

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT- II)
KOLKATA**

**Rst. A. (IB) No. 06/KB/2023
and
C.P (IB) No. 1905/KB/2019**

A Petition 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.

In the matter of:

State Bank of India

...Financial Creditor

Versus

N.S. Engineering Projects Private Limited (CIN: U29120WB2007PTC112967), a Company incorporated under the Companies Act, 1956 having its registered office at Dakhin Jhapardhan, ONGC Road, Domjur, Howrah-711405, West Bengal.

...Corporate Debtor

Rst. A. (IB) No. 06/KB/2023

An Application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016.

In the matter of:

State Bank of India

...Applicant

Versus

N.S. Engineering Projects Private Limited (CIN: U29120WB2007PTC112967), a Company incorporated under the Companies Act,

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1956 having its registered office at Dakhin Jhaphardhan, ONGC Road, Domjur,
Howrah-711405, West Bengal.

...Respondent

Date of Hearing: 24 March 2023

Date of pronouncing the order : 31 March 2023

Coram:

Smt. Bidisha Banerjee

: *Member (Judicial)*

Shri Balraj Joshi

: *Member (Technical)*

Appearances (through hybrid mode)

For the Financial Creditor

Ms. Urmila Chakraborty, Advocate

Mr. Debashish Chakrabarti, Advocate

Mr. Snehasish Chakraborty, Advocate

For the Corporate Debtor

Mr. Ishaan Saha, Advocate

Mr. Zeeshan Hanque, Advocate

Mr. Tanay Agarwal, Advocate

Mr. Ram Maroo, Advocate

COMMON ORDER

(Rst. A. (IB) No. 06/KB/2023 and C.P (IB) No. 1905/KB/2019)

Per Bidisha Banerjee, Member (Judicial)

1. The Court convened *via* hybrid mode.

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2. The Restoration Application has been filed by the State Bank of India represented by Mr. Sandipan Mukherjee, Assistant General Manager of State Bank of India seeking for revival and restoration of C.P (IB) No. 1905/KB/2019 pursuant to the directions passed by the Hon'ble NCLAT *vide* order dated 03 February 2023.

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3. The Hon'ble NCLAT *vide* a common order dated 03 February 2023 set aside the two orders of this Adjudicating Authority dated 28 June 2022 and 29 June 2022 pertaining to the Corporate Debtors *viz.* N.S. Engineering Projects Private Limited (C.P. (IB) No. 1905/KB/2019 and C.P. (IB) No. 1857/KB/2019) and Abhijeet Integrated Steel Limited (C.P. (IB) No. 1676/KB/2018).
4. C.P. (IB) No. 1905/KB/2019, C.P. (IB) No. 1857/KB/2019 and C.P. (IB) No. 1676/KB/2018 were brought back on Board after restoration on file to its original position *vide* the Office Order of the Registry of this Adjudicating Authority on 14 February 2023.
5. In view of the above, the Restoration Application has thus become infructuous and is hereby dismissed.

C.P (IB) No. 1905/KB/2019

6. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Subrata Barman, Chief Manager, State Bank of India (*'Financial Creditor'*), duly authorized *vide* Letter of Authority dated 15.10.2019¹ for initiation of Corporate Insolvency Resolution Process (*'CIRP'*) against N.S. Engineering Project Private Limited (*'Corporate Debtor'*).
7. The present Petition was filed on 07 November 2019 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted in payment of the principle amount including interest i.e., Rs.39,46,03,964/- (Rupees Thirty Nine Crore Forty Six Lakh Three

¹Annexure – A of the Petition.

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Thousand Nine Hundred and Sixty Four only) as on 18 September 2017, to the Financial Creditor. The date of default is stated to be **31 March 2017**.

8. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is Rs.11,50,00,000/- (Rupees Eleven Crore Fifty Lakh only) with paid up Capital as Rs.11,16,27,000/- (Rupees Eleven Crore Sixteen Lakh Twenty Seven Thousand only).
9. *Vide* a common order dated 28 June 2022, this Adjudicating Authority had rejected the Company Petition on the ground of contributory negligence on the part of the Financial Creditor.
10. The order of 28 June 2022 was appealed by the Financial Creditor before the Hon'ble NCLAT who was pleased to set aside the order dated 28 June 2022 by this Adjudicating Authority *vide* its detailed judgment dated 03 February 2023. The Hon'ble NCLAT in it's judgment at paragraph 32 directed this Adjudicating Authority to pass an order of admission and all consequential orders within a period of one month from the date of copy of the order is produced.
11. The operative portion of paragraphs 31 and 32 of the judgment of the Hon'ble NCLAT is reproduced hereunder:

“31. We, thus, are of the view that both the orders of Adjudicating Authority dated 28.06.2022 and 29.06.2022 are unsustainable and are set aside. The Appellant(s) have made out a case for admission of their Section 7 Application and Adjudicating Authority committed error in rejecting Section 7 Application.

32. In result, we allow the Appeal(s), set aside the impugned order dated 28.06.2022 and 29.06.2022 and direct the Adjudicating Authority to pass an order of admission and other consequential

orders within a period of 30 days from the date of copy of this order placed before the Adjudicating Authority.”

12. In view of the above direction of the Hon'ble NCLAT, **C.P (IB) No. 1905/KB/2019** is hereby admitted.
13. In the light of the above facts and circumstances, it is, hereby ordered as follows:-
- a. The application bearing **CP (IB) No. 1905/KB/2019** filed State Bank of India, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **N.S. Engineering Project Private Limited**, the Corporate Debtor, is **admitted**.
 - 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. **Mr. Anil Anchalia**, registration number IBBI/IPA-001/IP-P00049/2017-2018/10123, email id. anilanchalia@yahoo.com is hereby appointed as Interim Resolution Professional (IRP) of the

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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 officers and managers of the Corporate Debtor shall 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. There shall be no future opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i. 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

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issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

- j. 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 Corporate Debtor 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.
- k. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, 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.

14. Rst. A. (IB) No. 06/KB/2023 is infructuous and is hereby dismissed.

15. CP (IB) No. 1905/KB/2019 to come up on **9th May 2023** for filing the periodical report.

16. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

The Order is signed on the 31 day of March 2023

GGRB_LRA