

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

(IB)-587(PB)/2018

IN THE MATTER OF:

Enkay (India) Rubbers Co. Pvt. Ltd. Applicant/Petitioner
Vs.
Sumeru Processors Pvt. Ltd. Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016

Order delivered on 14.09.2018

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

Sh. S. K. MOHAPATRA,
Hon'ble Member (Technical)

Presents:

For the Petitioner/Applicant : Mr. G.K. Jain, CA
For the Respondent : Mr. Narendera M. Sharha & Ms. Anindita
Saha, Advs.

ORDER

This petition U/s. 7 has been filed on the basis of a promissory Note dated 03.11.2015 showing the debt of Rs. 25,00,000/- and its disbursement. The rate of interest has also been mentioned to be 15% per annum compounded on monthly basis amounting to Rs. 3,30,677/-. The statement of account of Bank of India as on 09.12.2015 has been attached (Annexure A-1) which shows the disbursement of Rs. 25,00,000/- to the respondent. A primary feature of Promissory Note which emerges from its perusal is that it is payable on demand and no period for repayment has been fixed. It is pointed out by the Ld. Counsel for the respondent that demand notice is purported to have been sent on 30.4.2018(Annexure- A4) at the address of registered office of the respondent company. However, the postal receipt shows (Annexure-A5) that it was directed at a different address. It has therefore been argued that without first raising the demand, the debt under Promissory Note would not become payable. It has further been submitted that U/s 19 of the



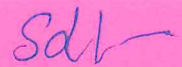
Negotiable Instruments Act, the requirement of law applicable to Promissory note by raising the demand has not been satisfied and therefore the amount would not become payable.

Faced with the aforesaid submission, Mr. G.K. Jain, Chartered Accountant/Special power of Attorney Holder has submitted that the present petition itself may be regarded as a demand notice and infact now the copy of the demand notice itself is with the respondent. Therefore, it may be regarded as raising of demand under the promissory note.

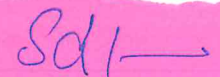
Ld. Counsel for the respondent have also raised other objections with regard to the competence of filing the petition by a special power of attorney. The aforesaid objection does not need to be dealt with at this stage in the light of the view which we are taking in this matter.

Having heard the Ld. Counsel, we are of the view that the demand notice has now been issued to the respondent and the same be treated to have been served on this date i.e. 14.09.2018. The parties are left to avail the remedies in accordance with the law herineafter.

In view of the above the petition is dismissed by giving liberty to the parties to avail the remedy in accordance with law. However, the demand notice based on promissory note is deemed to be served on the respondent.



(M.M.KUMAR)
PRESIDENT



(S. K. MOHAPATRA)
MEMBER (TECHNICAL)