In the National Company Law Tribunal

Kolkata Bench

Kolkata

C.P. (IB) No. 947/KB/2018

In the matter of:

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

And

In the matter of:

BANK OF INDIA, a body corporate constituted under the Banking Companies (Acquisition & Transfer of Undertaking) Act, 1980, having its Head Office at "Star House", C-5, G Block, Bandra-Kurla Complex, Bandra (East) Mumbai – 400051 and one of its branch office at 8A, Lindsay Street, Kolkata 700087, P.S. New Market, commonly/popularly known and reputed as Lindsay Street Branch.

... Applicant/Financial Creditor

Versus

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In the matter of:

M/s. WHITE & BROWN ALLOY CASTINGS PRIVATE LIMITED, having its registered Office at Flat-2D, Block-B, Vaishnawi Dham, Diamond Harbour Road, Joka, Thakurpukur, Kolkata - 700104

... Corporate Debtor

In the matter of :

BANK OF INDIA	**] Financial Creditor**
WHITE & BROWN ALLOY CASTINGS PVT. LTD.	**] Corporate Debtor**

Date of pronouncement of order : 26/08 /2019

Coram: Shri Jinan K.R, Hon'ble Member (Judicial) &

Shri Harish Chander Suri, Hon'ble Member (Technical)

Counsel on Record :

Mr. Prodyut Banerjee, Advocate	**] For the Resolution Professional**
Mr. Aveek Saha, Advocate	**]**
Mr. Shankar Singh, Advocate	**] For the Applicant Bank**
Mr. M.R. Sarbadhikari, Advocate	**] For the Respondent**

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ORDER

Per Shri Harish Chander Suri, Member (T).

1. This Petition CP(IB) No. 947/KB/2018 under Section 7 read with Rule 4 of the Insolvency & Bankruptcy Code, 2016 has been filed by Bank of India, hereinafter referred to as the "Financial Creditor" against M/s. White & Brown Alloy Castings Pvt. Ltd., hereinafter referred to as the "Corporate Debtor" having its Registered Office at Kolkata.

2. It is submitted that the Financial Creditor had sought initiation of Corporate Insolvency Resolution Process against the Corporate Debtor for its failure to repay the outstanding amount due from the Corporate Debtor to the Financial Creditor to the tune of Rs. 13,65,97,120.31 (Rupees Thirteen Crore Sixty Five Lacs Ninety Seven Thousand One Hundred Twenty and Paise Thirty One Only) for which the default had occurred as the Financial Creditor had placed on record all the relevant documents including the CIBIL Report and proved its case against the Corporate Debtor.

3. This Tribunal vide order dated 10th December, 2018 passed the order of admission and initiation of Corporate Insolvency Resolution Process, thereby appointing Mr. Anil Anchalia, to proceed and perform the duties of the IRP as per the Code and Rules made thereunder. The IRP filed its Ist Progress Report dated 11th January, 2019 and informed this Tribunal about the various

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compliances, like Public Announcements, taking charge of the Bank Accounts, correspondence with various stakeholders, Auditors, Statutory Authorities and Constitution of Committee of Creditors. The decision about the appointment of Resolution Professional was postponed in the first meeting of the CoC.

4. In the 2nd Progress Report dated 05.03.2019 the Ld. IRP continued performing the functions of the Resolution Professional because there was delay in appointment of the Resolution Professional. The Resolution Professional received quotations for appointment of Registered Valuers to determine the fair value and Liquidation value of the Corporate Debtor. It was informed that the promoter Directors of the Corporate Debtor had continued to be non-cooperative in spite of various requests and has withdrawn certain amount from Uco Bank after orders of initiation of CIRP. The appointment of IRP was approved by the Committee of Creditors with 100% voting as the Resolution Professional, and the Apex Insolvency Professionals LLP was engaged as Advisor to assist the RP in managing the CIRP against the Corporate Debtor. In addition to this two Registered Valuers' appointment was also approved.

