

**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

TP No. 28/CTB/2019

In

CP (IB) No. 1206/KB/2018

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process 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:

Ravindra Construction Company, (Through its Sole Proprietor, Mr. Ravinder Singh) having its registered office at: A-201, Sunny Valley CGHS Plot No. 27 Sector-12, Dwarka, New Delhi- 110078.

... Applicant/ Financial Creditor

-Versus-

In the matter of:

Kalinga Sponge Iron Limited, having its Registered Office at: Plot No. 82, Sector A, Kalunga Industrial Estate, Kalunga, Rourkela, Sundargarh, Orissa-770001.

...Respondent/CorporateDebtor

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing):

For Petitioner : Mr. Gaurav Mitra, Adv.
Mr. Naveen Dahiya, Adv.
Mr. Manish Sharma, Adv.
Mr. Adit Singh, Adv.

For the Respondent : Mr. Ratnanko Banerji, Sr. Adv.
Ms. Aprajita Rao, Adv.

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Mr. Sanwal Tibrewal, Adv.

Order reserved on: 15.11.2021

Order pronounced on: 22.11.2021

ORDER

Per: Satya Ranjan Prasad, Member (Technical)

1. This application is filed under Section 7 read with Sections 14, 33 and other applicable Sections of the Insolvency and Bankruptcy Code, 2016 (for brevity IBC Code, 2016) by **M/s. Ravindra Construction Company** (Through its Sole Proprietor, Mr. Ravinder Singh)/ **Financial Creditor** against the Corporate Debtor that is **Kalinga Sponge Iron Limited** to start Corporate Insolvency Resolution Process (CIRP) as the Corporate Debtor has allegedly committed default in paying, the Financial debt of a sum of ₹4,73,58,250/- (Rupees Four Crore Seventy-Three Lakh Fifty-Eight Thousand Two Hundred and Fifty only) as on 15th August 2018. This application was originally filed before NCLT, Kolkata Bench numbered as **CP (IB) No. 1206/KB/2018**. After Constitution of this Bench, the matter was transferred and re-numbered as **TP No. 28/CTB/2019**.
2. As per the averments, the Corporate Debtor is a Public Limited Company having its registered office at Plot No.82 A, IDC, Kalunga Distt., Sundergarh, Odisha. It was incorporated on 24.10.2000 under the provisions of the Companies Act, 1956, and is engaged in the business of manufacturing, drawing, refining, melting, buying, selling and otherwise dealing in all types of Basic Iron & Steels. Applicant/Financial Creditor states that Shri Ravinder Singh was the ex-director and ex-shareholder of the Corporate Debtor and now he is no more associated with Corporate Debtor in any manner whatsoever and had ceased to be the director of the Corporate Debtor w.e.f. 28.07.2017. He was appointed as the Director of

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the Corporate Debtor in the year of 2003 and continued as the director up till 28.07.2017. He transferred his entire shareholding of 10,37,500 equity shares of ₹ 10/- each in the Corporate Debtor in favour of present directors of the Corporate Debtor. A copy of Form-32 evincing the appointment of Mr. Singh as the Director in the year of 2003 has been annexed and marked as **Annexure-C** to the application. A Copy of the Form-DIR 11 evincing the confirmation of cessation of directorship of the applicant w.e.f. 28.07.2017 from the Corporate Debtor is also annexed to the application and marked as **Annexure-E**.

3. The applicant/Financial Creditor submits that in the capacity of being the director and shareholder of the Corporate Debtor and in the usual course of business as and when the need of the funds arose in the past, had advanced unsecured loans from time to time in the favour of the Corporate Debtor for the purpose of meeting the financial requirements of the Corporate Debtor. Also, that the amount advanced by the Financial Creditor was commercially used by the Corporate Debtor for the purchase of raw materials and paying loan instalments etc. and, therefore, had commercial effect of borrowing. It has been submitted that Mr. Ravinder Singh has been advancing the said unsecured loans himself and also through his sole proprietorship concern i.e., Ravindra Constructions Company since the very inception of the Corporate Debtor.
4. The applicant has stated that the loans facilitated by the Financial Creditor were repayable on demand and had been provided duly to the Financial Creditor since the year of 2003. That the detailed balance sheet for the financial year 2015-2016 of the Corporate Debtor reflects the amount of ₹6,73,86,240/- as outstanding and payable to the Applicant as on 31.03.2016. The same amount has been carried forward for the financial year 2016-17 as is evident from the Director's Report for the year of 2017

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available on online Portal of MCA. That thereafter, some further amount was released by the Corporate Debtor and in accordance with the ledger maintained by the Applicant, a principal sum of ₹ 4,62,92,880/- (Rupees Four Crore Sixty-Two Lakh Ninety-Two Thousand Eight Hundred and Eighty only) is presently payable by the Corporate Debtor to the Financial Creditor. That the details of the amount advanced over the period of time by the Financial Creditor is duly reflected on in the balance sheets of the Corporate Debtor for the Financial Year 2015-16 and 2016-17. A copy of the Ledger Account of Corporate Debtor maintained in the books of the Financial Creditor for the period of 01.04.2011 to 17.04.2018 evincing the aforesaid sum as outstanding on the part of the Corporate Debtor has been annexed as **Annexure-G** to the application.

