



**IN THE NATIONAL COMPANY LAW TRIBUNAL,**

**KOLKATA BENCH**

**KOLKATA**

**I.A (Companies Act) No. 54/KB/2022**

**Comp. Appl/39(KB)2022**

**IN**

**T.P. NO.4/KB/2022**

**In the matter of**

Section 60(5) of the Insolvency & Bankruptcy Code, 2016

And

**In the matter of:**

An application under 11 of the National Company Law Tribunal Rules, 2016,2016.

And

**In the matter of:**

National Oil Company Limited, having its registered office at P-38, India Exchange Place, Kolkata-700069.

And

**In the matter of:**

Rishra Steel Limited

*... Corporate Debtor*

And



**In the matter of:**

Deccan Traders Limited, a Company within the meaning of Companies Act, 2013, having its registered office at 5, Gorky Terrace, Kolkata

..... Financial Creditor

Versus

**In the matter of:**

1. Sri Nitin Daga, Liquidator, Rishra Steel Limited having his office at Avani Oxford-II, Block-1, Flat 1B, 136, Jessore Road, Kolkata-700055;

2. The official Liquidator, High Court, Calcutta having his office at 9, Old Post Office Street, Kolkata;

..... Respondents

Date of hearing :14/07/2022

Order Pronounced on :18/07/2022

**Coram:**

***Mr. Rohit Kapoor, Member (Judicial)***

***Mr. Harish Chander Suri, Member (Technical)***



### **Counsels appeared**

For Official Liquidator	:	Ms. Debjani Mitra, Adv.
For Jaykay Enterprise Ltd.	:	Mr. Jishnu Saha, Sr. Adv. Mr. Supriyo Gole, Adv. Ms. Madhuja Barman, Adv. Mr. Harish Sahu, Adv. Ms. Askiota Shankar, Adv.
For Liquidator	:	Mr. Shaunak Mitra, Adv. Mr. Patita Paban Bishwal, Adv. Mr. Nitin Daga, Liq. in person
For applicant in IA (Companies Act) 54/KB/2022	:	Mr. Sankarsan Sarkar, Adv. Mr. Aditya Kanodia, Adv.
For Decan Traders Pvt.Ltd.	:	Ms. Pushpa Mishra, Adv.
For ARCL	:	Mr. Rudrajit Sarkar, Adv.

### **ORDER**

#### **Per: Harish Chander Suri, Member (Technical)**

1. This application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, has been filed by M/s. Deccan Traders Limited, having its registered office at 5, Gorky Terrace, Kolkata (hereinafter referred as the Financial Creditor) praying for the following reliefs:



- a) The order dated June, 17, 2022 passed in TP No. 4/KB of 2022 be recalled and/or modified;
  - b) Sri Nitin Daga, the proposed Interim Resolution Professional be appointed as the Interim Resolution Professional be appointed as the Interim Resolution Professional of the Corporate Debtor in place and stead of being appointed as the liquidator by modifying the order dated June 17, 2022;
  - c) Stay of operation of the order dated June 17, 2022 till disposal of the present application;
  - d) The liquidator be directed to stay his hands from taking any steps pursuant to the order dated June 17, 2022 till disposal of the present application;
  - e) Ad-interim orders in terms of prayers above;
2. The present winding up petition being T.P. NO.4/KB/2022 has been transferred from the Hon'ble High Court at Calcutta to the NCLT by the Hon'ble Supreme Court of India vide its order dated 06.08.2021.
  3. In this matter an order was passed on 17.06.2022 and Mr. Nitin Daga, an Insolvency Professional, having registration no. IBBI/IPA-001/IP-P02213/2020-2021/13405 was appointed as the Liquidator of Rishra



Steel Limited as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019 and directed to submit his consent within seven days of the order passed. Immediately, after getting the copy of the order from the website of the NCLT Portal, Ld. Sr. Counsel appearing for the Financial Creditor mentioned the matter before the Hon'ble Tribunal that the proceedings ought to be commenced from the CIRP stage and he sought time to file an application for recalling and/or modifying the order dated June 17, 2022. Subsequently the present application being I.A (Companies Act) No. 54/KB/2022 was filed by the Financial Creditor for recalling and/or modifying the order dated June 17, 2022 and the matter was put on board on 29.06.2022, 05.07.2022, 12.07.2022 and listed on 13.07.2022 for argument.

