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NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

T.C.P No. 428/(MAH)/2017

CORAM:

Present: SHRI M.K. SHRAWAT
MEMBER (J)

SHRI BHASKARA PANTULA MOHAN
MEMBER (J)

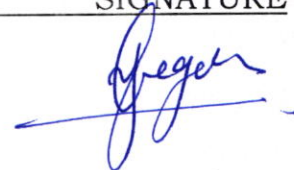
ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 04.08..2017

NAME OF THE PARTIES: Dewan Housing Finance Corporation Ltd.
V/s.
Aadit Metal Trade Pvt.Ltd.

SECTION OF THE COMPANIES ACT: I & BP Code 2016.

S. No. NAME DESIGNATION SIGNATURE

01 ~~27~~ P.D. Jain Advocate
for P.D. Jain & co
for Aadit Metal Trade
Pvt.Ltd.



ORDER

TCP 428/I&BP/NCLT/MB/MAH/2017

1. The admitted factual position is that this Petition was transferred from the Hon'ble Bombay High Court by invoking the provisions under section 433(e) of the old Companies Act, 1956. The Petitioner had moved winding up proceedings before the Hon'ble High Court for the recovery of the principal amount of Rs.85,29,332/-.
2. That on transfer the Petitioner had submitted Form No.5, admittedly on 17.07.2017 wherein it was stated that the Petitioner is a Financial Creditor and the Financial Debt was as per the Company Petition submitted before the Hon'ble High Court. Name of the IRP has also not been proposed.

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3. On receiving the said Form the Respondent Debtor has raised certain preliminary objections and an Affidavit has been filed wherein it was contested that in respect of the financial Creditor, the required Form was to be filed on or before 15.07.2017 as prescribed under the Notification dated 29.06.2017 [F. No. 1/5/2016-CL-V] (GSR 732(E)). Since admittedly the Form was filed on 17.07.2017, therefore, should not be admitted for commencement of Insolvency process. The second objection of the Respondent Debtor is that for Financial Creditor, the required form to be submitted is not Form No.5 and the required Form is Form No.1 hence the Petition on Form No.5 is *prima facie* defective.

4. On due consideration of the facts and the defects as pointed out from the side of the Respondent Debtor and particularly in a situation when the Applicant himself has no answer to these objections, we hereby hold that the Petition being belatedly filed is not eligible for commencement of the Insolvency process. It is also correct that the requisite Form for the "Financial Creditor" is not Form No.5, hence the Form filed being defective is also not to be admitted for commencement of Insolvency process. Further, considering the First proviso of the Notification as mentioned above, although the Petition stood abated, but a liberty is granted to file a fresh Petition if deemed fit and if as per law permitted.

5. This Petition is, therefore, disposed of as "**abated**" and to be consigned to Records.

Sd/-

BHASKARA PANTULA MOHAN

Member (Judicial)

Date : 04.08.2017

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Sd/-

M.K. SHRAWAT

Member (Judicial)