

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH: GUWAHATI

Diary No.579 of 2017

Under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of:

Indian Refrigeration Stores ... Operational Creditor

-Versus-

Agartala Diary Foode (P) Ltd ... Corporate Debtor

Order delivered on 10-10-2017

Coram:

Hon'ble Mr. Justice P. K. Saikia, Member (J)

ORDER

This is a proceeding under Section 9 of the Insolvency & Bankruptcy Code, 2016 (in short "the Code of 2016) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short Rules of 2016), filed by the Indian Refrigeration Stores, New Alipore, 1 / 2, Chetla Road, Kolkata 700 053, the Operational Creditor herein, seeking initiation of Corporate Insolvency Resolution Process against Agartala Diary Foode (P) Ltd., the Corporate Debtor herein, under the code of 2016.

On receipt of the application the Registry has scrutinized the same and noticed some shortcomings therein. For ready reference, the note of the registry put up on 09-10-2017 for perusal is reproduced below: -

"In the matter of

Agartala Dairy Foode (P) Limited

Hon'ble Member (Judicial):

In compliance with order dated 14/09/2017, the Registry had sent notice to Indian Refrigeration Stores requesting it to rectify the defects noticed by the Registry in its application.

It was also requested to rectify the defects immediately and in any event not later than seven days from the date of receipt of the letter failing which appropriate orders would be passed in accordance with law.

A copy of the letter has also been sent to the applicant through electronic mail on 15/09/2017 at the email provided by the applicant. From the perusal of records available with India Post website, it appears that the advocate for Indian Refrigeration Stores received the notice on 18/09/2017.

The Registry has not received any further communication from the applicant on the above mentioned subject of rectification of defects noticed by the Registry in the application filed under section 7 of the Insolvency and Bankruptcy Code, 2016.

Laid for kind perusal of Your Lordship and for favour of further orders.

Sd/- Bulbuli Richong
Registrar (I/c) 09/10/2017"

Those shortcomings were communicated to the Operational Creditor for their information and doing needful within seven days as required under the proviso to Section 9 (5) (ii) of the Code of 2016 vide order dated 14-09-2017 of this Tribunal. For ready reference, the order dated 14-09-2017 is reproduced below: -

"ORDER
Date: 14.09.2015

This application under Section 9 of the Insolvency and Bankruptcy Code 2016 (in short, the Code 2016) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 (in short, Rule 2016) has been initiated by Indian Refrigeration Stores, (in short OC) seeking initiation of corporate insolvency resolution process against Agartala Dairy Food Private Limited (in short CD) under the Code 2016.

It has been alleged that OC had entered into 2(two) purchase orders with CD upon latter's acceptance of 2(two) quotations for supply of 22 Filled Industrial Gas Cylinders with Caps. Under the accepted quotations, CD was to return the said cylinders within 30 days of supply failing which detention charges would be imposed upon the CD as per the terms of the said quotations agreed upon by the parties thereto.

However, despite repeated reminders from the side of OC, the CD failed and/or neglected to return a total of 21 cylinders under purchase order No.40636. Ultimately, CD returned the said 21 cylinders on 29th September, 2015 and, therefore, chargeable

days from the date of supply became 981 days. But CD had failed to make payment towards detention charges and, therefore, as on 22 May, 2017, an amount of INR 1,91,520/- becomes due to the OC.

This Registry, on receipt of the application under Section 9 of the Code 2016, examined the same and noticed some defects in the presentation/preferring the application under consideration and such defects were reflected in its report dated 13.09.2017. For ready reference, the objection so raised by the Registry in its note dated 13.09.2017 is reproduced below: -

"As per section 9(3) of the Insolvency and Bankruptcy Code, the following document needs to be submitted along with the main application-

- a. An affidavit to the effect that there is no notice given by corporate debtor relating to the dispute of the unpaid operational debt.*
- b. A copy of certificate from the financial institution maintaining accounts of the operational creditor confirming that there is no payment of the unpaid operational debt by the corporate debtor.*

The applicant has not furnished the above details in the application.

ii) The annexures submitted are not in the format provided in form 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. As per the rules the annexures have to be submitted in the following format.

Annexure-1- copy of the invoice /demand notice as in Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016

Annexure-ii- copies of all documents referred to in the application

Annexure-iii- Affidavit in support of the application in accordance with the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016.

Annexure IV- Proof that specified application fee has been paid.

III) The organisational status of Indian Refrigeration Stores is not clear from Part-1 of the form. Identification of operational creditor, whether a company registered society, partnership, etc. may be provided.

IV) The authorisation in favour of Puneet Kumar Garodia may be submitted in proper format.

v. Three authenticated sets have not been submitted to the Registry.

vi. The annexures appended to the application have not been verified by the authorised representative/advocate.

Vii Fax Number/Email address etc. have not been provided.

Viii Affidavit verifying the petition has to be in NCLT Form 6 in non-judicial stamp paper of value of 20 Rs.

iv. Authorised representative signing the main application has to sign the affidavit verifying the petition.

x. Vakalatnama/Memo of appearance not filed along with the main application.

xi. Proof of service of the application to the corporate debtor not appended with the main application".

I have considered the objection in the light of the application and other connected documents and found reasons to concur with the objection so raised by the Registry. Accordingly, operational creditor is directed to rectify the same immediately."

It is stated by the Registry that seven days' time, so specified in proviso to Section 9(5)(ii) of the Code of 2016 is already over in the meantime. But the defects have not been rectified by the Operational Creditor as yet.

Today i.e. on 10-10-2017, one Mr. Punit Kumar Garodia, learned counsel appearing for the Operational Creditor has prayed for some more time for rectification of the defects noticed in the application. However, such prayer is found untenable in view of the law laid down by National Company Law Appellate Tribunal, New Delhi in the case of Smart Timing Steel Ltd. Vs National Steel & Agro Industries Ltd. reported in (2017) 142 SCL 382, as well as the decision of the same Tribunal in the case of J. K. Jute Mills Company Ltd. Vs Surendra Trading Co. reported in (2017) 142 SCL 188.

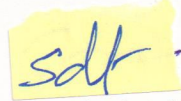
In J. K. Jute Mills Company Ltd. (supra), it was held that seven days' time meant for rectification of defects noticed in the application filed under Section 9 and 10 of the Code of 2016 are mandatory and there is no scope of enlargement of such time. For ready reference, relevant part of the decision in the case of J. K. Jute Mills Company Ltd. (supra) is reproduced below: -

"44. However, the 7 days' period for the rectification of defects as stipulated under proviso to the relevant provisions as noticed above is required to be complied with by the corporate debtor whose application, otherwise, being incomplete is fit to be rejected. In this background we hold that the proviso to sub-section (5) of section 7 or proviso to sub-section (5) of section 9 or proviso to sub-section (4) of section 10 to remove the defect within 7 days are mandatory, and on failure applications are fit to be rejected."

I have already found that certain defects did creep up in preferring the application under Section 9 of the Code of 2016 by the Operational Creditor and such defects were duly communicated requiring them to rectify the same within the time fixed by the Statute. However, the Operational Creditor failed to rectify the defects within the statutory period, same being seven days, as required under the Law.

Being so, this Bench has no other option but to reject the application.

Accordingly, this application preferred under Section 9 of the Code of 2016 is dismissed for the aforesaid reason.



Member (Judicial)
National Company Law Tribunal
Guwahati Bench: Guwahati.

Dated, Guwahati, the 10th October, 2017

Deka/10-10-2017