5. It is also stated that the applicant approached the concerned directors of the Corporate Debtor, i.e., Mr. Amit Kumar Agarwal and Mr. Prem Chand Agarwal and duly requested them to repay the unsecured loans advanced by the Financial Creditors at the earliest. In furtherance of the said discussion, the Corporate Debtor assured and further promised to repay all the dues in full latest by 31.05.2018. Upon assurance on the part of the directors of Corporate Debtor and in furtherance of the aforesaid meeting in New Delhi on 13.04.2018, a sum of ₹ 32,00,000/- (Rupees Thirty-Two Lakh only) was released by the Corporate Debtor in favor of Financial Creditor thereby reducing the pending/outstanding amount to ₹4,62,92,880/- (Rupees Four Crore Sixty-Two Lakh Ninety-Two Thousand Eight Hundred and Eighty only). However, after the said payment of ₹32,00,000/- no further payment was made by the Corporate Debtor despite assurances on the part of the directors of the Corporate Debtor.
6. It is further stated that the Financial Creditor issued a demand letter to the Corporate Debtor on June 25, 2018, thereby demanding full repayment of

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dues to the tune of ₹4,62,92,880/- within a period of 15-days. On non-receipt of payment another demand letter was issued for repayment of dues within 15-days on July 18, 2018 to the Corporate Debtor and also to its Management. In reply to their demand notice dated 25.06.2018, the Corporate Debtor, while not denying the claim, stated that there is difference in amount as claimed vide their reply dated July 14, 2018, and thereby asked for year wise ledger of last 5 years account of both Ravinder Construction Company and Shri Ravinder Singh, which *prima facie* indicate acknowledgement of Debt by the Corporate Debtor. The applicant/Financial Creditor submits that in spite of repeated/ reminder the Corporate Debtor failed to repay the loan. Hence, the applicant has approached this Tribunal, for commencement of Corporate Insolvency Resolution Process against the Corporate Debtor.

7. Corporate Debtor was served with the notice of this application. Corporate Debtor has filed its reply. Their main submissions are to the following effect—

- i) *Ravinder Singh and three others were promoters of the Corporate Debtor and held shares of the Company within themselves through friends and family and for all practical purposes the Company was considered a partnership concern between the four. On 22.06.2017 the said shareholders entered into an agreement to transfer ownership rights of the Company to Prem Chand Agarwal and Akhil Kumar Agarwal. The Company was closed for more than 5 years and its accounts with State Bank of India and Corporation Bank were declared NPAs and the Banks have initiated recovery proceedings against the Company and its guarantors. Ravinder Singh was one of the guarantors to the loan account of the Company with the banks.*

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- ii) *In terms of the MoU dated 22.06.2017 the incoming parties were to release the outgoing parties from the guarantee furnished by them to the banks. The net consideration for the said arrangement was fixed at ₹ 26.00 crore and the outgoing parties (including Shri Ravinder Singh) confirmed vide their letter dated 24.07.2017 that the said amount of ₹ 26.00 Crore payable as consideration and withdrawal of the guarantee of the outgoing parties as per the terms of the MoU was for the full and final settlement of ALL the liabilities due to the outgoing parties towards the corporate debtor over and above their shareholding.*
- iii) *On 13.04.2018 the outgoing parties declared and recorded in writing that they had transferred their shares to Bajrangbali Rerollers (P) Ltd. against payment of consideration for the same and also that they had no claim from Prem Chand Agarwal in relation to any matter relating to the Company and would not raise any dispute in future. Respondent has provided copy of such declarations along with their reply as Annexure R-6.*
- iv) *On 12 .04.2018 a letter was issued to Ravinder Singh, confirming that his net liability after adjustments in terms of the MOU and clarifications thereof stands at ₹ 32.00 lakh. The letter further requested the applicant to acknowledge the said net liability so that it can be paid as full and final settlement of his claims. Letter was duly acknowledged by the applicant and on the basis of the said acknowledgment the balance due of Rs.32.00 lakh was paid through RTGS on 16.04.2018.*
- v) *On assurance of the outgoing partners that they had no further claims against the Company or against Prem Chand Agarwal and Akhil*

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Kumar Agarwal, steps were taken to release the outgoing parties from their liability as guarantors.

