

NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

(IB)-447(ND)2017

CORAM:

**PRESENT: MS. DEEPA KRISHAN
HON'BLE MEMBER(T)**

**MS. INA MALHOTRA
HON'BLE MEMBER (J)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW DELHI
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 02.08.2018**

**NAME OF THE COMPANY: M/s. Seth Thakurdas Khinvraj Rathi Vs. M/s.
Cals Refineries Ltd.**

SECTION OF THE COMPANIES ACT: 9 of 2016

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
	Present for the Petitioner:	C.A. Vinod Chaurasia, A/R for RP Mr. Anurag Ojha with Rohan Chawla, Advocates		
	Present for the Respondent:	Mr. Nikhil Rohatgi, Advocate for R-8 Mr. Abhishek Baid, Advocate (for SEBI) Ms. Kriti Awasthi, Advocate for R-9 & 10 Ms. Lakshmi Gurung (for Income Tax) Mr. Abhijeet Sinha, Mr. Ayush Agarwal, Mr. Aditya Shukla & Mr. Mangesh Krishna, Advocates for R-3 Mr. Arunendra Singh, Advocate for SFIO (R-2) Mr. Rakesh Singala, Advocate for R-3		

ORDER

Ms. Lakshmi Gaurang, Advocate appearing on behalf of the Income Tax Department submits that the dept. wants a representation in the COC. The RP is therefore directed to work out and reconstitute the COC after due notice to the other participants whose voting power shall consequently get affected. It would not be out of place to record that the Operational Creditors are highly aggrieved by the said inclusion of the Income Tax Department, as from a majority on the committee, they are now being reduced to a minuscule percentage.


(Sameer)

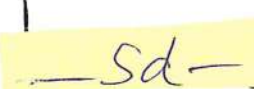
Copy of the order be given to the petitioner. Dasti. The RP is directed is convene the COC as expeditiously as possible.

Learned counsels appearing for the SFIO, SEBI and respondent 11 & 12 viz. Smt. Swaroopa Saha and M/s. Spice Energy Private Limited confirm that in terms of the directions given by SEBI to disgorge the sum of US \$ 92 million, no amount has been received. Further respondent 11 & 12 are not facing any prosecution as alleged by the RP. Pursuant to the order of SEBI whereby the ex-Directors of the Corporate Debtor were directed to disgorge the aforesaid amount, all parties confirm that no money has been received back in India. The RP submits in that as per an observation of the Criminal Court, it was noted that a sum of Rs. 36, 000/- crores has been received by the ex-Director. However, these are observations made by the Court and there is nothing to show that this money can be traced out or attached.

As the statutory departments SEBI and SFIO have filed their reports, they are no longer required in this case and are hereby discharged. There is no outcome in the application filed by the RP under Section 66 of the Code and no further action is contemplated.

This application therefore does not merit any further consideration and is being disposed off accordingly.


(Deepa Krishan)
Member (T)


(Ina Malhotra)
Member (J)

(Sameer)

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NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-447(ND)2017

CORAM:

PRESENT: MS. DEEPA KRISHAN
HON'BLE MEMBER(T)

MS. INA MALHOTRA
HON'BLE MEMBER (J)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW DELHI
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 24.07.2018**

**NAME OF THE COMPANY: M/s. Seth Thakurdas Khinvraj Rathi Vs. M/s.
Cals Refineries Ltd.**

SECTION OF THE COMPANIES ACT: 9 of IBC, 2016

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
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Present for the Petitioner:	CA Vinod Kumar Chaurasia, A/R for RP Mr. Rakesh Kumar Jain, RP
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ORDER

The 3rd interim report has been filed by the RP. His grievance *is that* ~~the~~ ^{his} legal expenses have not been reimbursed to him. till date : ~~the~~ ^{his} legal expenses have not been reimbursed to him. Though a sum of Rs. 40 lakhs was ~~asked~~ ^{proposed} to meet all the expenses, ~~the~~ ^{it} ~~same~~ was not approved by the COC. However, the major Operational Creditor through their representative, Mr. Roshan Santhalia had agreed to fund the proceedings, ~~funds~~. The RP has given details of the expenses incurred till date which are stated to be ~~Rs. 90,000/-~~ ^{about} Rs. 90,000/-. The RP cannot be expected to incur expenses from his pocket and the Applicant/Members of the COC have to bear the expenses.

(Sapna)



Notice to Mr. Roshan Santhalia, AR of the Applicant as to why
this commitment has not been honoured. Dasti.

To come up on 2nd August, 2018, the date already fixed.

