

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

**CP NO. 111/2015
RT NO. 16/2017**

Date: 02.03.2017

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

M/s. Mehta Tubes Ltd. Company. ...Petitioner.

Versus.

M/s. KEW Industries Ltd. and others. ...Respondents

Present: - Ms. Nidhi Garg, Advocate for Mr. Sukhjinder S.
Behl, Advocate for petitioner.
None for respondents.

ORDER

R.P. Nagrath, J., Member (Judicial) (Oral):

The instant petition was filed in the Hon'ble Punjab and Haryana High Court under Section 433 (e) of the Companies Act, 1956 for winding up of the respondent-company for its inability to pay the debts due to the petitioner.

We have heard the learned counsel for the petitioner and also perused the record. The case was taken up by the Hon'ble High Court for the first time on 24.7.2015 and notice was ordered to be issued to the respondent-company. On 26.02.2016, the Hon'ble High Court observed that the notice has been received unserved with the report that the addressee left without address. Learned counsel for the petitioner sought sometime to find out any

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other address of the respondent-company. On 11.07.2016, the learned counsel for the petitioner contended before the Hon'ble High Court that the respondent-company was still existing at the address mentioned in the petition. On 17.10.2016, the Hon'ble High Court again ordered to issue fresh 'Dasti' notice to the respondent-company for 19.12.2016. As per report on the notice, the company was stated to have been closed for many years. From the aforesaid facts, we find that the respondent-company has not been served.

We have heard the learned counsel for the petitioner.

The petition was received by transfer in this Tribunal in terms of Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016 (for brevity, hereinafter referred to as the "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 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



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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."

The petition was thus to be treated as application under Sections 7, 8 or 9 of the Insolvency and Bankruptcy Code, 2016 and the petitioner was required to file the requisite information including details of the insolvency professional but no such information has been filed. Therefore, the proceedings in the instant petition would stand automatically abated on the expiry of 60 days period w.e.f. 15.12.2016, the date when the aforesaid Rules came into force. The instant petition, therefore, shall stand abated. This is, however, without prejudice to the right of the petitioner to avail of the alternative remedy if permissible under the law. The file be consigned.

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

(Deepa Krishan)
Member(Technical)

March 02, 2017