4. It is submitted by Mr. Ratnanko Banerji, Senior Counsel for the applicant that the order of transfer also contemplates that the proceedings ought to be commenced from the CIRP stage. He also submitted that a Memo was filed by the applicant on 17.06.2022



wherein the name of Mr. Nitin Daga was proposed as an IRP/RP and not as a Liquidator.

5. It is further submitted that as per the Second Proviso to Section 434 (c) of the Companies Act 2013, the statute contemplates that the transferred proceedings shall be dealt with as an application for initiation of CIRP and not liquidation and also submitted that no useful purpose would be served if the Liquidator is appointed since the whole purpose of transfer to NCLT was to make an attempt for revival of the Corporate Debtor and not to liquidate and dissolve the Corporate Debtor.
6. It has also been submitted that there was a Scheme for Revival of the Corporate Debtor filed in the winding up petition which was directed by the Hon'ble Supreme Court to be considered by the High Court. The same is also specifically recorded in the order of transfer.
7. It is further submitted that the Hon'ble Supreme Court has clarified in **A. Navinchandra Steels (P) Ltd. v. Srei Equipment Finance Ltd., [(2021) 4 SCC 435]** which is as follows:



“25. A conspectus of the aforesaid authorities would show that a petition either under Section 7 or Section 9 IBC is an independent proceeding which is unaffected by winding-up proceedings that may be filed qua the same company. Given the object sought to be achieved by the IBC, it is clear that only where a company in winding up is near corporate death that no transfer of the winding-up proceeding would then take place to NCLT to be tried as a proceeding under the IBC. Short of an irresistible conclusion that corporate death is inevitable, every effort should be made to resuscitate the corporate debtor in the larger public interest, which includes not only the workmen of the corporate debtor, but also its creditors and the goods it produces in the larger interest of the economy of the country. It is, thus, not possible to accede to the argument on behalf of the appellant that given Section 446 of the Companies Act, 1956/Section 279 of the Companies Act, 2013, once a winding-up petition is admitted, the winding-up petition should trump any subsequent attempt at revival of the company through a Section 7 or Section 9 petition filed under the IBC. While it is true that Sections 391 to 393 of the Companies Act, 1956 may,



in a given factual circumstance, be availed of to pull the company out of the red, Section 230(1) of the Companies Act, 2013 is instructive and provides as follows:

“230. Power to compromise or make arrangements with creditors and members. — (1) Where a compromise or arrangement is proposed—

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them;

the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.”



8. It is submitted that from this Section, it is clear that a compromise or arrangement can also be entered into in an IBC proceeding if liquidation is ordered. However, what is of importance is that under the Companies Act, it is only winding up that can be ordered, whereas under the IBC, the primary emphasis is on revival of the corporate debtor through infusion of a new management.
  
9. The Counsel for the Official Liquidator was present and has not objected to appointment of an IRP. She has submitted that he has been in possession of the factory land since 1990, however, no request has yet been received by the Official Liquidator for handing over assets of the Corporate Debtor.
  
10. Mr. Jishnu Saha, Learned Senior Counsel appearing for M/s. Jaykay Enterprises Limited has objected to the modification of the order dated 17.6.22 on the ground that his clients have taken out an application being Comp. Appl/39(KB)2022 for impleadment as party in the transferred Company Petition no. 519 of 1989 (T.P.NO.4/2022). It has been submitted that his clients are the owners of the factory land and are entitled to possession thereof.



11. The learned senior counsel has further submitted that since no conveyance deed has ever been executed by his clients in favour of the Corporate Debtor his clients are entitled to take possession of the property of the Corporate Debtor.

12. After going through all the pleadings and other records submitted by the parties and after hearing the counsels for the parties, we find that official liquidator has been in possession of the factory land since 1990. No objection was ever raised by the said Jaykay Enterprises Limited for more than 32 years to such possession. It is also evident from records that the Official Liquidator had pursuant to the orders of the Court attempted to sell the property as a property owned by the Corporate Debtor. However even then, no objection was ever raised by Jaykay Enterprises Limited.

13. It is also submitted by the Financial Creditor that entire consideration had been received by Jaykay Enterprises Ltd for sale of the property and after receiving the full consideration the possession thereof was given to the Corporate Debtor. Thus prima facie an absolute right is clearly established in favour of the Corporate Debtor.