Sd/-
(Deepa Krishan)
Member (T)



Sd/-
(Ina Malhotra)
Member (J)

Rajiv 27/7/20
व.वि.बं.राजू / V.V.B. RAJU
उप पंजीयक / DEPUTY REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
Block-3, 6th Floor, CGO COMPLEX
LODHI ROAD, NEW DELHI - 110003

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(Sapna)

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-447(ND)2017

CORAM:

PRESENT: MS. DEEPA KRISHAN
HON'BLE MEMBER(T)

MS. INA MALHOTRA
HON'BLE MEMBER (J)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW DELHI
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 23.07.2018**

**NAME OF THE COMPANY: M/s. Seth Thakurdas Khinvraj Rathi V/s. M/s.
Cals Refineries Ltd.**

SECTION OF THE COMPANIES ACT: 9 of IBC, 2016

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
Present for the Petitioner:	Mr. Anurag Ojha(Petitioner-Operational Creditor) Ms. Easha Kadian for Lakshmi Gaurang Standing Counsel for Income Tax Dept. CA Vinod Chaurasia, A/R for RP Mr. Rakesh Kumar Jain, for RP			
Present for the Respondent:	Mr. Nikhil Rostogi, Advocate for R-8 Mr. Abhijeet Sinha, Mr. Ayush Aggarwal, Mr. Aditya Shukla & Mr. Maugesh Krishna, Advocates for R-3 Ms. Kriti Awashti, Advocate for R-9 & 10 Mr. Arunendra Singh, Advocate for R-2 SFIO			


ORDER


Learned counsel for the SFIO has filed written submissions intimating that the respondent arrayed herein are facing prosecution before the Special Court. It is further confirmed by him that no money in terms of the direction given by SEBI for disgorging US \$ 92 million dollars has been received till the time prosecution was launched.

(Sameer)



The grievance of the RP is that interim expenses have not been paid by the COC. The Operational Creditor at whose instance the CIR was initiated submits that the RP had called for meeting in which one of the points on the agenda was for interim expenses. He unilaterally cancelled the meeting and none has been held thereafter. The RP repudiates this submission. Let minutes of the meeting of the COC be placed on record. The COC shall ~~on the~~ decide ^{on the} interim expenses towards which each member shall pay proportionately. Another point for considerations is that whether the income tax dept should be included in the COC. Ms. Esha Kadian submits as per instruction received the department shall participate as a member of the COC. The Operational Creditor has raised objection to the same. There^s objections shall be adjudicated on with the next date of hearing. To come up on 2nd of August, 2018.


(Deepa Krishan)
Member (T)


(Ina Malhotra)
Member (J)

(Sameer)

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

CORAM:

(IB)- 447(ND)/2017

PRESENT: MS. DEEPA KRISHAN
HON'BLE MEMBER(T)

MS. INA MALHOTRA
HON'BLE MEMBER (J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 18.07.2018.

NAME OF THE COMPANY: M/s Seth Thakurdas Khinvraj Rathie Vs. M/s Cals Refineries Ltd.

SECTION OF THE COMPANIES ACT: 9 of IBC, 2016

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
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For the Petitioner (s)	:	Mr. Bidit Kumar Deha, Mr. Anurag Ojha, Ms. Kanishk Arora and Mr. Anwag Ohja, Advocates		
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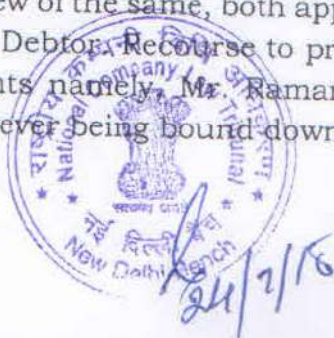
For the Respondent (s)	:	Mr. Vinod Chaurasia, CA Mr. Rakesh Kr. Jain, RP Ms. Lakshmi Gurung, Standing Counsel, IT Dept. Ms. Kriti Awasthi, Advocate for R-9 & 10 Mr. Arunendra Singh, Advocate for SFIO		
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ORDER

CAs 230/2018 and 231/2018 has been filed by CFO and CS of the Corporate Debtor praying for being relieved from the service of the Corporate Debtor on the grounds that they have not received any remuneration from November, 2017. Their prayer has been opposed by RP stating that the Corporate Debtor is a listed company and is required to give a periodic report to the Bombay Stock Exchange. Since the Corporate Debtor is now represented by the RP, he would be held liable for serious consequences for the lapse. He therefore requires assistance of the CFO & CS of the Corporate Debtor who are key personnels.

The prayer made by the applicants however merits consideration. No employee can be expected to be bounded down to his jobs without receiving monthly remunerations. In view of the same, both applicants are relieved from the services of the Corporate Debtor. Recourse to proper procedure be made with the ROC. Both applicants namely, Mr. Raman Mallick, CFO and Mr. Suvindra Kumar, CS are however being bound down by this court to give all

(Sapna)



L

possible assistance to the RP as and when required in respect of financial statements for the period till today. RP shall give 5 days' notice to them to render assistance. Failure to do so will make the relieved key personnels/applicants liable for contempt.

CA 230/2018 and CA 231/2018 stands disposed off.

Ms. Lakshmi Gurung, Standing Counsel for IT Dept. prays for some time to seek necessary instructions whether income tax would be represented through their designated official in the COC.

The quantum of the claim of the Income Tax Dept. is taken into consideration and should they wish to get themselves represented in the COC, they would virtually be comprising of 99.80% with equivalent voting powers, reducing the Operational Creditor to a minuscule number.


The RP submits that due notice has been effected on SEBI and SFIO. While the SFIO's counsel is present in court, none is present on behalf of SEBI. Affidavit of service be filed, upon which further steps would be taken to effect service.