- vi) Thereby denying that the Applicant has any claim on the Corporate Debtor the Respondent has also submitted that the application is not maintainable as the Applicant/Petitioner is not a financial creditor as the alleged claim of the applicant is not a financial debt. The alleged loan was interest free as is appearing in the loan ledger of the applicant.*
- vii) Their ledger account was sent vide letter dated August 23, 2018. It will be evident from the same that no amount could be outstanding as the claim made was already settled. Balance sheet for the year ended 31.03.2018 indicate that the settlement amount in favour of the Applicant is Rs. 32. Lakh. The amount has already been paid; therefore, no claim survives.*
- viii) All advances made by the applicant to the Company were adjusted in full against the payments made by Prem Chand Agarwal and Akhil Kumar Agarwal to Ravindra Construction Company and Ravinder Singh who duly acknowledged the same by executing declaration to such effect.*
- ix) A sum of ₹ 32.00 lakh was paid to the applicant in full and final settlement of all his dues to the Company. The Applicant after receipt of the said sum had declared that he had no further claim against the Company or Prem Chand Agarwal and Akhil Kumar Agarwal. Said sum was paid to the applicant after making payment to the banks to discharge the personal guarantee of the applicant.*

8. On the above reply of the Corporate Debtor, the respondent has submitted rejoinder dated 02.02.2019. It has been stated *inter alia* that the Corporate

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Debtor is relying on the adjustments in the balance sheet for the year 2017-18. Loan amount has been deliberately written off without any explanation. Further, that MOU was signed by Mr. Ravinder Singh in his personal capacity as a shareholder and director of the Corporate Debtor, whereas the Application under IBC has been filed by "Ravindra Construction Company" which is not a party to the MOU. Applicant has also stated that above letters dated 24.07.2017 and 12.04.2018 relied upon by the Corporate Debtor are forged and fabricated documents and submitted his reasonings for the same. The applicant also states that he tried to contact the Corporate Debtor over the phone for an amicable settlement. However, the same has failed. Also, that the Corporate Debtor has *mala fide* intentions and ulterior motives to defraud this applicant of his lawful dues.

9. The respondent states that there are lot of material facts which have been suppressed by the applicant and on this ground itself, the application ought to be dismissed. The respondent further states that the applicant has not given any loan much less a financial loan. Hence, this application is not maintainable under Section 7 of the Insolvency and Bankruptcy Code, 2016. When there is no financial loan, the claim of interest @ 24 % per annum is misconceived. The Corporate Debtor states that one Mr. Hansraj Dhankar, Mr. Shish Pal Solanki and Mr. Amit Kumar Agarwal and the applicant herein i.e., Mr. Ravinder Singh were the promoters of the Corporate Debtor and the shares holding were held between themselves. On 22.06.2017, the above four said shareholders entered into an Agreement with Prem Chand Agarwal and Akhil Kumar Agarwal, present Directors of the Corporate Debtor for transfer of ownership rights of the Company for a valuable consideration. The applicant has in his capacity as a Managing Director of the Company sold the Corporate Debtor by Memorandum of Understanding (MOU) dated 22.06.2017. In the Memorandum of Understanding (MOU) dated 22.06.2017 executed between the above-

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mentioned Directors (i) Mr. Hansraj Dhankar (ii) Mr. Ravinder Singh (iii) Mr. Shish Pal Solanki (iv) Mr. Amit Kumar Agarwal and the present Directors i.e., Prem Chand Agarwal and Akhil Kumar Agarwal. This agreement was entered between them for change of ownership of the Corporate Debtor, the Corporate Debtor had huge liabilities with State Bank of India and Corporation Bank. Both the bank's accounts were declared as Non-Performing Asset (NPA) and recovery proceedings were initiated. The applicant herein Mr. Ravinder Singh was also one of the guarantors for the loan availed by the Corporate Debtor. The Memorandum of Understanding (MOU) further states clearly that the plant of the Company was closed over 5 years prior to the date of the execution of the Memorandum of Understanding (MOU). In other words, the Corporate Debtor was closed down and not in operation since 2012. The incoming/present Directors agreed to take over the Corporate Debtor for total sale consideration of ₹ 26,00,00,000/- (Rs. Twenty-six Crore) and agreed to clear the bank dues and other liabilities of the Corporate Debtor including the personal guarantees issued by the applicant. It was agreed between the parties that first the bank dues shall be paid off under One Time Settlement (OTS). The balance consideration of the above-mentioned amount i.e., ₹ 26,00,00,000/- (Rs. Twenty-six Crore) would then be paid to the outgoing parties towards full and final settlement of all their liabilities. The same was agreed to be paid partly through purchase of their shareholding and the balance would be payable in the ratio of profit sharing of the outgoing parties. By Letter dated 24.07.2017, it is said that the amount of ₹ 26,00,00,000/- (Rs. Twenty-six Crore) shall be full and final settlement of all the liabilities due to the outgoing parties. This Letter ascertain the terms and conditions of the Memorandum of Understanding (MOU) dated 22.06.2017.