5. In the 3rd Progress Report dated 21.04.2019 also, the RP sought orders from this Tribunal to direct the Suspended Board of Directors of the Corporate Debtor and Officers to hand over all the statutory records

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including Books of Accounts to the RP forthwith but in spite of that they did not hand over the same. It was further mentioned in the report that the invitation for Expression of Interest (EOI) was published on 04.04.2019 in two Newspapers Financial Express (English daily) and **Ek din** (Bengali daily) and the last date of submission of EOI was 19th April, 2019.

6. In the 4th Progress Report dated 03.06.2019 the Resolution Professional informed this Tribunal that the Fourth Meeting of CoC was held in which the minutes of the 3rd meeting dated 2nd April, 2019 was approved. The RP had visited the Factory of the Corporate Debtor and met the Promoter and Director and informed him about the directions of this Tribunal on 05.03.2019 directing him to hand over the books of accounts of the Corporate Debtor to the RP and he assured that all records of books of accounts along with audited financial statements of preceding 4 (Four) Financial years would be handed over to the Financial Creditor very soon. Meanwhile the valuation of the Fixed Assets had also been carried out by the two appointed Valuers and the Valuation of other assets are still pending as the information is yet to be received from the Promoter Directors of the Corporate Debtor.

7. It was informed by the Resolution Professional that only one EOI had been received and that too was from the Promoter Director of the Corporate Debtor Mr. Aniruddha Mukherjee and no other outside party has shown any

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interest in the Corporate Debtor. The RP has mentioned all the steps taken by him in details in his 4th Progress Report.

8. Next in the series is the 5th and final Progress Report of the RP. It is specifically submitted that the Promoter and Director of the Corporate Debtor only had submitted the Resolution Plan which was rejected in the last CoC meeting and it came to the notice of the RP that Applicant was a wilful defaulter of the Bank and thereby ineligible under Section 29A(b) of IBC 2016.

9. From all the reports received from the RP and all the documents placed on record, it appears to us that in spite of the extension of CIRP by 90 days with effect from 7th June, 2019, since no Resolution Applicant has come forward, this Tribunal has no option but to order Liquidation of the Corporate Debtor in terms of Section 33, Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016. The extended period of CIRP is going to expire on 05th September, 2019. The Ld. Counsel for the RP submits that there is no possibility of resolution of the stressed assets of the CD. He also submits that RP is willing to continue as the liquidator. Accordingly, we hereby order requiring the Corporate Debtor, namely, M/s. White and Brown Alloy Castings Private Limited, to be **liquidated** in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016, upon the following directions:-

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ORDER

i) Mr.Anil Anchalia is appointed as the Liquidator to continue the Liquidation Process;

ii) Mr.Anil Anchalia is directed to issue Public Announcement stating that the Corporate Debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

iii) The Registry is directed to communicate this Order to the Registrar of Companies, West Bengal and to the Insolvency and Bankruptcy Board of India.

iv) The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under Section 33 (5) of the Insolvency and Bankruptcy Code shall commence.

v) This order is deemed to be a notice of discharge to the Officers, employees and the workmen of the Corporate Debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016.

vi) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.

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vii) The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within 75 days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

viii) Copy of this order be sent to the Financial Creditor, Corporate Debtor and the Liquidator by post and by e-mail for taking necessary steps.

ix) **C.P. (IB) No. 947/KB/2018 is disposed of** accordingly.

x) Urgent certified copy of this order, if applied for, be issued to the parties upon compliance of all requisite formalities.

Sd/-
(Harish Chander Suri)
Member (T)

Sd/-
26/8/19
(Jinan K.R.)
Member (J)

Signed on this, the 26th day of August, 2019.

VC

In the National Company Law Tribunal

Kolkata Bench

Kolkata

C.A. No. 510/KB/2018

C.P. (IB) No. 947/KB/2018

In the matter of:

An application under Sections 66 and 67 of the Insolvency and Bankruptcy Code, 2016.