Ld. Counsel for the SFIO as well as the Respondent no. 9 & 10 against whom allegations are made are present in court through their counsel. They are permitted to file their submissions in respect of whether the directions of SEBI dated 31st December, 2014 has been acted upon and any money pursuant to the same has been received.


Renotify this case for further consideration on 23rd July, 2018.

Keeping in view that the reply of the Income Tax Department is yet to be received, the COC shall be held after adjudicating the same.

To come up on 23rd July, 2018.


(Deepa Krishnan)
Member (T)




(Ina Malhotra)
Member (J)

 24/7/2018
व.वि.बं. राजू / V.V.B. RAJU
उप पंजीयक / DEPUTY REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
Block-3, 5th Floor, CGO COMPLEX
LODHI ROAD, NEW DELHI - 110003

(Sapna)

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NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-447 (ND)/2017

PRESENT: MS. INA MALHOTRA
HON'BLE MEMBER(J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW
DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON
12.07.2018.

NAME OF THE COMPANY: M/s Seth Thakurdas Khinvraj Rathi Vs. M/s
Cals Refineries Ltd.

SECTION OF THE COMPANIES ACT: 9 of IBC, 2016

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
1	For the Petitioner:	Mr. Anurag Ojha, Advocate		
2	For the Respondent:	Mr. Rakesh Kumar Jain, RP Mr. Vinod Chaurasia, CA Ms. Lakshmi Gurung, Standing Counsel, IT Dept.		

ORDER

CA 314/2018 has been filed praying for change of date of 13th July, 2018. As per the previous order the directions for holding the COC for 13th July, 2018 were given and is not a typographical error. However, keeping in view the changed circumstances, whereby the claim of the Income Tax is also to be considered, it would be expedient to fix the meeting of the COC thereafter as that would subsequently effect the voting rights of the present Members of the COC. Adjudication for considering the claim of the Income Tax and their inclusion as Members of the COC is fixed for 18th July, 2018.

The change of date is being opposed by the operational creditor/petitioner. It is also his case that the income tax claim cannot be



24/7/18

considered as a financial claim and they cannot be a part of the COC. This submission requires to be adjudicated upon and therefore the change of date for convening the COC is considered expedient.

List this case on 18th July, 2018 for deciding whether the claim of income tax is to be included. The date for convening the meeting of the COC shall be fixed thereafter.

Ld. Counsel for the income tax is also directed to give the status of the appeal pending in respect of the claims made by them.



—sd—

(Ina Malhotra)
(Member (J))

Raju : 24/7/2018

वृ.वि.बं. राजू / V.V.B. RAJU
उप पंजीयक / DEPUTY REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
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LODHI ROAD, NEW DELHI - 110003

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NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-447 (ND)/2017

PRESENT: MS. INA MALHOTRA
HON'BLE MEMBER(J)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW
DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON
06.07.2018.**

**NAME OF THE COMPANY: M/s Seth Thakurdas Khinvraj Rathi Vs. M/s
Cals Refineries Ltd.**

SECTION OF THE COMPANIES ACT: 9 of IBC, 2016

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
	For the Petitioner:	Mr. Anurag Ojha and Mr. Kanishk Arora, Advocates		
	For the Respondent:	Mr. Rakesh Kumar Jain, RP Mr. Vinod Chaurasia, PCA Ms. Lakshmi Gurung, Standing Counsel, IT Dept.		

ORDER

Mr. Anurag Ohja has appeared for Operational Creditor at whose instance CIRP was initiated. He has made allegations against the RP in this case as after convening a meeting of the COC, he has unilaterally cancelled it. Mr. Vinod Chaurasia, CA appearing on behalf of the RP has confirmed the cancellation. In view of the same he is directed to ensure that the COC is convened at the earliest, which is now being directed to be convened for 13th July, 2018.

There are other 2 applicants. The CFO & CS who pray for a discharge as they have not been paid their remuneration. Notice of this application was served on the RP.

CA 280/2018 has been filed by the RP seeking permission for reconstituting the COC as a claim of the income tax has been received which give rise to a change in the voting share.

Let steps be taken by the RP to serve the members of the COC.

List this application for arguments and disposal on 18th July, 2018.

—Sd—

(Ina Malhotra)
(Member (J))

NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

(IB)-447(ND)/2018

**PRESENT: MS. INA MALHOTRA
HON'BLE MEMBER(J)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW
DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON
02.07.2018.**

**NAME OF THE COMPANY: M/s. Seth Thakurdas Khinvraj Rathii Vs. M/s.
Cals Refineries Ltd.**

SECTION OF THE COMPANIES ACT: 9 of IBC, 2016

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
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**For the Petitioner: Mr. Bidit Kumar Deka and Mr. D. N. Chaturvedi,
Advocates**

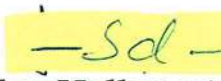
**For the Respondent: Mr. Vinod Chaurasia, PCA
Mr. Rakesh Kumar Jain, RP**

ORDER

Ld. Counsel appearing for the applicant prays for some time to satisfy this Bench as to how their prayer can be granted under the provision of IBC.

To come up on 6th July, 2018.

