

NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

5, ESPLANDE ROW (WEST), KOLKATA-700001



Tel. No. (033) 2248 6330

Fax No. (033) 2252 1750

Dated: 24/02/2020

No. NCLT / KB / 2020 / 1345

To

1. State Bank of India
Jeevandeep Building
1st Floor, 1, Middleton Street,
Kolkata - 700 071
2. Hanumanta Engineering Pvt. Ltd.
37, Shakespeare Sarani
Kolkata - 700 017
3. Insolvency and Bankruptcy
Board of India
7th Floor, Mayur Bhawan,
Shankar Market,
Connaught Circus
New Delhi - 110 001
4. Registrar of Companies, W.B.
Nizam Palace, 3rd Floor,
2nd M.S.O Building,
234/4, A.J.C. Bose Rd.
Kolkata - 700 020.
5. Shri Sanjay Kumar Agarwal
Drapadi Mansion
3rd Floor,
11, Brabourne Rd.
Kolkata - 700 001

Sub: C.P. No. 1111 of 2018 CA No. 1633 of 2019 I.A. No. — of —

In the matter of State Bank of India vs —

Sir,

Hanumanta Engineering Pvt. Ltd.

I am directed to forward herewith a copy of the order dated 20/02/2020

passed by this Tribunal in respect of the above matter, for information / compliance thereof.

Encl. as stated

Insolvency and Bankruptcy Board of India

INWARD

Date: 27/02/2020 Time: 02:35 PM

Sign: *[Signature]* Dy. No. 8034

E. Office No.

Yours Faithfully,

[Signature]
24/02/2020
Court Officer
National Company Law Tribunal
Kolkata Bench

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 1111/KB/2018

CA(IB)No. 1633/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:

State Bank of India, a body corporate constitute under the State Bank of India Act, having its Central Office at Madam Cama Road, Mumbai-400021, Head Office at Samridhi Bhawan, Kolkata-700001 and having its branch office at Jeevandeep Building, 1st Floor, 1, Middleton Street, Kolkata-700071, commonly known as Stressed Assets Management Branch-II, under Police Station-Shakespeare Sarani.

... **Financial Creditor**

VERSUS

In the matter of:

Hanumanta Engineering Private Limited, (Formerly known as SRC Steels Private Limited), a company incorporate under the provisions of the Companies Act, 1956 and having its registered office at 37, Shakespeare Sarani, Kolkata-700017, Suit No. 3, 1st Floor, Kolkata-700017 and also at 23, Netaji Subhas Road, 1st Floor, 4th Commercial Building, Kolkata- 700001 and having its place of business and/or works at Sankrail Industrial Park, Post Office and village- Dhulgarh, Police Station Sankrail, Howrah-711302.

... **Corporate Debtor**







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

Coram:

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

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

For R.P. : Ms. Vidhi Agarwal, Adv.
Mr. B. Govinda Rajan, Adv.

For Financial Creditor : Mr. Joy Saha, Sr. Advocate
Mr. Debasish Chakrabarti, Adv.
Ms. Trisha Saha, Adv.

For Corporate Debtor : Mr. Dipak Dey, Adv.
Ms. Swapana Choudhary,

ORDER

Per Shri Jinan K.R., Hon'ble Member (Judicial)

1. The Company Petition (IB) No. 1111/KB 2018 was filed by the State Bank of India under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate insolvency resolution process as against the Corporate Debtor/ M/s Hanumanta Engineering Private Limited. Vide order dated 19th August, 2019, the said application was admitted by appointing Mr. Balasubramaniun Govindrajan as an IRP. The IRP was subsequently appointed as Resolution Professional and he continued the process and complete the CIRP process but unable to obtain a resolution plan dissolved assets of the Corporate Debtor and



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thereby filed the final Progress Report dated 13th February, 2020 recommending to pass an order of liquidation.

2. When the Final Progress Report was under consideration regarding passing an order of liquidation as there was no resolution plan forthcoming for re-solving the assets of the corporate debtor. One of the Directors of the suspended Board of the Corporate Debtor has filed CA (IB) 1633/KB/2019 without quoting any of the provisions of the Code and Regulations nor the Rules of NCLT. It seems to have been filed by one of the Director who is allegedly authorized signatory of the Corporate Debtor under the seal of the Corporate Debtor Company praying for recalling the order of admission reiterating the objections raised by the Corporate Debtor in the reply affidavit and the supplementary affidavit filed in the C.P.
3. It is further contended that this Adjudicating Authority has committed mistake while passing the impugned order which according to learned counsel for the Corporate Debtor committed an error apparent on the face of the records by holding that the period of limitation for filing proceedings under Section 7 of the Act, is beyond of three years and further come to the conclusion on the strength of the judgement of the Hon'ble Appellate Tribunal that a proceeding filed in another forum would have effect of stopping of limitation from running and thereby the findings of this Adjudicating Authority are in serious error of law and this would be evident from the judgement in

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the case of **Jignesh Shah** passed by the Hon'ble Supreme Court of India and thereby prayed for recalling the order of admission and restore the order or stay all further proceedings till the disposal of this application.

