

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD
COURT 1

TP/MP/ 129 of 2019 [CP(IB) 249 of 2019]

Coram: MADAN B. GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE
INDORE BENCH AT AHMEDABAD OF THE NATIONAL COMPANY LAW TRIBUNAL ON 15.12.2020

Name of the Company:

Balaji Coal Pvt Ltd
V/s
Swastik Coal Corporation Pvt Ltd

Section:

7 of the Insolvency and Bankruptcy Code

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Dated this the 15th day of December, 2020.



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD
COURT 1**

CP (IB) No.249/7/NCLT/AHM/2019

An application filed under Section 7 of the Insolvency and
Bankruptcy Code, 2016

In the matter of :

Balaji Coal Private Limited
(Mr. Mukul Deshlahra)
Plot No.69, Ratanlok Colony,
Scheme No.53, Indore
MP 452001

..Financial Creditor

Versus

M/s Swastik Coal Corporate Private Limited.,
CIN:U74210MP1995PTC009875
Registered Office at :
"Swastik House",
21/3, Ratlam Kothi,
Near Hotel Omani Palace,
Indore
MP-452001

.... Corporate Debtor

Date of Hearing: 11th December, 2020

Date of Pronouncement of Order 15th December, 2020

**Coram: MADAN B. GOSAVI, MEMBER(J)
VIRENDRA KUMAR GUPTA, MEMBER (T)**

Appearance:

Learned Counsel Mr. Baiju Bhagat for the Financial Creditor.
Learned Counsel Mr. Harmish Shah for the Corporate Debtor.



ORDER

[Per: VIRENDRA KUMAR GUPTA, MEMBER (T)]

1. The facts, in brief, are that the application filed under Section 7 by Financial Creditor to initiate CIRP against the Corporate Debtor M/s. Swastik Coal Corporation Pvt. Ltd... The amount of debt in default has been claimed at Rs.3,43,45,700/- including interest. The date of default has been stated as 11.12.2018.

2. Learned Counsel Mr. Baiju Bhagat appraed for the Financial Creditor narrated the facts and drew our attention to the document in support of the disbursement of the money. He specifically referred to page 66 and 67 containing letters written by the Corporate Debtor on 31.12.2018 and 08.02.2019 respectively wherein acknowledgement of debt as well as schedule of payment of outstanding amount was stated. In such letters, rate of interest was also mentioned. Based upon these two documents, Learned Counsel for the Financial Creditor submitted that there was a debt due and payable both in law and in fact and default had occurred, hence,



application filed by the Financial Creditor could be admitted.

3. Learned Counsel Mr. Harmish Shah for the Corporate Debtor took a plea that there was no contract / agreement, hence, date of default as mentioned by the Financial Creditor was not correct. It was also contended by the Corporate Debtor that Financial Creditor failed to provide record of default with information utility. For this reason also, application was liable to be rejected.

4. In the rejoinder, Learned Counsel for Financial Creditor pleaded that requirement of record of information utility was not mandatory, hence, this plea was devoid of merits. As regard to default, it was again reiterated that in view of letters written by the Corporate Debtor which was not in dispute, the contention raised by the Corporate Debtor had no substance.

5. We have considered the submission made by both the sides and material on record. It is not in dispute that there

is an outstanding debt which is due and payable and default has occurred in payment thereof. It is also not in dispute that said debt is not barred by limitation. Though, Corporate Debtor has taken two pleas, however, in our considered opinion, these do not help the cause of the Corporate Debtor in view of said letters being brought on record wherein the amount of debt, liability to pay and rate of interest has already accepted by the Corporate Debtor.

6. The name of Insolvency Resolution Professional Mr. Umang Subhaschandra Khandelwal proposed whose consent is on record. Further, from the material on record, it is evident that no disciplinary proceedings are pending against such IRP. We accordingly, appoint Mr. Kedar Ramratan Laddha to act as IRP to take CIRP. The application is otherwise complete and defect free.



7. We have considered the submissions made by both the sides and material on record. We admit this application and order as under:

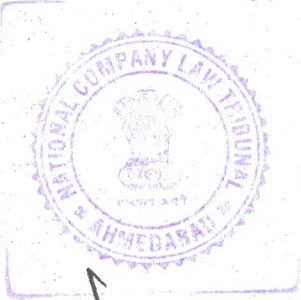
ORDER

1. Corporate Debtor M/s Swastik Coal Corporation Pvt. Ltd. is admitted in Corporate Insolvency Resolution Process under Section 7 of Insolvency and Bankruptcy Code, 2016.
2. We appoint Mr. Umang Subhaschandra Khandelwal, registration no. IBBI/IPA-001/IP-P00669/2017-2018/11142, having address Flat No.6AB, Mangaldeep Apartment, Plot No.13/4 Farm land, Nr. Gurudwara, Ramdaspath, Nagpur, Email umang.khandelwal@gmail.com under section 13(1) (c) of the IB Code as IRP.
3. That the Moratorium under Section 14 of the Code shall come to effect from 15.12.2020 till the completion of Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub- Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.



4. That the Bench hereby prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any Court of law. Tribunal, Arbitration Panel or other Authority(s), transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the SARFAESI Act, 2002 the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

5. Further, litigation or any application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to pronouncement of this order such proceedings are expected to be dealt with in accordance with law r.w.



Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.

6. That the supply of essential goods or services to Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium, period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of the Corporate Debtor.

7. The IRP so appointed shall make Public announcement of Corporate Insolvency Resolution Process (CIRP) be made immediately as specified under Section 13 of the Code and by calling for submissions of claim under Section 15 of the Code.



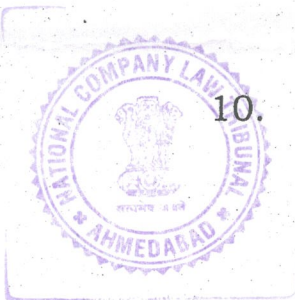
8. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor

CP (IB) No.249/7/NCLT/AHM/2019

are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

9. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

10. We direct the Financial Creditor / Applicant to pay the IRP a sum of Rs. 2,00,000/- (Rs. Two lakhs) as fees & expenses till the COC decides about his fees / expenses.



[Handwritten signature]

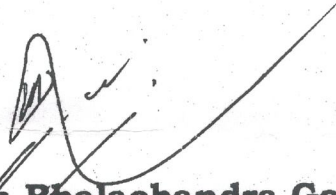
[Handwritten signature]

CP (IB) No.249/7/NCLT/AHM/2019

11. The Registry is directed to communicate a copy of this order to the Petitioner-Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on website immediately after pronouncement of the order.
12. The commencement of Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.
13. CP(IB) No. 249/7/NCLT/AHM/2019 is allowed and stands disposed of.



(Virendra Kumar Gupta)
Member (Technical)




(Madan Bhalachandra Gosavi)
Member (Judicial)

Signed on this, the 15th day of December, 2020.



Certified to be True Copy of the Original


Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad

20