An application CA 249/2018 has been filed under Section 66, the same is not pressed for at this stage.


**(Ina Malhotra)
(Member (J))**

NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

(IB)-447(ND)2017

CORAM:

**PRESENT: MS. DEEPA KRISHAN
HON'BLE MEMBER(T)**

**MS. INA MALHOTRA
HON'BLE MEMBER (J)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW
DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON
13.06.2018**

**NAME OF THE COMPANY: M/s. Seth Thakurdas Khinvraj Rathie Vs. M/s.
Cals Refineries Ltd.**

SECTION OF THE COMPANIES ACT: 9 of IBC 2016


S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
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Present for the Petitioner:	Mr. Bidit Kumar Deka, Advocate
Present for the Respondent:	Mr. Vinod Kumar Chaurasia, PCA

ORDER

An application has been filed on behalf of the Company Secretary and the CFO praying for being released from their posts in the company as they have not been paid their salaries from November, 2017. The company being a Corporate Debtor, is already under a resolution process. Notice of this application is accepted by the ACA appearing on behalf of the RP. To come up on 2nd of July, 2018.


**(Deepa Krishan)
Member (T)**


**(Ina Malhotra)
Member (J)**

(Sameer)

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NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

CORAM:

(IB)-447(ND)/2017

PRESENT: MS. DEEPA KRISHAN
HON'BLE MEMBER(T)

MS. INA MALHOTRA
HON'BLE MEMBER (J)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW
DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON
30.05.2018**

**NAME OF THE COMPANY: M/s Seth Thakurdas Khinvraj Rathie Vs. M/s
Cals Refineries Ltd.**

SECTION OF THE COMPANIES ACT: 9 of IBC, 2016

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
	For the Petitioner:	Counsel for the Petitioner		
	For the Respondent:	Mr. Rakesh Kumar Jain, RP Ms. Kishore M. Gajaria and Ms. Jyoti Dutt, Advocates		

ORDER

It is submitted that an amount of Rs. 6 lakhs towards the expenses involved in the Resolution Process has been contributed by the members of the COC. The same was deposited in the account of the Corporate Debtor. Since there is no mandate to the Bank for the account to be operated by the RP, the amount cannot be withdrawn. It is therefore directed that Axis Bank, 29CC Basant Lok Complex, Vasant Vihar, New Delhi having A/c. No. 911020018142540 shall release the sum of Rs. 5 lakhs at this stage by way



of draft to the RP, Shri Mr. Rakesh Kumar Jain as reimbursement of his professional fees and expenses.

It is made abundantly clear that the amount contributed towards Resolution Process by the COC will cover his fees for the entire Resolution Plan and expenses made till date. Further unforeseen expenses may be considered and borne by the COC.


There is a deadlock with respect to the decision taken by the COC. While the applicant's claim is to the extent of 59% and they pray for extension of the resolution period by another 90 days, the other two claimants prefer liquidation proceedings to commence.

It is surprising to note that the liquidation value of the Corporate Debtor is only to the tune of RS. 2.3 lakhs, which would be distributed pro-rata to various claimants. In view of the certain submission made by the applicant, it is considered expedient to await a possible return of 92 million US \$ in favour of the Corporate Debtor. The period of resolution is extended till the total period of 270 days. The period of pendency of this application shall be excluded i.e. from 16th May, 2018 till today. This would be in the best interest of the parties and other claimants.




Another prayer has been made by the applicant for replacement of the RP by the earlier RP. Equally eager is the RP to be relieved, perhaps on account of dissatisfaction of his remuneration. There is no cogent explanation justifying his removal at this stage. The Bench does not consider that appointing another RP or relieving the present one at the mere asking of the parties would be in the best interest of working out the Resolution Plan. The prayer for replacement or relieving the RP is rejected. Mr. Rakesh Kumar Jain is directed to continue till the end of the proceedings.

CA 183/2018 stands disposed off.


(Deepa Krishan)
Member (T)




(Ina Malhotra)
Member (J)

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Registrar
National Company Law Tribunal
New Delhi

NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI BENCH**

(IB)-447(ND)2017

CORAM:**PRESENT: MS. DEEPA KRISHAN
HON'BLE MEMBER(T)****MS. INA MALHOTRA
HON'BLE MEMBER (J)****ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW
DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON
17.05.2018****NAME OF THE COMPANY: M/s. Seth Thakurdas Khinvraj Rathi Vs. M/s.
Cals Refineries Ltd.****SECTION OF THE COMPANIES ACT: 9 of 2016**

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
	Present for the Petitioner:	Mr. Rakesh Kumar Saini, RP		
	Present for the Respondent:	Ms. Jyoti Dutt Mr. Vinod Kumar Chaurasia, PCA		

ORDER

Vide order dated 11.05.2018, the COC was directed to ensure that payment to the RP Mr. Rakesh Kumar Jain should be made and his grievance should be resolved. It is submitted that the amount contributed by the COC towards expenses were deposited in the account of the CD. Despite the said account being frozen and defrozen by the RP, he is unable to operate the said account to realise his dues as there is no mandate in his favour to operate the account. It is being specifically directed that pursuant to the approval of the COC, the RP shall be entitled to withdraw the approved amount from the contribution deposited by the COC in the account of the CD.