**Comp. Appl/39(KB)2022**



14. This is an Application filed by the Jaykay Enterprises Ltd praying for as follows:

- a) An order be made impleading the applicant as a party in the transferred Company Petition no. 519 of 1989;
- b) Leave be given to the applicant to inspect all records, papers and proceedings of the transferred Company Petition no. 519 of 1989 and to obtain certified copies of relevant records, papers, documents and orders of such proceedings;
- c) Such further or other order or orders be made and/or direction or directions be given as to this Hon'ble Court may seem fit and proper;

15. The learned senior counsel on behalf of the applicant submitted that his clients are the owners of the factory land. He further submitted that since no conveyance deed has ever been executed by his clients in favour of the Corporate Debtor his clients are entitled to take possession of the property of the Corporate Debtor and prayed to the Hon'ble Tribunal to implead his clients as party in the transferred Company Petition no. 519 of 1989.



16. The learned senior counsel appearing for the Financial Creditor objected to impleadment the applicant as party in the transferred Company Petition no. 519 of 1989. He submitted that Jaykay Enterprises Ltd is neither a shareholder or a creditor or any other way connected to the Corporate Debtor.
17. However, at this stage we are not required to adjudicate the claims of Jaykay Enterprises Limited and the only question arises is whether after transfer of a Post Admission Winding Up Petition, the petition should be treated as a petition for initiation of CIRP or Liquidation ought to be commenced straight away.
18. It is undisputed that the applicant has prayed for appointment of IRP and not a liquidator and such prayer was not objected by any party.
19. The Hon'ble Supreme Court has also clarified in **A. Navinchandra Steels (P) Ltd. v. Srei Equipment Finance Ltd., [(2021) 4 SCC 435]** that a petition either under Section 7 or Section 9 IBC is an independent proceeding which is unaffected by winding-up proceedings that may be filed qua the same company and it is clear that only where a company in winding up is near corporate death that no transfer of the winding-up proceeding would then take place to



NCLT to be tried as a proceeding under the IBC. Short of an irresistible conclusion that corporate death is inevitable, every effort should be made to resuscitate the corporate debtor in the larger public interest, which includes not only the workmen of the corporate debtor, but also its creditors and the goods it produces in the larger interest of the economy of the country. It is, thus, not possible to accede to the argument on behalf of the appellant that given Section 446 of the Companies Act, 1956/Section 279 of the Companies Act, 2013, once a winding-up petition is admitted, the winding-up petition should trump any subsequent attempt at revival of the company through a Section 7 or Section 9 petition filed under the IBC.

20. A bare perusal of the Second proviso to Section 434 (c) also makes it clear that the intention of the statute is also to make an attempt for revival of the Company (in liquidation) when the winding up proceedings have been transferred.

21. From the list of dates submitted by the Official Liquidator before us and perusal of the application filed by Deccan Traders Pvt Ltd for transfer of winding up it is clear that no assets of the Corporate



Debtor have been sold and no irrevocable stage has arisen where an attempt for CIRP cannot be made.

22. It is also clear that a Scheme for Revival of the Corporate Debtor was being examined by the High Court. Even if the proceedings are to be commenced from the same stage, the process of revival was still underway in the winding up proceedings. From the orders on record, it appears that the Official Liquidator has been in possession of the assets of the Corporate Debtor. The revival process under the Code is through the CIRP Process.

23. Thus we find that the proper course would be to thus initiate CIRP process against the Corporate Debtor. Accordingly, the order dated 17.6.22 is hereby recalled and we pass the following orders: -

### **ORDERS**

- a) We hereby direct to initiating Corporate Insolvency Resolution Process against Rishra Steel Limited (the Corporate Debtor).
  
- b) There shall be a moratorium under section 14 of the IBC.
  
- c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves



the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e) Shri Nitin Daga, registration IBBI/IPA-001/IP-P02213/2020-2021/13405, email: daga.nitin.cs@gmail.com, mobile no. +91 98742 55772 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.



- f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The Official Liquidator shall hand over all assets of the Corporate Debtor and also provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h) The Financial Creditor shall deposit a sum of Rs. 3,00,000 (Rupees Three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Official Liquidator and the IRP by Speed Post, email and



WhatsApp immediately, and in any case, not later than two days from the date of this Order.

- j) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

24. In view of the aforesaid directions, **I.A (Companies Act) No. 54/KB/2022** is allowed.

25. List **T.P No. 4/KB/2022** for filing the **Progress Report** and **Comp. Appl./39(KB)2022** for further consideration on 2<sup>nd</sup> August 2022.

26. 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 (Technical)**

**(Rohit Kapoor)**  
**Member (Judicial)**

**Order signed on the 18<sup>th</sup> day of July, 2022**

**PJ**