

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK



CP (IB) No. 168/CTB/2019

CORAM: 1. Ms. Sucharitha R. Member (J)
2. Shri Satya Ranjan Prasad, Member (T)

In the Matter of:

An application under Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the Matter of:

Swain Aluminium Private Limited, a company incorporated under the Companies Act, 1956 and having its Registered Office situated at House-2, Green Park, Sailashree Vihar, Bhubaneswar - 751 021 within the aforesaid jurisdiction.

... .. Corporate Applicant/Corporate Debtor

Counsels appeared for the Petitioner (s)

1. Mr. Deba Mohapatra & Co.
2. Santosh Kumar Pradhan

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Date of pronouncement of Order: 20th day of February, 2020.



ORDER


Per: Ms. Sucharitha R. Member (J)

1. This application is filed under Section 10 of Insolvency Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process of the **M/s. Swain Aluminium Private Limited.**
2. The Registered Office of the Corporate Debtor is situated at House - 2, Green Park, Sailashree Vihar, Bhubaneswar - 751 021. The Registered Office of the applicant is situated within the jurisdiction of this Adjudicating Authority.
3. The applicant was incorporated on 20.03.2009 as a Company limited by Shares, with a main objective to manufacture all kinds of aluminium rerolled sections and to setup downstream facilities for producing alloys, ingots, slabs, billets, etc. The applicant Company has been using financial facilities from Indian Overseas Bank (IOB) since 25.10.2010 and from Odisha Gramya Bank since 23.12.2010. The applicant submits that total dues to both the Banks are to the tune of rupees Twenty-Eight Crore Eighty-Six Lakh Fifty-One Thousand Only. The applicant submits that factory premises and machineries are

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mortgaged/hypothecated to the banker. The loan account was classified as Non-Performing Asset on 31.12.2014. The financial creditor / Indian overseas bank issued notice dated 08.07.2015 under Section 13(4) of SARFAESI Act, 2002, claiming a sum of Rs. 18,12,67,043.00 as on 15.04.2015.

4. The applicant tried for one-time settlement proposal with the bank dated 17.02.2018, 19.07.2019 and 14.08.2019. However, the same did not materialise. The Bank had rejected the one-time proposal (OTS) vide E-mail dated 05.03.2018. As per recall notice dated 05.01.2015 of the Odisha Gramya Bank the total outstanding is Rs. 28,85,89,000/- (Twenty-Eight Crore Eighty-Five Lakh Eighty-Nine Thousand Only). The liabilities as per the Book of Accounts of the Corporate Debtor as on 28.11.2019 is Rs.25,65,89,000/- Lakh (Twenty-Five Crore Sixty-Five Lakh Eighty-Nine Thousand Only). The total tangible assets of the Corporate Debtor as on 28.11.2019 is Rs. 4,67,64,463.57. Assets of the Company as against liabilities are much higher than total realizable value of its assets. The Applicant/ Company cannot run since there is no cash flow in operation. The liability of the Applicant/Corporate Debtor is increasing and the value of its assets are also depleting. The promoters and Directors of the Applicant/Corporate Debtor are unable to revive the Company. Hence, the applicant approached to this Adjudicating Authority for Corporate

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Insolvency Resolution Process. The Board of Directors' meeting was held on 02.11.2019 and Extra Ordinary General Body Meeting was also held on 02.11.2019, unanimously passed resolution to approach the NCLT for initiation of Corporate Insolvency Resolution Process. The applicant has enclosed the details of the assets and liabilities and Audited Balance Sheet as on 31.03.2018 along with the application.

5. The Corporate Applicant has suggested the name of Mr. Saradindu Jena for appointment as Insolvency Resolution Professional of Ou No- 510, 5th Floor, Esplanade One, 721, Rasulgarh, Bhubaneswar, Orissa, 751 010 having E-mail Id- ip.jena2017@gmail.com is appointed as Interim Resolution Professional/ Resolution Professional registered with the ICSI Insolvency Professionals Agency having Registration No. IBBI/IPA-002/IP-N00520/2017-18/11622. There is nothing on record to show that any disciplinary proceeding is pending against the proposed IRP.
6. This application is **ADMITTED** by following order.

ORDER

- (i) The application filed by the Corporate Applicant under Section 10 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process against M/s.

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Swain Aluminium Pvt. Ltd. (Corporate Applicant/Corporate Debtor)



Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.

(ii) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-Section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

(iii) Moratorium under Sec.14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following: -

- 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;

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- 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (iv) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- (v) 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.
- (vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process. Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-

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Section (1) of Sec.31 or passes an order for liquidation of Corporate Debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

(vii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.

(viii) **Mr. Saradindu Jena**, Ou No-510, 5th Floor, Esplanade One, 721, Rasulgarh, Bhubaneswar, Orissa, 751 010 having E-mail Id- ip.jena2017@gmail.com is appointed as Interim Resolution Professional/ Resolution Professional registered with the ICSI Insolvency Professionals Agency having **Registration No. IBBI/IPA-002/IP-N00520/2017-18/11622** as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

Xi The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

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x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.


xi) Registry is hereby directed to communicate the order to the Corporate Applicant/Corporate Debtor and to the Interim Resolution Professional/ Resolution Professional by Speed Post as well as through E-mail.

Interim Resolution Professional to file 1st progress report on 15.04.2020

List the matter on 15.04.2020.

Let the certified copy of the order be issued upon compliance with requisite formalities.


Shri Satya Ranjan Prasad
Member (T)


Ms. Sucharitha R.
Member(J)

Signed on this, the 20th day of February, 2020.

Kaushal (Steno)

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Deputy Registrar
National Company Law Tribunal
Cuttack Bench