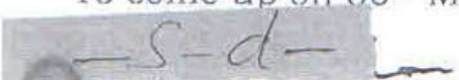
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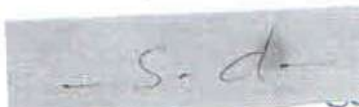
CA 183 of 2018 has been filed by the operational creditor, being one of the 3 major operational creditors on the committee of creditors. Notice of this application is accepted by the other two members of the COC. Let reply be filed. To come up on 30th May, 2018 for arguments and disposal of this application.

Prayer has also been in the said application for extension of the Resolution period of the CA was filed on 10th May, 2018 while 180 days are due to expire on 22nd May, 2018.

To come up on 30th May, 2018 for further consideration.


(Deepa Krishan)
Member (T)




(Ina Malhotra)
Member (J)

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Registrar
National Company Law Tribunal
New Delhi
22.5.2018

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-447(ND)/2017

CORAM:

PRESENT: MS. DEEPA KRISHAN
HON'BLE MEMBER(T)

MS. INA MALHOTRA
HON'BLE MEMBER (J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 11.05.2018

NAME OF THE COMPANY: M/s Seth Thakurdas Khinvraj Rathi Vs. M/s Cals Refineries Ltd.


SECTION OF THE COMPANIES ACT: 9 of IBC, 2016


S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
	For the Petitioner:	Mr. Roshan Santhalia, Advocate		
	For the Respondent:	Mr. Rakesh Kumar Jain, RP Ms. Kishore M. Gajaria and Ms. Jyoti Dutt, Advocates		

ORDER

There is no consensus in respect of the appointment of the RP to look into the affairs of the company. The COC's meeting is being convened for today evening. Renotify this case for further consideration on 14th May.

The present RP, Mr. Rakesh Kumar Jain is present in court and submits that his expenses have not been reimbursed by the COC. Ld. Counsels representing the members of the COC are present in Court. They are directed to resolve this issue.


(Deepa Krishan)
Member (T)


(Ina Malhotra)
Member (J)

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-447(ND)/2017

CORAM:

PRESENT: MS. DEEPA KRISHAN
HON'BLE MEMBER(T)

MS. INA MALHOTRA
HON'BLE MEMBER (J)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW
DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON
03.05.2018**

**NAME OF THE COMPANY: M/s Seth Thakurdas Khinvraj Rathie Vs. M/s
Cals Refineries Ltd.**

SECTION OF THE COMPANIES ACT: 9 of IBC, 2016

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
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For the Petitioner:	Mr. Roshan Santhalia, Advocate			
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For the Respondent:	Ms. Madhusudan Sharma, Advocate			
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ORDER

CA-162 of 2018 has been filed by the operational creditor at whose instance the CIRP was set into motion. Since there are no financial creditors, the COC consists only of operational creditors. The applicant herein has a claim to the extent of 59% of the claim made by the members of the COC. He has made allegations against the RP in this application. Notice of this application is accepted by the learned counsel appearing for the RP. Let reply be filed. To come up on 11th May, 2018.

CA-163 of 2018 has been filed for replacement of the RP in terms of the resolution pass by the COC recommending that Mr. Rakesh Verma be appointed as RP, instead of Mr. Rakesh Kumar Jain, Learned Counsel for the

Operational Creditor submits that the resolution plan cannot be given effect to. It has to adhere to the procedural requirements of Regulation 25 of the Code. Let steps be taken by the COC in a meeting to be convened on a date prior to the next date of hearing. To come up on 11th of May, 2018.


(Deepa Krishan)
Member (T)


(Ina Malhotra)
Member (J)

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-447 (ND)/2017

CORAM:

PRESENT: MS. DEEPA KRISHAN
HON'BLE MEMBER(T)

MS. INA MALHOTRA
HON'BLE MEMBER (J)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW
DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON
29.01.2018**

**NAME OF THE COMPANY: M/s Seth ThakurdasKhinrajRathi Vs. M/s
Cals Refineries Ltd.**

SECTION OF THE COMPANIES ACT: 9 of IBC, 2016

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
	For the Petitioner:	Mr. Anurag Ojha, Advocate Mr. Rakesh Kumar Jain, RP		
	For the Respondent:	None		

ORDER

Mr. Rakesh Kumar Jain, RP in this case will take all such steps as are
statutorily required under the Code and file the resolution plan within the
statutory period.

-s-d-1
(Deepa Krishan)
Member (T)

-S-d-1
(Ina Malhotra)
Member (J)

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-447 (ND)/2017

CORAM:

PRESENT: MS. DEEPA KRISHAN
HON'BLE MEMBER(T)

MS. INA MALHOTRA
HON'BLE MEMBER (J)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW
DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON
16.01.2018**

**NAME OF THE COMPANY: M/s Seth Thakurdas Khinvraj Rathi Vs. M/s
Cals Refineries Ltd.**

SECTION OF THE COMPANIES ACT: 9 of IBC, 2016

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
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For the Petitioner (s) : Mr. Krishanu Adhikary, Advocate

For the Respondent (s) : Mr. Gulshan Kumar Gupta, IRP

ORDER

Report of the IRP in this case has been filed. He had held the meeting of the COC on 11.1.2018.