And

In the matter of:

SRI ANIL ANCHALIA, Son of Sri Indar Chand Anchalia, aged about 42 years, residing at 48/11, Jessore Road, 5th Floor, Flat-B5, Kolkata – 700055 having Office at 16B, Robert Street, Second Floor, Kolkata 700012

... Applicant

Versus

In the matter of :

SRI ANIRUDDHA MUKHERJEE, Son of Late Prabhat Kumar Mukherjee, aged about 58 years, residing at Flat No. 5B, 135A, Shyama Prasad Mukherjee Road, Police Station – Kalighat, Kolkata 700026.

.......Respondent

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In the matter of:

M/s. WHITE & BROWN ALLOY CASTINGS PRIVATE LIMITED, having its registered Office at Flat-2D, Block-B, Vaishnawi Dham, Diamond Harbour Road, Joka, Thakurpukur, Kolkata - 700104

... Corporate Debtor

In the matter of :

SRI ANIL ANCHALIA	**] Applicant**
SRI ANIRUDDHA MUKHERJEE	**] Respondent**
M/s. WHITE & BROWN ALLOY CASTINGS PRIVATE LIMITED	**] Corporate Debtor**

Date of pronouncement of order : 26/08 /2019

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

Counsel on Record :

Mr. Prodyut Banerjee, Advocate	**] For the Resolution Professional**
Mr. Aveek Saha, Advocate	**]**
Mr. Shankar Singh, Advocate	**] For the Applicant**
4. Mr. M.R. Sarbadhikari, Advocate	**] For the Respondent**

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ORDER

Per Shri Harish Chander Suri, Member (T).

1. This application under Sections 66 & 67 of the Insolvency & Bankruptcy Code, 2016 has been filed by Mr. Anil Anchalia, the Resolution Professional appointed by this Tribunal vide order dated 10th December, 2018 against the Promoter and Director of the Corporate Debtor Sri Aniruddha Mukherjee.

2. It is submitted that the Applicant/Resolution Professional had complied with the provisions of the Code and had diligently tried to obtain control over the affairs, assets, books of accounts and other documents of the Corporate Debtor and for that purpose had visited the factory premises of the Corporate Debtor and made the promoters, Directors etc. of the Corporate Debtor to take over the affairs and its assets, books and documents of the Company. But, they flatly and squarely refused to provide any cooperation in the resolution process.

3. It is further submitted that on the request of the Applicant, this Tribunal had issued categorical directions in its order dated 11th January, 2019, directing the Respondent to cooperate with the Applicant but in spite of the directions, the Respondent did not hand over the cash balance, cash books, cheque books, bank books and other records in complete violation of the order of this Tribunal, compelling the Applicant to file an application under

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Section 70 of the Insolvency and Bankruptcy Code, pursuant to which an order dated 5th March, 2019 was passed directing the Respondent to hand over all statutory records inclusive of books of accounts of the Applicant preferably within 7 days.

4. It is submitted that the Respondent has not as yet handed over the aforesaid record. In the meanwhile, the Applicant came to know on 17th February, 2019 that during the period 10th December, 2018 to 16th January, 2019 i.e. during the Corporate Insolvency Resolution Process period, the Respondent had unauthorisedly withdrawn an aggregate amount of Rs. 13,80,000/- (Rupees Thirteen Lacs Eighty Thousand Only) from the account of the Corporate Debtor maintained with Uco Bank, New Alipore Branch A/c. No. 01790210000670. The Applicant further came to know that on 4th January, 2019 the Respondent had earlier also withdrawn an amount of Rs. 77,000/- (Rupees Seventy Seven Thousand Only) towards payment of his personal credit card dues from the account of the Corporate Debtor maintained with Kotak Mahindra Bank, Harish Mukherjee Road Branch having Account No. 2011600705 that too during the CIRP period of 10.12.2018 to 13.12.2018. So, the Respondent is stated to have unauthorisedly withdrawn a sum of Rs. 14,57,000/- from the Bank Account of the Corporate Debtor with an intention to defraud the creditors.