4. This application was strongly opposed on the side of the Resolution Professional. The Ld. Senior Counsel appearing for the Corporate Debtor submits that the objection regarding the committing of error apparent on the face of the records by the Adjudicating Authority in passing the order of admission in the C.P., is absolutely wrong and that this Adjudicating Authority has no power to recall or re-appreciate the facts and law, which has already been appreciated by this Bench and accordingly, the application is liable to be dismissed. He relied upon the paragraphs 19 and 20 in the order of admission dated 19th August 2020. Para 19 and 20 read as under:-

19. *We are taken to Annexure-2-C, page no. 835 and 842 of the balance sheet by the Ld. Sr. Counsel for the Financial Creditor. Page N. 842 relates to Disclosures-Secretarial audit report. In the balance sheet, under the head **Long-term borrowings**, the amount of debt payable is shown as Rs. 33,49,92,064. But the creditor to whom the said amount is due is not written under the said head. However, this entry if read along with Textual Information (15) at page no 835, it is made clear that the Corporate Debtor admitted default of secured term loan availed from the State Bank of India for Rs. 33,49,92,064. This note according to the ld. Counsel for the Corporate Debtor is not an unconditional admission, but*



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is a disputed amount and therefore is not an acknowledgement. The note was read over by him to us to convince us that the amount shown in the note being written as the disputed amount won't fall under section 18 of the Limitation Act. The said note is extracted below:-

Disclosure in auditors report relating to default in repayment of financial dues. " In our opinion and according to the information and explanations given to us, the company has not defaulted in repayment of dues to any financial institutions, banks and debenture holders **except the secured Term Loan from State Bank of India of Rs. 33,49,92,064/-** which has been declared by the bank as a Non Performing Assets. The same has been **disputed by the company** in the High Court".

20. Referring to the civil suit pending before the High Court, he further would submit that the declaration of NPA is under challenge and therefore that is not an acknowledgement of dues. We are not at all convinced by the argument advanced by the Ld. Counsel for the Corporate Debtor. The challenge regarding declaration of account of the Corporate Debtor as NPA has nothing to do with the case in hand. As per the Civil suit pending for consideration, the Corporate Debtor challenged the procedure followed by the Financial Creditor in declaring the account as NPA. This is not a case based on declaration of account as NPA but on the basis of occurrence of default. It has come out in evidence that no amount was repaid. Admittedly, the loan was availed by the Corporate Debtor. That being so, the recital in the note that declaration of account as NPA is under challenge before the High Court and hence there is no direct

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admission in writing in the balance sheet, is found devoid of any merit. In view of the above-said we are inclined to hold that the balance sheet above referred is an acknowledgement of debt found due to the Financial Creditor from the Corporate Debtor and, therefore, the said ground taken by the Corporate Debtor is found unsustainable under Section 18 of the Limitation Act, 1963.

5. We have heard the Ld. Counsel appearing for the applicant/ Corporate Debtor as well as the Ld. Sr. Counsel appearing on behalf of the Resolution Professional at length. The Ld. Counsel appearing for Corporate Debtor submits that the claim preferred by the Financial Creditor being hopelessly barred by limitation, this Adjudicating Authority should have dismissed the application and since the default according to the Financial Creditor occurs on 30/08/2011 and filing of this application on 10/08/2018, a lapse of seven years could not have been entertained by this Adjudicating Authority. She also reiterated the very same contentions taken in the reply affidavit as well as the supplementary affidavit. By filing supplementary affidavit, the Corporate Debtor has raised the issue of question on limitation and by considering the objections raised on the side of the Corporate Debtor, we raised two points for the determination in the case in hand before admission. Those points are as under:-

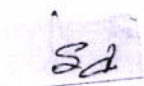
- i. Whether the application was filed within the period of limitation?



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ii. Whether the interim order in CA No. 191/2014 passed by the Hon'ble Calcutta High Court in any manner whatsoever prevented or barred the Financial Creditor from instituting present petition?

6. Both these points were answered in favour of the Financial Creditor. The date of default as well as question of extended period of limitation upon production of balance sheet were all considered at length by this Bench in deciding the points raised upon the submission on both the sides. In the above said circumstances, it appears to us that, we do not commit any error apparent on the face of records or mistake in applying the law of the land as on the date of passing of the order and therefore, the application filed at the fag-end of the expiry of CIRP period of 180 days praying for recalling the order for re-agitating the already entertained issues could not be allowed. This Adjudicating Authority has no power to recall or re-appreciate the evidence already led. Even if this Adjudicating Authority has committed any judicial mistake, it was right of the applicant to approach the higher authorities by preferring an appeal, the attempt of the Corporate Debtor is to abuse the process of law without exhausting its remedy. This application is therefore liable to be dismissed with costs. Being satisfied that the objections raised on the side of the Corporate Debtor in passing the order of



liquidation as there was no resolution plan forthcoming before the expiry of CIRP period of 180 days, which expired on 4th February, 2020. The question is whether an order of liquidation could be passed as prayed for by the learned RP.