List of claims have been filed by him. The entire data collected by him has been handed over to the RP proposed by the COC.

The details of the proposed RP be communicated to the IBBI.

He has also placed on record certain fraudulent acts of ex-Directors of the Corporate Debtor, a report of which has been handed over to the proposed RP in this case.

To come up on 29th January, 2018, for clearance of the RP in this case. Notice for the same be issued to the IBBI.

-S-df
(Deepa Krishan)
Member (T)

-S-df
(Ina Malhotra)
Member (J)

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

CORAM:

(IB)-447 (ND)/2017

PRESENT: SH. S. K. MOHAPATRA
HON'BLE MEMBER(T)

SMT. INA MALHOTRA
HON'BLE MEMBER (J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 13.12.2017

NAME OF THE COMPANY: M/s Seth Thakurdas Khinvraj Rathi Vs. M/s Cals Refineries Ltd.

SECTION OF THE COMPANIES ACT: 9 of IBC, 2016

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
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For the Petitioner (s)	:	Ms. Sangeeta Bharti & Mr. Krishanu Adhikary, Advocates		
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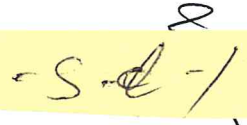
For the Respondent (s)	:	Ms. Harshita Agarwal, Advocate		
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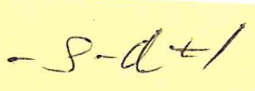
ORDER

A report has been received from the IBBI, proposing the name of Mr. Gulshan Kumar Gupta (Regn. No. (IBBI/IPA-001/IP-P00021/2016-17/10046), 30, Sweet Home Apartment, Sector 14, Rohini, Delhi-110085, Email: gulshanguptacs@gmail.com, mobile No. 9810510390) as the IRP in this case.

His name is, therefore, being confirmed by this Bench. Ld. Counsel for the Operational Creditor as well as the Corporate Debtor are both present in court. The said order be communicated to the IRP to carry out immediate steps as mandated under the Code.

Be listed for the report of the IRP on 16th January, 2018.


(S. K. Mohapatra)
Member (T)


(Ina Malhotra)
Member (J)

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH**

(IB)-447(ND)/2017

In the matter of

M/s. Seth Thakurdas Khinvraj Rath Applicant/
Operational Creditor

V/s

M/s. Cals Refineries Ltd. Corporate Debtor

SECTION: U/s 9 of IBC, 2016

Order delivered on 23th November, 2017

Coram:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SH. S. K. MOHAPATRA, HON'BLE MEMBER (T)

For the Petitioner (s): Ms. Sangeeta Bharti
Mr. Krishanu Adhikary

For the Respondent (s): Mr. Dinesh Rastogi
Ms. Harshita Agarwal

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

This petition has been filed u/s 9 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as the Code). It has been filed in the format as required under the Code on allegations of an unpaid debt of Rs.1,08,75,799/-.

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2. The brief background of the case giving rise to the unpaid debt has been delineated in the petition. The Petitioner/ Operational Creditor had permitted use and occupancy of its premises, being the flat bearing No.17, 3rd Floor, Shri Shantiniketan Cooperative Housing Society Ltd., 95, Marine Drive, Mumbai, along with garage No.7 for the Director of the Corporate Debtor viz. Mr. Shrinivasan, and accordingly a Leave & Licence Agreement as well as Licence and Hire Charges Agreement, both dated 10.3.2008, were executed between the parties for a period of 5 years at agreed consolidated charges of Rs. 3.65 Lakhs.

3. In view of the unpaid aforesaid liability and the Corporate Debtor's intention of avoiding the same, they filed a Suit no. 250 of 2008 before the Ld. Small Causes Court, Mumbai, praying for restraining the Operational Creditor from illegally dispossessing them from the aforesaid property. Vide order dated 17.4.2009, while granting injunction in favour of the Corporate Debtor, the Ld. Trial Court also imposed an obligation on them to deposit the monthly amount in court as per terms agreed upon, before the 10th day of each month. The said order was challenged by way of a Revision Petition. The Revisional Court declined to interfere with the order directing the Corporate Debtor to make the monthly payment. In order to avoid compliance as directed by the Ld. Revision Court, the Corporate Debtor is stated to have withdrawn its Revision Petition



as also the Suit before the Ld. Small Causes Court. The agreements were terminated by the Operational Creditor and an application was filed before the competent authority u/s 24 of the Maharashtra Rent Control Act, seeking a decree for eviction as well as mense profits as damages for the unlawful possession of the premises occasioned by the termination of the agreements. The Leave to Defend application filed by the Corporate Debtor was rejected by the Court and directions were passed for the Corporate Debtor to hand over the possession of the premises to the Operational Creditor. They were also directed to pay arrears of compensation at the agreed rate of Rs.3,65,000/- per month w.e.f. 10th June, 2009 for illegally occupying the premises without payment of Licence Fee and Hire Charges. The competent authority further directed the Corporate Debtor to pay damages @ Rs. 7,35,000/- per month until handing over the vacant peaceful possession to the Operational Creditor. The Operational Creditor submits that the said premises were finally vacated on 1.5.2010. However, they failed to pay arrears of compensation and damages as awarded by the competent authority. This order of the Competent Authority was duly challenged before the Additional Commissioner, Konkan Division, vide Revision Application No. 232 of 2010, which was disposed off with directions to pay arrears of compensation for 6 ½ months @ Rs.3,65,000/- aggregating to Rs. Rs. 23,72,500 and interest thereon at the rate of 24% per annum. The Corporate Debtor was

