

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 226 of 2017**

**IN THE MATTER OF:**

**Allied Media Network Pvt. Ltd.**

**...Appellant**

**Vs.**

**M/s. Sanraa Media Ltd.**

**...Respondent**

**Present: For Appellant: - Mr. Sanjay Kumar, Advocate.**

**ORDER**

**18.10.2017-** The appellant preferred an application under Section 433(e) of the Companies Act, 1956 before the Hon'ble Madras High Court. Pursuant to Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016 notified by Central Government on 7<sup>th</sup> December, 2016 the case was transferred to the Adjudicating Authority.

2. Notification dated 7<sup>th</sup> December, 2016 was subsequently modified by the Companies (Transfer of Pending Proceedings) second amendment Rules, 2017 by notification dated 29<sup>th</sup> June, 2017. Rule 5 therein reads as follows: -

*"5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts.- (1) 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 stand abated.*

*Provided further that any party or parties to the petitions shall, after the 15<sup>th</sup> 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:*

*Provided also that where a petition relating to winding up of a company is not transferred to the Tribunal under this rule and remains in the High Court and where there is another petition under clause € of Section 433 of the Act for winding up against the same company pending as on 15<sup>th</sup> December, 2016, such other petition shall not be transferred to the Tribunal, even if the petition has not been served on the respondent.”*

3. After transfer of the case, the appellant filed affidavit and bank statement and other required statutory formalities, but not filed the same within the time limit i.e. 15<sup>th</sup> July, 2017, but on 19<sup>th</sup> July 2017. In this background, the Adjudicating Authority declared the application abated by the impugned order dated 22<sup>th</sup> August, 2017, which reads as follows:

*“Counsel for petition present and filed an affidavit in proof of the paper publication made for the appearance of the respondent for his appearance and for making submissions. Respondent called absent. No*

*representation. While hearing the arguments, it is submitted that the petitioner has filed affidavit and bank statement u/s 9(3)(b)&(c) and other required statutory formalities to be complied as per IB Code, 2016 only on 19.07.2017. in view of the notification dated 29.06.2017 issued by the Ministry of Corporate Affairs, the matter stands closed as abated.”*

4. We agree with the submissions made by the learned counsel for the appellant that pursuant to earlier notification, six months' time was allowed which is beyond 19<sup>th</sup> July, 2017 but in view of the subsequent notification dated 29<sup>th</sup> June, 2017. Last date of submissions has been forwarded resulting abatement of the application, without any fault on the part of the appellant.
5. In the present case, even if we set aside the impugned order dated 22<sup>nd</sup> August, 2017 on the ground that the appellant was entitled to file bank statement u/s 9(3)(b)&(c) and other required statutory formalities even on 19<sup>th</sup> July, 2017, but that will not suffice give any relief to the appellant as more than five months have passed thereafter.
6. In the circumstances, in terms of Rule 5 aforesaid, we allow the appellant to file fresh application under Section 7 or Section 9, as the case may be, after fulfilling the requirements under 'I&B Code'. If such application is filed within the reasonable period, the Adjudicating

Authority will consider the same in accordance with law uninfluenced by the impugned order dated 22<sup>nd</sup> August, 2017. The appeal stands disposed of with aforesaid observations.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

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