)**

Tata Capital Financial Services Ltd. ...Petitioner.

Versus

M/s CL Engineering Ltd. ...Respondent

Present: Mr. A.V.S.Barsat, Advocate for petitioner.
None for respondent.

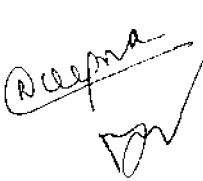
ORDER

(Oral):

This case has been received by transfer from the Hon'ble Punjab and Haryana High Court, Chandigarh. It be entered in the relevant register. This petition was filed for winding up of the respondent-company under Section 433 (e) of the Companies Act, 1956 on the ground of inability to pay its debts.

The matter was listed on 12.08.2016 before the Hon'ble High Court and notice was directed to be issued to the respondent-company to show cause as to why this petition be not admitted. In the meantime, alienation of the property of the respondent-company was stayed. Thereafter the file was not taken up before the Hon'ble High Court.

We have heard the learned counsel for the petitioner. We find that the service of the respondent was duly effected before 15.12.2016 and thus this petition is required to be returned to the Hon'ble High Court. We say so for the reason that this petition was received by the Tribunal in terms of Rule 5 of the Companies (Transfer of Pending Proceedings), Rules 2016 (in short




to be referred as 'the Rules') which came into force w.e.f. 15.12.2016. Rule 5 of the aforesaid Rules 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".

Rule 26 of the Companies (Court) Rules,1959 says that the other relevant provision is Rule 29 of these rules which reads as under:


"Save as otherwise provided by these rules and subject to any directions of the Judge or Registrar, the petitioner, applicant or any other person having the conduct of proceedings in Court, shall be responsible for the service of all notices, summons and other processes and for the advertisement and publication of notices, required to be effected by these rules or by order of Court."

Dasgupta


Learned counsel for the petitioner contends that the notice was sent by Registered Post to the respondent-company and there is an affidavit dated 10.11.2016 of Mr. Gaurav Sharma, Cluster Collection Manager of the petitioner-company in support of effecting service upon the respondent company. Annexure A-1 is the notice dated 29.09.2016, Annexure A-2 is copy of the receipt issued by the postal authorities in token of despatch of the notice and Annexure A-3 is the Track Report of the Post Office as a proof of delivery of registered article containing notice to the addressee on 05.10.2016.

The respondent having been served of the notice on 05.10.2016, much before the coming into force of the Rules, the file is required to be returned to the Hon'ble High Court for disposal in accordance with law.

In view of the above, the records of the instant petition be returned forthwith to the Hon'ble Punjab and Haryana High Court, Chandigarh for further necessary action.


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


(Deepa Krishan)
Member(Technical)

February 21, 2017

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