also directed to pay damages @ Rs. 30,000 per day aggregating to Rs.38,70,000/- with interest thereon @ 24% per annum. The security amount was also directed to be forfeited without adjustment towards any other dues.

4. Being aggrieved by the order of the Additional Commissioner, Konkon Division, the Corporate Debtor filed a Writ Petition before the Hon'ble Bombay High Court, being Writ Petition No. 8743 of 2010. While admitting the petition and imposing Rule, the Hon'ble High Court directed the Corporate Debtor to deposit a sum of Rs.29,05,051/-. Due permission was granted to the Operational Creditor to withdraw the said amount subject to the final outcome of the Writ Petition. The said writ Petition was ultimately dismissed vide a detailed judgment dated 23.7.2012 against which the Corporate Debtor filed SLP No. 26349 of 2012 before the Hon'ble Apex Court. While granting leave, the Hon'ble Supreme Court directed the Corporate Debtor to deposit a sum of Rs.43 lakhs permitting the Operational Creditor to withdraw the same on furnishing adequate security. The said SLP was eventually dismissed on 8.8.2016.

5. The Operational Creditor also filed a Contempt Petition against the Corporate Debtor and its Directors in which the following observations were made:-

“1. In this case, there is neither any dispute nor have the respondents raised any dispute that the respondent No.1 Company is due and payable to the petitioner an amount of approximately Rs.1,06,00,000/- (Rs. One Crore Six Lakh only). The petitioner in his case, is a partnership firm and its managing director is reported to be 92 years of age.

2. Mr. Narichania, learned Senior Advocate for the respondents submits that respondent No.1 is not in a financial position to make any payment whatsoever to the petitioner. In fact, he submits that the financial position of respondent No.1 is such that even if an order for winding up of respondent No.1 is made, the respondents will have no objection to the same. He points out that there are orders made by the Income Tax authorities as well as other statutory authorities, which have frozen the account of respondent No.1 and in the unfrozen account the balance is of hardly Rs.50,400/-. Learned counsel for the respondents submits that respondents No.3,4 and 5 are independent directors. And, therefore, no contempt proceedings may be initiated against them.

3. Learned counsel for the petitioner points out that the paid up share capital of respondent No.1 Company is in the range of Rs.829 crores. He submits that the authorized capital of respondent No.1 Company is Rs.4,000 crores. He submits that the respondents are defying and bent upon frustrating the orders for payment with full knowledge that managing partner is aged 92 years. In these circumstances, he submits that this is a fit case to proceed further against the respondents under Contempt of Courts Act.

4. Prima facie, this appears to be a case where the respondents wish to defy the legal procedures and ensure that

✓

the orders for payment are not complied with. Since, respondent Nos.3,4 and 5 are stated to be independent directors, their personal presence on the next occasion is dispensed with. However, in future, if they are directed to remain present, they shall do so. Respondent No.2 is ordered to be released on bail and, therefore, shall furnish bail bond in an amount of Rs.1,00,000/- (Rs. One Lakh only) with one surety in the like amount to the satisfaction of the Registrar, Judicial. Respondent No.2 is directed to remain present on the next date."

6. Aggrieved by the Corporate Debtor's obdurate attitude in not repaying its dues, the Operational Creditor has followed up its claim dated 18.09.2017 by issuance of a statutory demand notice under the Insolvency and Bankruptcy Code on 18.9.2017 in respect of its unpaid operational debt of Rs.1,07,39,111/-. Ld. Counsel for the Petitioner submits that no reply has been received to the said statutory demand notice.

7. The Petition has been filed in the required format. Notice u/s 8 was duly delivered to the Corporate Debtor. There is compliance of the provisions of Section 9(3)(b) and 9(3)(c).

8. Upon being served with the notice in this case, appearance has been put in on behalf of the Respondents and a reply filed. Ld. Counsel for the Respondent has opposed the prayer made in the present petition for triggering a Corporate Insolvency Plan against the Corporate Debtor. He denies the existence of any Operational

Debt and impugns the order passed by the Additional Commissioner, Konkan Division, on grounds of its contravening the provisions of Maharashtra Rent Control Act. It is submitted that the Respondent company has a paid up capital of more than Rs.1 crore and is therefore exempted from the applicability of the said Act by virtue of Section 3 thereof. It is argued by the Ld. Counsel that as settled by a catena of judgments, a decision passed by a Court / Forum which does not possess any jurisdiction is a nullity and therefore, the basis of the claim being made on a null and void order is unsustainable.

