JUDGMENT

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

CO.PET.NO. 662/2016

IN THE MATTER OF:

Sharda Rawat .....Petitioner

Vs

Kee Projects Ltd. .....Respondent

Judgement delivered on.....

Coram:

CHIEF JUSTICE M.M.KUMAR
Hon'ble President

Ms. Deepa Krishan
Hon'ble Member (T)

Advocates: K.K Mukhija, Rakesh Mukhija, Pankaj Dabas,Ira Gupta, Sunil Aggarwal & Rita Yagnik.

Per Ms. DEEPA KRISHAN, MEMBER (TECHNICAL)

JUDGMENT/ORDER

1. The petitioner Sharda Rawat (hereinafter referred to as "financial creditor"), had filed a petition for winding up against the respondent company under Section 439 read with section 443 of Companies Act 1956 and also read with Section 433(e) read with Section 434 of Companies Act 1956 before the Hon'ble Delhi High Court on 29th July, 2016. This Matter was received on transfer from Hon'ble High Court of Delhi pursuant to notification no. G.S.R.1119 (E) & S.O 3676(E) dated 7th December, 2016 issued by Ministry of Corporate Affairs, Govt. of India. The petitioner has filed compliance affidavit in terms of the above notification.
2. Respondent Company is a private limited Company (CIN: U74899DL1991PLC046351) incorporated on 11th November,1991 with authorised capital of Rs. 6,00,00,000/- and paid-up capital of Rs. 5,53,40,500/- and is engaged in the business of material handling and mineral processing, catering to industries like cement, Power, Steel, Coal, Sponge

Iron, Paper, Chemical mining etc. Respondent Company assured that if in case petitioner transacts/ gives a chance of business to the respondent company then it will be profitable business for the petitioner and also assured that the payment towards the supplies as made by the petitioner to the respondent shall be made within the period of 45 days.

3. Based on the representations made by the respondent, the petitioner, who is a proprietorship concern and an operational creditor has supplied goods to the respondent company M/s Kee Projects Ltd. (hereinafter referred to as "Corporate Debtor") during the period 11.5.2013 to 4.7.2013 and raised invoices totalling to Rs. 32,93,099/- as per the following details:-

Bill / Invoice No.	Date	Amount
1060	11.05.2013	7,77,534
1061	13.05.2013	4,46,202
1064	18.05.2013	5,25,743
1065	18.05.2013	5,39,228
1083	04.07.2013	10,04,392
Total		Rs. 32, 93, 099/-

4. It is further stated that towards these invoices a sum of Rs. 10, 77,534/- has already been paid to the petitioner. For the balance amount of Rs. 22, 15,565/- the cheques issued by the corporate debtor in favour of the petitioner were dishonoured on presentation. Details of the dishonoured and returned cheques are as follows:-

Cheque no	Dated	Drawn on	Rupees
062046	20.03.2016	Oriental Bank of Commerce, Express Tower, Azadpur, New Delhi	5,50,000/-
062047	08.04.2016	Oriental Bank of Commerce, Express Tower, Azadpur, New Delhi	5,50,000/-
062048	20.04.2016	Oriental Bank of Commerce, Express Tower, Azadpur, New Delhi	5,50,000/-
062049	30.04.2016	Oriental Bank of Commerce, Express Tower, Azadpur, New Delhi	5,65,565/-

5. Hence, the operational creditor has filed the present application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as a Code).

6. The compliance affidavit under Section 9(iii) (c) of the Code states that the operational creditor has dispatched the copy of the petition, along with statement of account from 11.04.2011 to 21.05.2016(Annexed in A-5) to the corporate debtor on 1.5.2017 through speed post at its registered office which was duly served and delivered to the corporate debtor. Subsequently, demand notice dated 2.06.2017 under Section 8 of the Code and Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, has been sent by the financial creditor as prescribed in form 3 of the said rules. An affidavit regarding service of the same has been filed on 12.6.2017 along with postal receipt and tracking report. It is further stated that despite expiry of the period of 10 days after delivery of demand notice, no response has been received from the corporate debtor regarding any payment having been made or any notice of existing dispute.

7. A copy of the statement of Bank Account / certificate from the financial institution maintaining accounts of the

operational creditor, namely, State Bank of India, Naraina Industrial Estate has been filed (Annexure-1 of the Compliance Affidavit) to show that there has been no payment of the unpaid operational debt. A copy of the ledger account of the operational debtor in the books of accounts of the applicant operational creditor has also been filed as Annexure-5 before the Hon'ble High Court of Delhi. True copies of the dishonoured cheques along with bank memos returning the same have also been filed as per Annexure-6 of the said paper book. Copies of invoices have also been filed as Annexure-4 (collectively) with the said paper book.

8. In the compliance affidavit filed on 23.6.2017, the applicant has stated that the Interim Resolution Professional may be appointed by this Tribunal as per Section 16(iii) of the Code.

9. Having heard the learned Counsel and after perusing the paper book and affidavit with his able assistance, we are of the view that all the necessary requirements contemplated by Section 9 of the Code stands complied with. The Operational Creditor has disclosed the relevant data by placing on record the evidence by way of invoices, copy of ledger account and returned dishonoured cheques along with bank statement.

Evidence regarding issue and service of notice of default under Section 8 has also been filed along with compliance affidavit. In view of the above, we are satisfied that the operational creditor meets with the prescription of Section 9 of the Code and the Rules framed thereunder.

10. As a sequel to the above discussion this petition is admitted and the following directions are issued.

(i) The matter be referred to Insolvency and Bankruptcy Board of India for appointment of Corporate Insolvency Resolution Professional.

(ii) In terms of Section 13 of the Code the Resolution Professional shall make public announcement concerning the initiation of the Corporate Insolvency Resolution Professional by making specific reference to this order immediately after his appointment.

(iii) A moratorium would come in operation from today prohibiting all of the following acts namely: -

"(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or

order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."

However, the order of moratorium would not affect the supply of essential goods or services to the Corporate Debtor and the same may be specified by the Insolvency Professional. It shall also not apply to transactions which might have been notified by the Central Government in consultation with any financial sector regulator.

(iv) This order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.

(v) The Insolvency Professional shall perform all his duties in terms of Section 15, 17, 18, 20 & 21 of the Code.

(vi) All the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend all assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor.

11. The petition is disposed of in the above terms.

Sd-

(CHIEF JUSTICE (Rtd.) M.M.KUMAR)

PRESIDENT

06.07.2017

Sd/-

(DEEPA KRISHAN)

MEMBER (TECHNICAL)