

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

**CP No.220/2016
RT CP No.81/Chd/Pb/2017**

In the matter of:

D.P.Jagan & Sons.Petitioner.

Versus.

M/s Zander Engineers.Respondent.

Present: Ms.Samiya Singh, Advocate for the petitioner.

This petition was filed under Section 433 (e) of the Companies Act, 1956 for winding up of the respondent company for its inability to pay the outstanding debt. The petition was listed before the Hon'ble High court on 22.11.2016 and notice was directed to be issued to the respondent for 10.3.2017 to show cause as to why this petition be not admitted. In the meanwhile, the matter was transferred to this Tribunal on coming into force of the Insolvency & Bankruptcy Code, 2016 and in view of the Companies (Transfer of pending Proceedings) Rules, 2016.

When the case was listed on 10.3.2017, it was adjourned sine-die for enabling the petitioner to file the appropriate information in terms of Sections 7, 8 or 9 of the Insolvency & Bankruptcy code, 2016 as required by Rule 5 of the aforesaid Rules. Though the information has been filed, yet the learned counsel for the petitioner submits that the notice was sent to the respondent in compliance with the orders dated 22.11.2016 passed by the Hon'ble

Punjab & Haryana High Court. The petitioner's counsel has referred to the copy of the postal receipt showing the despatch of the notice by speed post on 23.11.2016 with the track report of the post office showing the delivery of the notice to the respondent Corporate Debtor on 25.11.2016. Rule 5 of the Companies (Transfer of pending Proceedings) Rules, 2016 as amended vide notification dated 29.06.2017 reads as under:

“5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts.-

*(1) All the petitions relating to winding up of a company 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** 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 Companies Act, 2013 exercising territorial jurisdiction to be 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 upto 15th day of July, 2017, failing which the petition shall stand abated:

Provided further that any party or parties to the petitions shall, after the 15th day of July, 2017, be

eligible to file fresh applications under sections 7 or 8 or 9 of the Code, as the case may be, in accordance with the provisions of the Code.”

Since the respondent in this case was served before 15.12.2016, when these rules came into force, the file of the case is required to be returned to the Hon'ble High Court for further proceeding in the matter. Therefore, the record of the case be sent back to the Hon'ble High Court by attaching the copy of postal receipt of despatch of the notice and the track report of the post office in proof of delivery of the notice on 25.11.2016.

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

September 25, 2017.
Ashwani