

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. No. 707/2016

IN THE MATTER OF:

Sriram Compounds Pvt. Ltd.
v.

.....Petitioner

Shiva Drums Pvt. Ltd. & Ors.

.....Respondents

SECTION : UNDER SECTION 433(e) and 434 (1) of the Companies Act, 1956

Order delivered on 26.07.2017

Coram:

CHIEF JUSTICE M.M. KUMAR
Hon'ble President

Deepa Krishan
Hon'ble Member (T)

For the Petitioner(s) : Shri H.K. Chaturvedi & Ms. Suchita Dixit, Advocates

ORDER

This is an application i.e. C.A. No. 223(PB)/2017 for recall of order dated 11.05.2017 requiring the petitioner to serve notice under the provisions of Section 8 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') which has been held mandatory in accordance with the view taken by the National Company Law Appellate Tribunal in the case of Era Infra Engineering Ltd. v. Prideco Commercial Projects Pvt. Ltd., Company Appeal (AT) (Ins) No. 31/2017 decided on 03.05.2017. Learned counsel for the applicant has argued that the transfer proceeding should dovetail with order dated 12.08.2016 passed by the Hon'ble Delhi High Court where notice has already been issued and the same was



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admittedly not served, therefore, it is requested that the notice of the petition filed in the Hon'ble High Court should have been issued afresh instead of requiring the petitioner to comply with the provisions of Section 8 of the Code. Another argument raised is that in Era Infra Engineering Ltd. (supra) the Hon'ble Appellate Tribunal was dealing with the case filed under the Code and it was not a case of transfer from the Hon'ble High Court.

Having heard the learned counsel, we are of the considered view that the notification issued by the Ministry of Corporate Affairs on 07.12.2016 notified the Rules known as Companies (Transfer of Pending Proceedings) Rules, 2016 which require the petitioner to submit all the information other than the information forming part of the record of transfer in accordance with Rule 7 of the Code necessary for the admission of the petition under Section 7, 8 and 9 of the Code, as the case may be, including the details of the proposed Insolvency Professional. It was required to be done within 60 days from the date rules were notified, failing which the petition was to abate (proviso to Rule 5).

In accordance with the proviso to Rule 5 necessary information and requirements for admission of the petition under Section 8 and 9 was required to be made by the petitioner which includes the service of notice under Section 8 of the Code. Additional affidavit has been filed but no notice under Section 8 of the Code has been given. It is also appropriate to notice that after 07.12.2016 a



further notification dated 28.02.2017 was issued by the Ministry of Corporate Affairs extending the period of 60 days to 6 months. The period was further extended for another 30 days vide notification dated 29.06.2017. The petitions which remain incomplete were to abate by 15.07.2017.

In the additional affidavit dated 08.05.2017 filed by the petitioner the only thing mentioned is that the petition may be treated under Section 9 of the Code without any further compliances. As per Section 9 (3) of the Code the Operational Creditor was required to furnish a copy of the invoice demanding payment or demand notice delivered by the Operational Creditor to the Corporate Debtor. There is further requirement of filing an affidavit to the effect that there is no notice given by the Operational Debtor relating to a dispute of unpaid operational debt and a copy of the certificate from the financial institution maintaining the accounts of the Operational Creditor confirming that there is no payment of the unpaid operational debt by the Corporate Debtor. There is further requirement of Section 9 (2) of the Code that the application under Section 9 of the Code is required to be filed in accordance with the form prescribed. The proforma has been prescribed by Rule 4 (2) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016. All the aforesaid necessary requirements have not been complied with and the deadline for doing so has expired on 15.07.2017.



We do not feel the necessity of answering the argument based on the judgment rendered in Era Infra Engineering Ltd. (supra) because the petition is incomplete in more than one respect. Therefore, the application for recall of the order dated 11.05.2017 is dismissed. Even the petition has abated and the petitioner would be at liberty to file fresh one on the same cause of action in accordance with the provisions of the Code, if so advised.

— Sd —

(CHIEF JUSTICE M.M. KUMAR)
PRESIDENT

— Sd —

(DEEPA KRISHAN)
(MEMBER TECHNICAL)

26.07.2017
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