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10. On 25.07.2017, Mr. Prem Chand Agarwal and Akhil Kumar Agarwal were appointed as Additional Directors in terms of the Memorandum of Understanding (MOU). The applicant along with the other three Directors handed over the physical possession of the Company/Corporate Debtor. Thereafter, the present Directors of the Corporate Debtor settled the dues of the Corporate Debtor to State Bank of India and Corporation Bank. The State Bank of India vide Letter dated 25.04.2018 have issued No Dues Certificate in favour of the Corporate Debtor. The Corporation Bank by Letter dated 13.04.2018 had issued No Dues Certificate. Thereby, the personal guarantee of the applicant stands nullified and the applicant is also saved from liabilities on account of loan of the Corporate Debtor. The applicant by Letter dated 28.07.2017 has resigned from the Directorship of the Corporate Debtor. The respondent has filed Declaration dated 13.04.2018 executed by the applicant stating therein that: -

"he has no claim from Mr. Prem Chand Agarwal and his family members, in relations to any matters relating to M/s. Kalinga Sponge Iron Ltd. and that I shall not make any dispute with them in relation to any matter henceforth".

11. Similar Letters were also executed by other three outgoing Directors. The respondent states that in the Financial Year 2017-18 no amount is due and payable to the applicant. The respondent stated by Letter dated 12.04.2018 issued to the applicant that the amount to be paid to the applicant was sum of ₹ 32 Lakh. It is pertinent to mentioned herein that by Letter dated 13.04.2018, the applicant along with other outgoing three Directors has acknowledged that no amount is due and payable and no claim is maintainable.

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12. The Balance-Sheet for the year ending on 31.03.2018 reflects that no amount is due and payable to the applicant.
13. We have read the application, reply, rejoinder and other documents filed therein. Heard the learned senior counsel /counsel appearing on behalf of the parties at length on several occasions. It is clear that applicant was erstwhile Director/Shareholder of the respondent company. From the documents, it is clear that a Memorandum of Understanding (MOU) was entered between the applicant and three other Directors of the Corporate Debtor with the present Directors of the Corporate Debtor dated 22.06.2017. As per the Memorandum of Understanding (MOU), the applicant has agreed to sell the Corporate Debtor for a business transfer agreement for a sale consideration of sum of ₹ 26,00,00,000/- (Rs. Twenty-Six Crore). The Memorandum of Understanding further states that the Corporate Debtor was not in operation since 2012. The Memorandum of Understanding (MOU) also acknowledges the bad financial state of the Corporate Debtor and the ongoing case filed by the State Bank of India and Corporation Bank for recovery of the dues. The Memorandum of Understanding (MOU) further acknowledges that the present guarantees of the outgoing Directors are also available with the bankers for recovery of the amount due and payable by the Corporate Debtor. Hence, in the Memorandum of Understanding (MOU), it was agreed between the parties that the incoming parties shall ensure that the personal guarantee of the outgoing parties and 3rd party guarantee shall be released on clearance of the bank's dues. Based on this, the Corporate Debtor acting through the present Directors entered into One Time Settlement (OTS) proposals with State Bank of India and Corporation Bank. It appears from the documents that both the loans were cleared. By Letter dated 25.04.2018, the State Bank of India has issued No Dues Certificate. By Letter dated 13.04.2018, the Corporation Bank has issued No Dues Certificate and towards the full and

