

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH: GUWAHATI

Dy. No.755 of 2017

Under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016.

In the matter of:

M/s. Shreyans Realtors Pvt. Ltd.

M/s. Otis Developers

... Applicants/Financial Creditors

-versus-

M/s. Saroj Realtors and Developers Pvt. Ltd.

... Non-applicants/Corporate Debtor

Order delivered on 09-01-2018

Coram:

HON'BLE MR. JUSTICE P.K. SAIKIA, MEMBER (JUDICIAL)

For the applicants/Financial Creditor : Mr. Amit Pareek,
Mr. N. Oja,
Ms. A. Talukdar - Advocates

For the Non-applicants/Corporate Debtor : Mr. Gautam Choudhury,
Mr. S. Ahmed
Ms. A. Rehman
Ms. S. Kaushik
Mr. K. K. Goswami - Advocates

ORDER

This is an application under Section 7 of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as the "Code of 2016"] read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 [hereinafter referred to as the "Rules of 2016"].

2. The applicants herein, they being M/s. Shreyans Realtors Pvt. Ltd. and M/s. Otis Developers, claiming themselves to be the Financial Creditors, have preferred this application seeking initiation of Corporate Insolvency Resolution Process (in short "CIRP") against M/s. Saroj Realtors and Developers Pvt. Ltd., hereinafter referred to as the "Corporate Debtor" alleging that the Financial Creditors together had made available to the Corporate Debtor a loan to the tune of Rs.31,66,000.00, which was not repaid in accordance with repayment schedule and, therefore, as on 30-11-2017, an amount to the tune of Rs.87,87,565.00 remained payable to the Financial Creditors from the side of the

Corporate Debtor. Hence, seeking initiation of Corporate Insolvency Resolution Process, this application was filed before this Bench of NCLT.

3. The Registry of this Bench scrutinized the same and found certain defects, which were notified to the Financial Creditors. For ready reference, the Registry's note dated 15-12-2017 is reproduced hereinbelow: -

"Hon'ble Member (Judicial)

An application under section 7 of the Insolvency and Bankruptcy Code of India has been filed by Shreyans Realtors Private Limited and M/s. Otis Developers on 4th December, 2017 against the above mentioned corporate debtor.

On scrutiny, the Registry has noted the following defects in the application filed by the financial creditors:

- 1. Banking transaction records and CA certificate have been furnished to establish the debited amount claimed as debt. Agreement/other agreed terms and conditions to establish that the debited amount is by way of loan may be furnished by the financial creditors. Such terms and conditions are required to calculate the interest amount and correctly assess the maturity period and the date of default.*
- 2. The date of default for both the financial creditors have been given as 1/04/2014. Delays/lapses in filing the application within the limitation period may be explained by the financial creditors.*
- 3. The annexures have not been properly numbered as required under Form 1.*
- 4. Under Rule 9(2) of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016, the application must be accompanied with a certificate confirming the eligibility of the proposed insolvency professional as a resolution professional in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.*
- 5. Identification document of partnership firm Otis Developers has not been provided along with the petition.*

Approval may kindly be given to write to the financial creditors to rectify the defects within a period of seven days from the date of receipt of this letter failing which appropriate orders will be passed in accordance with law.

*Sd/- Bulbuli Richong
Registrar (I/c) dated 15/12/2017*

*Hon'ble Member(J)- Please
Seen the note and proposal is accepted
Sd/- 15/12/2017"*

4. On being so required, the Financial Creditors have rectified the defects and filed the rectified application. But, even in the application so rectified, there were some more defects. For ready reference, the same is reproduced below: -

"Hon'ble Member (Judicial)

A joint application under section 7 of the Insolvency and Bankruptcy Code was received by this Bench on 04/12/2017 from Shreyans Realtors Private Limited and M/s. Otis Developers.

On 15/12/2017, the Registry through letter number NCLT/GB/2017/3227 dated 15/12/2017 requested the applicant - financial creditor to rectify the following defects in the application:

- "1. Banking transaction records and CA certificate have been furnished to establish the debited amount claimed as debt. Agreement/other agreed terms and conditions to establish that the debited*

amount is by way of loan may be furnished by the financial creditors. Such terms and conditions are required to calculate the interest amount and correctly assess the maturity period and the date of default.

2. The date of default for both the financial creditors have been given as 1/04/2014. Delays/lapses in filing the application within the limitation period may be explained by the financial creditors.
3. The annexures have not been properly numbered as required under Form 1.
4. Under Rule 9(2) of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016, the application must be accompanied with a certificate confirming the eligibility of the proposed insolvency professional as a resolution professional in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
5. Identification document of partnership firm Ottis Developers has not been provided along with the petition.

Approval may kindly be given to write to the financial creditors to rectify the defects within a period of seven days from the date of receipt of this letter failing which appropriate orders will be passed in accordance with law."

Financial creditors – applicant through letter dated 22nd December 2017 and 26th December 2017 rectified the defects pertaining to point 3 and submitted the certificates required under point 4 and 5.

With respect to point 1 on request for furnishing documents that the debited amount is by means of a loan, the financial creditors submitted the following documents:

- a. Board Resolution and Partners Resolution of the financial creditors to grant the debt to the corporate debtor at the prevailing interest rate of 24% per annum.
- b. Certified copy of the extracts of the board meeting held on 29th March 2014.
- c. Copy of Independent Auditor's report comprising the balance sheet as on March 31st, 2014.
- d. Copy of Form 8 registered at MCA portal

With respect to point 2 on explaining the delays and lapses in filing the application, the financial creditors submitted as below:

- a. Hon'ble NCLAT has decided that the Limitation Act, 1963 shall not be applicable in filings under Insolvency and Bankruptcy Code, 2016.

Laid for kind perusal of Your Lordship and permission for listing on 09/01/2018 after serving notices to the parties.

Sd/- B. Richong

Registrar (I/c) 01/01/2018

Hon'ble Member (J) Pls.

Seen and allowed. Sd/-"

5. After rectification of the defects as pointed out as aforesaid, the Registry has listed the matter before the Bench for taking necessary action in accordance with the prescriptions rendered under Section 7 of the Code of 2016. The Corporate Debtor had also been served with the notice asking it to show cause as to why the application shall be not admitted.

6. Mr. Amit Pareek and Mr. N. Oja, learned PCS appeared for the Financial Creditor. Mr. Gautam Choudhury, Mr. S. Ahmed, Ms. Abida Rehman, Ms. Susmita Kaushik and Mr. K. K. Goswami, learned

Advocates appeared for and on behalf of the Corporate Debtor. Mr. Avishek Choudhury, the director of the Corporate Debtor, who was authorized to file the reply, is also present in person.

7. The learned counsel appearing for the Corporate Debtor submitted that the CD had already filed objections against the application, with the Registry and in view of the above, the CD may be allowed to canvas all those grievances before this Bench, in order to show that the application is liable to be dismissed.

8. The learned counsel for the Corporate Debtor have further submitted that the Corporate Debtor had already furnished a copy of the objection to the Financial Creditor for their perusal and information.

9. In view of above, the Financial Creditors are directed to submit reply to the objection aforesaid, within 7(seven) days, supplying simultaneously copy thereof to the Corporate Debtor.

10. The Registry is directed to list the matter on 22nd January, 2018.

321-

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

Dated, Guwahati the 09th January, 2018
Deka/09-01-2018