



**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

**M.A. No. (IB) 8/CB/2022
IN
C.P (IB) No. 167/CTB/2019**

In the matter of:

An application filed u/s 74(3) read with Section 236 of IBC 2016.

N.K MINERLS PRIVATE LIMITED, CIN: U13100OR2011PTC013022 having registered address at Near Veterinary Hospital, Station Road, Barbil Keonjhar, Odisha-758 035.;

...Applicant

-Versus-

ORISSA MANGANESE AND MINERALS LIMITED, CIN: U13201OR1953PLC017027, having registered address at IPICOL House, 3rd Floor Annexe Building, Janpath, Bhubaneswar, Khorda, Odisha- 751 022;

... Respondent-1

GHANASHYAM MISRA & SONS PRIVATE LIMITED, having registered office 2nd Floor, 7 Waterloo Street, Kolkata, West Bengal, Pin- 700 069.

... Respondent-2

-In-

C.P (IB) No. 167/CTB/2019

N.K MINERLS PRIVATE LIMITED, CIN: U13100OR2011PTC013022 having registered address at Near Veterinary Hospital, Station Road, Barbil Keonjhar, Odisha-758 035.

-Versus ...Petitioner/Operational creditor.

ORISSA MANGANESE AND MINERALS LIMITED, CIN: U13201OR1953PLC017027, having registered address at IPICOL House, 3rd Floor Annexe Building, Janpath, Bhubaneswar, Khorda, Odisha- 751 022;

...Respondent/Corporate Debtor

Coram:

Shri P. Mohan Raj	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)



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Appearances

For the applicant : Mr. Chittaranjan Panda, CS
For the respondent : Mr. Anuj Singh, Adv.
Mr. Amit Patnaik, Adv.

Order reserved on: 01.08.2023
Order Pronounced on: 05.09.2023

ORDER

Per: P. Mohan Raj, Member, (Judicial)

1. This is an application filed by the applicant who is one of the Operational Creditors of the Corporate Debtor to forward the order passed by this Adjudicating Authority in CP No. 167/CTB/2019 to the IBBI to initiate criminal action against the respondent for contravention of the resolution plan.

2. The Corporate Debtor, Orissa Manganese and Minerals Limited was ordered to Corporate Insolvency Resolution Process by NCLT, Kolkata Bench by an order dated 03.08.2017 passed in C.P.No.371/KB/2017 in the Section 7 of IBC 2016 petition filed by the Financial Creditor i.e., State Bank of India. Thereafter, the second respondent i.e., Ghanashyam Misra & Sons private Ltd., submitted a resolution plan which was approved by the NCLT, Kolkata Bench on 22.06.2018. As per the approved resolution plan, the applicant i.e., N.K Minerals Private Limited is entitle to receive a sum of Rs.85,65,163.00/- When the successful resolution applicant failed to pay the said amount, the applicant has filed an application CP No. 167/CTB/2019 under Section 9 of IBC, 2016 for initiation of CIRP against the Corporate Debtor. When C.P No. 167 of 2019 was reserved for orders, the respondent filed an application I.A No. 162 /CB/2022 along with the demand draft for a sum of Rs.85,65,163/- drawn in favour of the applicant and tendered the Demand Draft, but on the applicant, side refused to accept the Demand draft, after recording the tender of demand draft and the refusal on the applicant this Adjudicating Authority dismissed the petition on 12.07.2022.

3. It is true the 1st respondent contravened the provision of approved resolution plan by committing default in payment of amount payable to the applicant within one month from the date of approval resolution plan. It is settled law that the Adjudicating Authority can extend the time to make payment by the



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successful resolution applicant. In our case even though the respondent committed default, later he tendered the amount by demand draft but the applicant blatantly refused to accept it without assigning any reason.

4. The mere contravention of the provision of resolution plan will not attract section 74(3) of IBC 2016, it must be knowingly and wilfully. Here the respondent came forwarded to pay the amount by Demand Draft but the applicant refused to accept it. The refusal of applicant leads to dismissal of the petition. On the applicant side failed to prove that the respondent knowingly and wilfully contravenes the provision of approved resolution plan.

5. On the applicant side relies upon order of NCLT-Chennai Order passed in D. Ebenezar Inbaraj vs Thirugnana Sambandam I.A.No.308/IB/2020 in C.P.No.536/IB/2017 dated 08.06.2022. There the successful resolution applicant in spite of grant of sufficient time extension to pay the amount payable under the resolution plan, the successful resolution applicant failed to pay the amount, in such a situation the NCLT-Chennai ordered to forward the order to IBBI, but here the respondent already tendered the amount, thus the facts of this citation will not helpful to the case of the applicant.

6. In these circumstances, there is no need to forward the order of dismissal passed in C.P.No.167/CTB/2019 to the IBBI for further action. In the result this application is **DISMISSED**.

7. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.

8. Let the certified copy of the order be issued upon compliance with requisite formalities.

9. File be consigned to records.

SATYARANJAN PRASAD

Digitally signed by SATYARANJAN PRASAD
DN: cn=P, postalCode=751014, st=ODISHA, o=CUTTACK, ou=NATIONAL COMPANY LAW TRIBUNAL, ou=01,
serialNumber=4628a278c35eac0b0346c756a22996128270646705427a7b161d7776,
streetName=108, cn=SatyaRanjan Prasad
c=IN, cn=Member (Technical) of the Tribunal, ou=01, ou=01, ou=01, ou=01, ou=01, ou=01, ou=01, ou=01,
ou=IBBI, ou=NCLT, ou=Govt, ou=SatyaRanjan Prasad
Date: 2023.09.05 15:48:37 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN
MOHAN RAJ

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Date: 2023.09.05 14:45:37 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this, the 05th day of September, 2023.

Kaushal _P.S.