5. The Applicant further submits that the Applicant has issued necessary instructions to the Bank of the Corporate Debtor not to allow operation of

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those accounts by the Respondents. The Applicant has thus prayed that this Tribunal might issue directions to the Respondent to immediately refund the amount of Rs. 14,57,000/- along with interest, at the rate of 18% per annum from the date of such withdrawals and also furnish an affidavit of his personal assets so that directions u/s 67 might be issued by this Tribunal creating a charge on such assets. It is worthwhile to mention here that in reply to this application, the Corporate Debtor has, in para 5 (vi) admitted the averments/allegations of the Applicant in the following :-

> *"Ld. Resolution Professional made much ado about nothing by claiming that Rs. 14.57 lakhs utilized by the Respondent/Borrower after Resolution Process started, as such utilization is illegal. In this respect, the detailed statement of such utilization by the Respondent/Borrower for the benefit of the Company, since submitted to the Resolution Professional is enclosed and marked as Annexure-R6. The said statement may justify such utilization, which is neither illegal nor illogical, as those amounts had been spent for making payment of legitimate dues of the claimants named in the Statement as well as the purpose".*

6. From the above said reply of the Respondent, it can very well be inferred that the Respondent has very candidly admitted that the amount withdrawn by the Respondent was utilized for the benefit of the Company and the statement marked Annexure-R6 would justify such utilization.

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7. Be that as it may, the fact of the matter is that the moratorium had been ordered by the Tribunal in its order dated 12th December, 2018 on which the Interim Resolution Professional had also been appointed who was later confirmed as Resolution Professional by Committee of Creditors in its meeting dated 20th February, 2019 and any dealing with any property movable or immovable or Bank Accounts relating to the Corporate Debtor, by any of its Directors or Employees, would be against the provisions of the Code.

8. The Respondent is stated to have disregarded the provisions of the Code as also the directions issued by this Tribunal for which the Applicant had to rush to the Tribunal to seek orders from time to time. The audacity of the Respondent firstly to withdraw the amount from the account of the Corporate Debtor and branding the same as having been utilized for the benefit of the Company is another violation of the orders of this Tribunal which needs to be reprimanded and taken note of.

9. In view of the aforesaid discussions and clear cut admission of the Respondent in so many words, we are inclined to allow this application upon the following orders:-

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i) The Respondent is directed to immediately pay the amount of Rs. 14,57,000/- along with 9% interest to the CD account with due notice to the Resolution Professional within a week of this order.

(ii) The Respondent is also directed to hand over all the records, books of accounts, documents of any property, movable or immovable in the name of the Corporate Debtor and also in the name of the respondent to the Resolution Professional within 2 (Two) weeks along with an affidavit duly sworn in by the Respondent in this regard specifically mentioning therein that there is no other record or property in his custody or in the possession of any of the Directors/ Officers/Employees of the Corporate Debtor and also affirming that in case anything is found false later on, he could be prosecuted under the appropriate Sections of the Code.

(iii) The respondent is restrained from transferring, encumbering, or alienating any of the immovable properties standing in his name until the payment of the amount as directed.

(iv) A copy of this order is to be send to IBBI, for initiating prosecution if any under section 69 of the I&B,Code.

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v) **C.A. No. 510/KB/2018** in CP (IB) No. 947/KB/2018 is **disposed of** accordingly.

(v) A copy of this order be immediately served to the Financial Creditor, the Resolution Professional, the applicant, the respondent and the Corporate Debtor free of cost for immediate compliance by Speed Post as well as by e-mail for information and for taking necessary steps.

(vi) Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

Sd

(Harish Chander Suri)
Member (T)

Sd
26/8/19
(Jinan K.R.)
Member (J)

Signed on this, the 26th day of August, 2019.

VC