7. The learned RP submits that since no resolution plan was received till 22nd January, 2020 i.e. till the last date for receipt of resolution plan, and since the Committee of Creditors has not taken any decision to get an order for extension of 90 days, he was compelled to file the Final Progress Report recommending to pass an order of liquidation. It is significant to note that there is deliberate non-cooperation on the side of the directors of the suspended Board of Corporate Debtor. From the beginning to the end of expiry of period of CIRP, the director of suspended Board of the Corporate Debtor, were directed to co-operate with the RP. An application was filed under Section 19(2) of the Code to provide an information, details regarding assets of the Corporate Debtor. The Corporate Debtor did not furnish the adequate materials/information, so as to enable the RP to continue the Corporate Debtor as a going concern. He has narrated in the report about the inventory of information which was supplied to the Directors of the Corporate Debtor for response. Around 46 and odd, information which he called for in writing has not been submitted to the RP. On the other hand, for and on behalf of the Directors of



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the Corporate Debtor, serious objection has been raised even against the conduct of the RP in completing the process and recommending to pass an order of liquidation. However, we have not been given any satisfactory explanation as to non-submission of the information, documents related to the assets and the affairs of the Corporate Debtor.

8. The submission on the side of the Ld. Sr. Counsel appearing for the RP that despite his significant efforts, no prospective resolution applicant is forthcoming. The Ld. Sr. Counsel also submits that the Transaction Auditors also could not complete the audited report for want of information and details required for the financial year ending on 31/03/2018. According to him, even if this audited report was conducted, he informed that these details requested by the RP and the Transaction Auditors, are with the Corporate Debtor. However, the Corporate Debtor has not provided those details and information sought from them by the Transaction Auditor. It is also submitted that the recovery Agency and Transaction Auditors as well as valuers were not provided with necessary details and information by the Corporate Debtor and there is deliberate non-corporation on the side of the Director of suspended Board of Corporate Debtor and according to the Ld. Sr. Counsel for the RP, instead of giving the said information to the RP, the Directors of the suspended Board of

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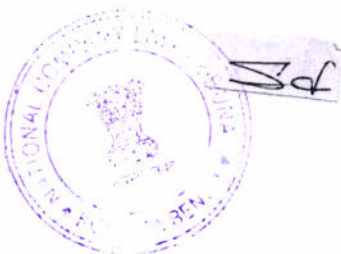


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Corporate Debtor and their team have been indulging in making numerous baseless allegations against the RP and disturbing his functioning and despite directions issued by the Adjudicating Authority, they did not co-operate but raised the false contention by filing reply to the application filed under section 19(2).

9. In the above said backgrounds, the Ld. Sr. Counsel appearing for the RP submits that since the period has elapsed, there is no chance of getting prospective resolution applicant who turned up or it is fair and just to pass an order of liquidation. The CoC consists of only one Financial Creditor, who is the applicant State Bank of India. It opted not to get an order of extension and it further submits that the CoC has decided to replace the existing RP by Mr. Sanjay Kumar Agrawal, whose written consent has been given for continuing as Liquidator and that the RP Mr. Balasubramaniam Govindarajan showed his unwillingness to continue due to health reasons. Accordingly, Mr. Sanjay Kumar Agrawal is to be appointed as the Liquidator and since no resolution plan is forthcoming within the period of CIRP which expired on 4th February, 2020, we have no other alternative but to pass an order of liquidation under Section 33(1) (a) of the Code.

10. In view of the above said discussions, we are passing an order requiring the Corporate Debtor to be Liquidator in the



manner as laid down in Chapter 3 of the Code upon the following grounds:-

ORDERS

- i. In view of the facts that the Corporate Debtor has been ordered to be liquidated. Mr. Sanjay Kumar Agrawal an Insolvency Professional who is holding IBBI registration No. IBBI/IPA-001/IP-P00062/2017-2018/10140 is appointed as the Liquidator and act in accordance with Rule 12 of Liquidation Process Regulation, 2016 and submit the preliminary Report as per Regulation 13 of the said Code.
- ii. The Registry is directed to communicate this order to the Registrar of Companies, West Bengal and to the Insolvency and Bankruptcy Board of India.
- iii. 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.
- iv. This order shall be deemed to be a notice of discharge of the Officers, employees and the workmen of the

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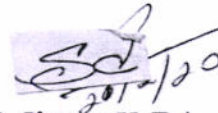
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Corporate Debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016.

- v. A copy of this order be sent to the Financial Creditor, Corporate Debtor and the Liquidator for taking necessary steps.
11. CP (IB) No.1111/KB/2018 is disposed of as above.
12. CA(IB) No.1633/KB/2019 is dismissed with cost of Rs. 1,00,000/- payable to the Corporate Debtor. The applicant in CA (IB) No.1633/KB/2019 shall pay the said amount in the account of Corporate Debtor, which can be utilized by the Liquidator as the liquidation cost.



(Harish Chander Suri)
Hon'ble Member (T)



(Jinan K.R.)
Hon'ble Member (J)


Signed on 20th February, 2020

PJ



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Court Officer
National Company Law Tribunal
Kolkata Bench