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final settlement of the outstanding in the name of the Corporate Debtor. Thereafter, by Letter dated 24.07.2017 addressed to the present Directors dated 24.07.2017, which is signed by the applicant himself on behalf of the Corporate Debtor, it is stated that the consideration of ₹ 26,00,00,000/- (Rs. Twenty-Six Crore) as per the Memorandum of Understanding (MOU) dated 26.06.2017 is the final settlement to the outgoing parties towards their shareholdings and other liabilities whatsoever and in lieu of releasing of guarantees of the outgoing parties. Board of Director's Meeting held on 22.06.2017, the four outgoing Directors, who were present at the meeting wherein it was resolved that there shall be "no claim of money from the parties except to the extent as specified in the Memorandum of Understanding signed between the parties". This resolution of the Corporate Debtor at the Board of Director's Meeting held on 22.06.2017, was also signed by the present applicant in his capacity as the Director of the Corporate Debtor. By Letter dated 22.06.2017, as per the terms and conditions of the Memorandum of Understanding, the physical possession of the company, plant, building was handed over to the present Directors. All the four Directors of the Corporate Debtor by Letter dated 28.07.2017 resigned from the Board of Directors of the Corporate Debtor. Thereafter, by Declaration dated 13.04.2018, the applicant along with other three erstwhile Directors has categorically stated that no claims from Mr. Prem Chand Agarwal and his family's members in relation to any matters to Kalinga Sponge Iron Ltd. and that they shall not make any dispute with them in relation to any matter henceforth. Hence, there is a categorical admission that no amount is due and payable. By Letter dated 12.04.2018, the Corporate Debtor has issued a Letter to the applicant, wherein it is stated that based on the Memorandum of Understanding (MOU) dated 22.06.2017 that a sum of ₹ 32 Lakh is due and payable by the Corporate Debtor to the applicant towards full and final settlement of all dues. This Letter has been acknowledged by the applicant. However, in course of the

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earlier, the Counsel for the applicant stated that he denies the authenticity of this Letter. Hence, this cannot be relied upon. In the Balance-Sheet audited for the year 2017-18, it is clear that as on 31.03.2018, no amount is due and payable by the Corporate Debtor to the applicant. At this juncture, it is pertinent to mention that applicant relies upon the Balance-Sheet for the year 2015-16 and 2016-17 as only proof of debt due and payable by the Corporate Debtor. It is important to remember that during this period, the applicant was in the realm of affairs of the Corporate Debtor, the same Auditor has given the Financial Statements for the year 2017-18, stating clearly therein that no amount is due and payable to the applicant.

14. There is no agreement regarding terms and conditions or regarding repayment etc. There is no bank statement or any other supporting evidence produced in support of his claim by the applicant that what is the mode of transaction for providing such stated loans to the Corporate Debtor. There are discrepancies noted in the ledger sheet of the applicant. We cannot take into consideration one or two Balance-Sheets of the company and conclude the case. Furthermore, there is no documents to show the loan transacted in to the account of the corporate debtor. From the arguments and documents, it is clear that the entire payment is towards the business transfer agreements between the parties for takeover of the Corporate Debtor, various loans were settled by the new Directors. There is also a Memorandum of Understanding (MOU) for the transfer of the shares from the erstwhile Directors to the present Directors. The agreements between the parties were entered on 22.06.2017. However, till 25.06.2018, the applicant has not issued any E-mail or Letter claiming the amount. The claim was after receipt of the full and final settlement of the bank's dues wherein the applicant is one of the personal guarantors. The Memorandum of Understanding (MOU) for transfer of the Corporate Debtor by the present applicant in his capacity as Managing Director was dated

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22.06.2017. Relevant dates in this regard have been summarized in the table below:

1.	MOU dated	22.06.2017
2.	Handing of the Corporate Debtor over dated	25.06.2017
3.	No Due Certificate in respect of loan account of Corporate Debtor from Corporation Bank	13.04.2018
4.	No Due Certificate in respect of loan account of Corporate Debtor from State Bank of India	25.04.2018
5.	The Letter of Demand of "debt" from applicant to respondent	25.06.2018, 18.07.2018
6.	The application was filed on	24.08.2018.

15. The applicant has failed to prove that he is entitled to interest on the alleged loan and that it was agreed that corporate debtor shall pay 24% interest P A. No document is filed to support that the alleged amount due is financial loan. Further the date of default is crucial point. The applicant failed to satisfy this tribunal regarding the exact date of default. Hence, the applicant has failed to prove existence of financial loan, interest due, and default.
16. In view of the above discussions, documents on record and after hearing the learned senior Counsel/Counsel at length we are of firm opinion that this petition ought to be dismissed.
17. Accordingly, TP No. 28/CTB/2019 arising out of CP (IB) No. 1206/KB/2018 stands **DISMISSED**. Parties to bear their cost.
18. Registry is hereby directed to communicate this Order to the applicant/petitioner and respondent. Let the certified copy of the Order be issued upon compliance with the requisite formalities.

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19. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

20. File be consigned to the record.

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Satya Ranjan Prasad
Member (Technical)

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P. Mohan Raj
Member (Judicial)

Signed this 22nd day of November, 2021.

Ravijeet_P.S.