

NATIONAL COMPANY LAW TRIBUNAL GUWAHATI BENCH

Dy.No.705/2017

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

In the matter of:

M/s Sigma Vanijya Private Limited,
M/s Shree Shyam Promoters Private Limited &
M/s Santram Transformers Private Limited ... Petitioners

-Versus-

M/s Everest Infra Energy Limited ... Respondents

Coram:

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

ORDER

Date of Order: 7th December 2017

This application under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016 has been filed for initiating Corporate Insolvency Resolution Process against M/s Everest Infra Energy Limited, a public non-government company having its registered office at Naharlagun, Arunachal Pradesh (hereinafter referred to as Corporate Debtor).

2. The aforesaid application has been jointly filed by three Financial Creditors, namely, M/s Sigma Vanijya Private Limited, M/s Shree Shyam Promoters Private Limited & M/s Santram Transformers Private Limited.

3. On receipt of the application, the Registry has scrutinized the same and detected certain defects which were duly communicated to the applicants for rectifying the same within the time stipulated under Section 7. For ready reference the defects so pointed out by the Registry are reproduced below:

"i) The applicant needs to submit three authenticated sets. The second and the third copies have not been authenticated by the applicants.

- ii) As per section 4 (3) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, a copy of the application filed with the Adjudicating Authority should be sent forthwith by registered post or speed post to the registered office of the corporate debtor. The applicants have so far not furnished to the Registry proof of submission of such dispatch of a copy of the application.
- iii) As per section 9 (2) of the Insolvency and Bankruptcy Application to Adjudicating Authority Rules, application for initiation of corporate insolvency resolution process should be accompanied with a certificate confirming the eligibility of the proposed insolvency professional for appointment as resolution professional in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Such certificate is not provided along with the application.
- iv) On scrutiny of exhibit A to the application, the following defects have been noticed:
 - a) As per table annexed as Exhibit A, the date of defaults for the loan amounts are shown to be 03/05/2012, 29/10/2012, 27/10/2012 and 19/06/2012. The above dates may not fall within the limitation periods within which relief can be claimed under the Insolvency and Bankruptcy Code.
 - b) Further as proof of debt, following documents have been submitted:
 - i) copy of bank statement evidencing the loan amount granted (Annexure E, F and G)
 - ii) copy of post-dated cheque in favour of financial creditors by the corporate debtor towards repayment of loan (Annexure H, I and J)
 - iii) copy of notices for repayment of loan amount, (Annexure K, L and M),
 - iv) copy of account confirmation ledger received from the corporate debtor (Annexure N, O and P)
 - v) Copy of certificates received from the statutory auditor copy of annual accounts of the corporate debtor for the financial year ending 2016-17 has been submitted (Annexure Q, R and S).
 - c) Copy of certificate of incorporation of the financial creditors along with MOA, AOA have not been furnished which the financial creditors may be advised to furnish.
 - d) Documents of identification numbers of the financial creditors may be furnished in the application."

4. Thereafter, rectifying the defects aforesaid, the applicants submitted the rectified application on 06.12.2017. On receipt of the same, the Registry, once again,

examined the application and rendered the following opinion. For ready reference, same is reproduced below:

"The period of seven days within which such defects should be cured as stipulated under section 7 of the Insolvency and Bankruptcy Code expired on 04/12/2017.

"The financial creditors submitted the rectified documents received vide Diary Number 767 / 2017 on 06/12/2017. The reason for delay is stated that the filings have been sent from Kolkata through speed post and received late in Guwahati.

"The applicants/ financial creditors have rectified the defects as below:

- i. *The sets have been authenticated by the applicants/ financial creditors.*
- ii. *On the issue of certification under rule 9 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the applicants have submitted that in the application itself such certification has been provided.*
- iii. *On the issue of limitation period and submission of further proof for existence of debt, it has been submitted by the applicant that as per judgement of Hon'ble NCLAT in Neelkanth Township and Constructions Private Limited and Black Pearl Hotels Private Limited, provisions of Limitation Act are not applicable to the Insolvency proceedings. The advocates/ professionals who would appear before the Hon'ble Bench shall better explain such proposition to the satisfaction of the Hon'ble Member.*
- iv. *Furthermore, the applicant has submitted that all relevant documents have been annexed to the Application and any further document, if required, would be submitted upon specific directions of the Bench.*
- v. *AOA, MOA and identification numbers have been provided by the applicant as requested vide the above mentioned letter."*

5. It has been found that this application, after rectification of the defects, was received on 05.12.2017 although the period for submitting the rectified application expired on 04.12.2017.

6. The applicants had also assigned reasons as to why the delay of one day occurred in submitting the rectified application. Such explanation regarding the delay that occurred in filing the rectified application is reproduced below:

"With reference to the aforementioned diary no. and regarding your query, I hereby submitted our reply for the queries by your good self. And due to the present petitioners are from Kolkata the reply has been send through speed post service, from Kolkata and delivered lately (i.e. 06/12/17) the same was unable to submit before the Registry in time. Therefore, the reply is filed today."

7. In view of the above, Registry is directed to issue notice to the Corporate Debtor to show cause as to why the present application should not be admitted.

8. The petitioner shall take steps in the matter of service of notice of this proceeding alongwith copy of the application and the connected documents upon the Corporate Debtor.

9. List this matter on 15.12.2017.

sdr

Member (Judicial)
National Company Law Tribunal,
Guwahati Bench, Guwahati

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