9. We are unable to appreciate the arguments advanced by the Ld. Counsel for the Corporate Debtor. The proposition that Court was not vested with any jurisdiction to pass the impugned order on the basis of which the present claim of debt survives is not for consideration before this Tribunal. The legality of the decision had been impugned and adjudicated in the writ petition and presumably any mistake of law would have been pleaded therein. The Corporate Debtor has left no stone unturned to avoid the liability which has repeatedly been confirmed by all courts upto the Apex Court. Given the facts of the case, the liability stands crystallised and mere repudiation is not a ground to resist the prayer made by the Operational Creditor.

10. Since the petition adheres to the requirements of the Code, and has been instituted by a duly authorised person under a Board Resolution, we find that there is no real dispute raised before us except for a feeble attempt. Accordingly, this Bench is of the opinion that there is no impediment in allowing the prayer made by the Operational Creditor in the present proceedings.

11. This petition is, therefore, admitted. Moratorium in terms of Section 14 of the Code comes into immediate effect:

“Moratorium:

14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, 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.

It is further directed that:

- (2) *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*
- (3) *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- (4) *The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

12. The Operational Creditor has not proposed the name of any Interim Resolution Professional. Accordingly, the matter is referred to the IBBI to recommend the name of an IRP to be appointed in this case within 10 days of communication of this order.

13. On confirmation of the IRP, he shall take all such steps as are required under the Code in terms of Section 15, 17, 18, 19 and 20 of the Code.

14. Be listed on 7th December, 2017 for awaiting recommendation of the proposed IRP by the IBBI.

15. Copy of the order be communicated to both the parties.



(S. K. Mohapatra)
Member (T)



(Ina Malhotra)
Member (J)

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 333 of 2018

IN THE MATTER OF:

Seth Thakurdas Khinvraj Rath

...Appellant

Versus

Cals Refineries Ltd. & Ors.

...Respondents

Present:

For Appellant : **Mr. Ankur Sood and Mr. Roshan Santhalia,
Advocates**

For 1st Respondent: **Mr. Vinod Kumar Chaurasia, Chartered Accountant
and Mr. Rakesh Kumar Jain, Resolution
Professional**

For 2nd Respondent : **Mr. Gulshan Kumar Gupta, Advocate**

O R D E R

02.07.2018 The appellant - 'Operational Creditor' has challenged the order dated 30th May, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench whereby and whereunder the application preferred by the appellant for removal of Mr. Rakesh Kumar Jain, 'Resolution Professional' has been rejected and the said 'Resolution Professional' has been directed to continue till the end of the proceedings. The application was filed on the ground that the 'Resolution Professional' has resigned.

Learned counsel appearing on behalf of the appellant submits that in absence of the 'Financial Creditor', the 'Committee of Creditors' was constituted of 'Operational Creditors' and the appellant (Operational Creditor) is one of the

member of the 'Committee of Creditors'. He further submits that the when the 'Resolution Professional' was dissatisfied he resigned, therefore, the Adjudicating Authority ought to have replace him.

Mr. Vinod Kr. Chaurasia, Chartered Accountant appears along with Mr. Rakesh Kumar Jain, 'Resolution Professional'. It is submitted that the Resolution Professional was dissatisfied with the remuneration, which has now been settled. Therefore, he has no objection to continue.

At this stage, learned counsel for the appellant submits that the 'Committee of Creditors' intends to replace the 'Resolution Professional' as they are not satisfied. However, such order cannot be passed in this appeal, as the Resolution Professional cannot be removed except in accordance with Section 27(2) of the Insolvency and Bankruptcy Code, 2016.

For the reasons aforesaid, while we are not intend to interfere with the impugned order dated 30th May, 2018, allow the 'Committee of Creditors' to act in accordance with law.

The appeal stands disposed of with the aforesaid observations. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/uk

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6497 OF 2018

SETH THAKURDAS KHINVRAJ RATHI

Appellant(s)

VERSUS

CALS REFINERIES LIMITED & ORS.

Respondent(s)

O R D E R

Heard the learned Senior Counsel appearing for the appellant.

We do not find any reason to interfere with the impugned order dated 02.07.2018 passed by the National Company Law Appellate Tribunal, New Delhi.

Accordingly, the appeal is dismissed.

Pending applications filed in the matter stand disposed of.

..... J.
(ROHINTON FALI NARIMAN)

..... J.
(INDU MALHOTRA)

New Delhi;
July 17, 2018.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 6497/2018

SETH THAKURDAS KHINVRAJ RATHI

Appellant(s)

VERSUS

CALS REFINERIS LIMITED & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.93209/2018-EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT and IA No.93208/2018-APPLICATION FOR
DIRECTION and IA No.93201/2018-STAY APPLICATION)

Date : 17-07-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

HON'BLE MS. JUSTICE INDU MALHOTRA

For Appellant(s) Mr. Rana Mukherjee, Sr. Adv.
Ms. Sangeeta Bharti, Adv.
Mr. Krishanu Adhikary, Adv.
Mr. Ashish Kumar, Adv.
Ms. Sreoshi Chatterjee, Adv.
Mr. Sushil Kumar Singh, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(R. NATARAJAN)
COURT MASTER (SH)

(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Signed order is placed on the file)