

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 265/KB/2019

In the matter of:

An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

-And-

In the matter of:

1. **Mr. Cecil Antony**, residing at Merlin Oxford, Flat 6F & 7F, 22, Prince Anwar Shah Road, Kolkata 700033.
2. **Mr. Dileep Singh Mehta**, residing at 13, Deshapriya Park West, Avinandan, 3rd Floor, Kolkata 700026.
3. **Mr. Francis Antony**, residing at MNAV-49, North Avenue, Urvashi, Bengal Ambuja, City Centre, Durgapur, City Centre Bardhaman, West Bengal – 713216.
4. **Mrs. Sangeeta Mehta**, residing at 13, Deshapriya Park West, Avinandan, 3rd Floor, Kolkata 700026.
5. **Mr. Mayankjeet Singh Chattha**, residing at 28, Doctor Sundari Mohan Avenue, Kolkata 700014 and
6. **Mr. Kunal Gurnani**, residing at Flat 3D, Block-A, Roopkatha, 27 Prantik Pally, Kasba, Kolkata 700041

(Trustees of NSHM Academy and Hari Charan Garg Charitable Trust, Pulic Charitable Trusts situated at 124 B.L. Shah Road, Kolkata 700053)

Financial Creditor/Applicant

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Versus

In the matter of:

M/S. SPS Ispat & Power Limited, a Company incorporated on 1st February, 2011, having its Registered Office at Elegant Towers, 224 A, Acharya Jagdish Chandra Bose Road, Kolkata 700017.

... Corporate Debtor

**Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &
Shri Harish Chander Suri, Hon'ble Member (Technical).**

Counsel on Record:

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| 1. Mr. Shaunak Mitra, Adv. |] |
| 2. Ms. Neha Somani, Pr. CS |] For Financial Creditor |
| 1. Ms. Shreeradha Ghosh, Adv. |] For Corporate Debtor |

Order pronounced on: 08th August, 2019.

ORDER

Per Harish Chander Suri, Member (T).

1. This application under Section 7 of the Insolvency and Bankruptcy Code (in short, I&B Code) 2016 read with Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016, has been filed by the **Trustees of NSHM Academy and Hari Charan Garg Charitable Trust, Public**

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Charitable Trusts, through their authorized representative and Power of Attorney dated 25th January, 2019 issued in the name of **Mr. Cecil Antony**, authorizing him to submit the application on behalf of all the Trustees vide Resolution dated 5th November, 2018, hereinafter referred to as the **“Financial Creditor”** against **M/s. SPS Ispat & Power Limited**, having its Registered Office at Kolkata, hereinafter referred to as the **“Corporate Debtor”**.

2. It is submitted that the Financial Creditor (NSHM) had granted a debt of Rs. 70,00,00,000/- (Rupees Seventy Crore Only) on 29th April, 2013 and Rs. 40,00,00,000/- (Rupees Forty Crore Only) was granted by Hari Charan Garg Charitable Trust on 26th April, 2013. These Charitable Trusts/Financial Creditors are primarily engaged in running Educational Institutions in the State of West Bengal.
3. It is submitted that the Financial Creditor had entered into an agreement dated 21st February, 2013 with SPS Ispat & Power Limited for the transfer/acquisition and use of the land for setting up the University Project at the Project land. As per the agreement, the aggregate sum of Rs. 110,00,00,000/- (Rupees Hundred and Ten crores Only) was paid by the Financial Creditor as advance payment against the total consideration of Rs. 410,00,00,000/- (Rupees Four hundred Ten Crores Only). The parties had also agreed therein that a sum of Rs. 40,00,00,000/- on the basis of the opportunity cost that would be lost by the Financial Creditor and on the basis of the idle estimated project cost in the hands of the Financial Creditor, was agreed to be

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paid to the Financial Creditors as liquidated damaged in the event of failure of the Corporate Debtor in performing its part and obligations assigned to it under the agreement.

4. It is submitted that the Corporate Debtor had failed in its obligation under the agreements on frivolous pretexts and wrongfully avoided complying with its obligations. The Financial Creditor invoked the arbitration clause contained in the agreement dated 21st February, 2013 and the sole arbitrator passed arbitral award on 23rd February, 2015 and the Corporate Debtor was directed to pay to the Financial Creditors i.e. the two Trusts a sum of Rs. 110 crores advanced to the Corporate Debtor along with Rs. 40 crores as liquidated damaged, in proportion to their respective loan amounts advanced to the Corporate Debtor within a period of One year from the publication of the award along with costs of Rs. 2 lakhs.
5. Since no application under section 34 of the Arbitration and Conciliation Act, 1996 was filed by the Corporate Debtor, the Award has attained finality. The Financial Creditors are also entitled to interest @ 13% p.a. under the Award.
6. It is further submitted that the Corporate Debtor has made part payments but has failed and neglected to pay the entire awarded amount despite repeated reminders and requests. It is submitted that the amount of debt in the Books of Accounts of Hari Charan Garg

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Charitable Trust is Rs. 59,91,50,000/- (Rupees Fifty Nine Crore Ninety One Lakh Fifty Thousand Only) as on 31st March, 2018 and the amount of debt in the books of NSHM Academy is Rs. 92,49,03,973/- (Rupees Ninety Two Crore Forty Nine Lakh Three Thousand Nine Hundred Seventy Three Only) as on 31st March, 2018.

