

NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH

CP (IB) NO. 50/Chd/Hry/2017

In the matter of:

Sahara Fincon Private Ltd.Financial Creditor/Applicant

Vs.

Tirupati Ceramics Ltd. Corporate Debtor/ Respondent

Present: Mr. Ajay Ghangas, Advocate for Applicant-Financial Creditor.

Mr. Manish Jain and Ms. Divya Sharma, Advocates for the respondent.

This is a petition filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiating the insolvency resolution process. The application was filed in Form No.1 of the Code as prescribed in sub-section (1) of Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The matter was heard on 06.09.2017. It was *inter alia* contended by the learned counsel for the respondent that the application is incomplete in as much as the application does not contain declaration as per Form No.1 to the following effect:-

"I hereby certify that to the best of my knowledge (name of proposed insolvency professional is fully qualified and permitted to act as an insolvency professional in accordance with the Insolvency and Bankruptcy Code, 2016 and the associated rules and regulations)."

2. It is apparent that in the application form, the name of Insolvency Resolution Professional was not proposed and so the

declaration was missing. When the matter was listed on 28.07.2017, the petitioner was directed to propose the name of Insolvency Professional as required under Section 7(3)(b) of the Code, being a mandatory requirement. The compliance was made but the declaration was not filed being not originally there in the original application.

3. It was also contended that as per serial No.7 of Part-V of Form No.1 the petitioner is required to attach copies of entries maintained under the Bankers Book Evidence Act, 1891. The learned counsel for the petitioner has relied upon its ledger account referring to various transactions through different banks but copies of the statement of account of these Banks have not been filed. These are Union Bank of India, HDFC Bank, Axis Bank, Punjab National Bank etc. This default should have in fact been pointed out by the registry before listing the case. It would be relevant to refer to sub-section (5) of Section 7 of the Code which reads as under:-

"(5) Where the Adjudicating Authority is satisfied that —

- (a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or*
- (b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:*

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the

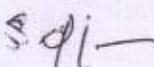
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applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority."

4. As per the proviso to sub-section (5) of Section 7 of the Code if the application is incomplete, before rejecting the application notice has to be given to the petitioner company to rectify the defects within 7 days on receipt of such notice.

5. The petitioner has, therefore, to be given an opportunity to remove these defects before the application is rejected, keeping the issue on merits open. Notice of both these defects to the petitioner and the learned counsel appearing for the petitioner accepts notice of these defects.

6. The matter be listed on 25.09.2017 for further hearing. Let the defects be removed by filing the fresh application Form No.1 with the declaration and completing Serial No.7 of Part V of Form No.1 alongwith the copies of Account Statements in respect of all the Bank Accounts certified under the Bankers Books Evidence Act, 1891 within seven days with copies to the counsel opposite. Copy of this order be supplied to the learned counsel for the petitioner forthwith.


(Justice R.P. Nagrath,
Member (Judicial))

Pronounced.

September 13, 2017
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