7. All the amounts of the Trusts had been disbursed to the Corporate Debtor through their respective bank accounts and the Financial Creditors have filed all the bank statements reflecting these debit entries in their bank statements. The Financial Creditor has proposed the name of Mr. Santosh Choraria, a Resolution Professional, to act as an Interim Resolution Professional in the event the application is admitted.
8. When the matter was listed before this Tribunal for admission, notice was issued and the Corporate Debtor appeared through its Counsel and filed their counter reply affidavit. In this affidavit Mr. Bipin Kumar Vohra, One of the Directors of the Corporate Debtor has submitted that he admits that Rs. 152,40,53,973/- (Rupees One Hundred Fifty Two Crores Forty Lakh Fifty Three Thousand Nine Hundred Seventy Three Only) as mentioned in Part IV clause (2) of the said application is outstanding which the Corporate Debtor has not been able to pay due to the stringent Financial constraints and that the Corporate Debtor has not been able to clear the outstanding dues in view of the fact that the Factory of the Corporate Debtor has been closed and the

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unavoidable effects of the depressed economic condition and unavoidable financial constraints and deplorable financial conditions since the factory has been finally closed.

9. In support of the application, the Financial Creditors have filed all the relevant documents to prove the disbursement of the Financial Debt, agreement of loan with liquidated damages in given circumstances, arbitration award, notice of demand dated 27th July, 2015 by the Financial Creditors to the Corporate Debtors. The Financial Creditor has also enclosed all the correspondences exchanged between the parties i.e. letter dated 23rd September, 2015 whereby the Corporate Debtor has admitted the debt and its liability, 27th July, 2015 21st March, 2016 and 30th June, 2016.
10. We have heard both the parties at length and perused all the relevant documents placed on record. We are very much convinced that the Financial Debt is owed by the Corporate Debtor to the Financial Creditor particularly in view of the admission of the Corporate Debtor in the reply affidavit and the correspondences exchanged.
11. In view of the aforesaid facts and circumstances, we have no option but to admit the application and pass the following orders:-

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ORDERS

(i) This application filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s. SPS Ispat & Power Limited** is hereby admitted.

(ii) We hereby declare a moratorium, and order public announcement in accordance with Sections 13, and 15 of the IBC, 2016.

(iii) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency and Bankruptcy Code, 2016. The Interim Resolution Professional, being appointed vide this order, shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process made, and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.

(iv) Moratorium under Section 14 of the Insolvency and 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 judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

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- 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 Securitisation 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 the possession of the corporate debtor.
- (v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- (vi) 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.
- (vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- (viii) Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or

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passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

(ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

(x) **Mr. Santosh Choraria** registered with the Indian Institute of Insolvency Professionals of Institute of Chartered Accountants of India, having **Registration No. IBBI/IPA-001/IP-P00549/2017-2018/10979**, e-mail ID: ca.schoraria@gmail.com, Mobile No. 9831207932, whose name has been proposed by the Financial Creditors, is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and constituting Committee of Creditors for evolving a resolution plan.

xi) The Interim Resolution professional should convene a meeting of the committee of Creditors and submit the resolution passed by the Committee of Creditors, and shall identify the prospective Resolution Applicant within **105 days** from the insolvency commencement date.

xii) The Corporate Applicant is directed to deposit Rs. 5,00,000/- (Rupees Five Lacs Only) in the ESCROW Account to be operated through the Registrar, NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP within two weeks from the date of the order. This amount can be

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withdrawn by the Resolution Professional, subject to the approval of Committee of Creditors.

xiii) The registry is hereby directed under Section 7(4) of the Insolvency and Bankruptcy Code, 2016 to communicate the order to the Financial Creditors, the Corporate Debtor and to the interim resolution Professional by Speed Post as well as through e-mail.

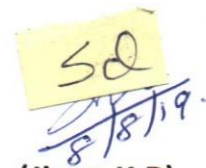
xiv) List the matter on **17th September, 2019** for the filing of the progress report.

xv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)

Member (T)



(Jinan K.R)

Member (J)

Signed on this 8th day of July, 2019.

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