

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

IA(IB) No.105/CB/2021
IN
CP (IB) No. 23/CTB/2019

In the matter of IBC Code, 2016

And

An application under Section 19(2) read with Sections 70 and 71 of the Insolvency and Bankruptcy Code, 2016;

And

In the matter of:

Mr. Manish Jain, Resolution Professional for Krishna Ferro Products Ltd. working for gain at Bajrang Bhawan, Room No. 303, 3rd Floor, 2B, Grant Lane, Kolkata-700 012;

... Applicant

-Versus-

1. Mr. Harikishan Agarwal, Director of Krishna Ferro Products Limited and working for gain at Village- Mandiakudra Kansbahal Rajgangpur, 770 034;
2. Mr. Manabendra Nth Sahoo, Director of Krishna Ferro Products Limited and working for gain at Village- Mandiakudra Kansbahal Rajgangpur, 770 034;
3. Mr. Anand Chnadra Bhutia, Director of Krishna Ferro Products Limited and working for gain at Village- Mandiakudar Kansbahal Rajgangpur, 770 034;

... Respondents

IN

In the matter of:

Suraj Products Limited, having registered office at Barapali, P.O. Kesarmal Rajgangpur, Sundargarh, 770 017, Odisha;

... Operational Creditor

-Versus-

Krishna Ferro Products Ltd, having registered office at Mandiakudar Kansbahal Rajgangpur, 770 034;

... Corporate Debtor

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Appearances (via video conference):

For the Applicant

Ms. Meenakshi Manot, Adv.
Ms. Shreya Choudhary, Adv.
Mr. Manish Jain, RP in person

For the Respondent

Mr. Aparajita Rao, Adv.

Order Reserved on: 24.02.2022.

Order Pronounced on: 09.03.2022.

Coram:

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

ORDER

Per P. Mohan Raj, Member, (Judicial)

1. The Resolution professional of corporate Debtor Krishna Ferro Products Limited filed this petition under the section 19(2) read with 70 & 71 of IBC 2016.
2. The petitioner averred in the petition that he is appointed as resolution Professional by order of this Tribunal Passed in I.A.No.25/CTB/2020 in CP.No.23/CTB/2019 dated 20.01.2020. He sent intimation to the corporate debtor to provide the details of the company. When the erstwhile Directors of the corporate debtor failed to cooperate with the interim resolution professional, he preferred IA No.163/CTB/2019 in which this Tribunal directed the Directors of corporate debtor to cooperate with the resolution professional. In spite of the order of the Tribunal the respondents/erstwhile directors of corporate debtor failed to extend their help. Due to non-cooperation of the respondents the petitioner could not complete his work in time. Further the auditor also not able to submit report in full-fledged manner. Hence this petition.

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3. The petitioner presented this petition with prayer to hold the respondents are liable for misconduct during insolvency resolution process and pass necessary order against the respondents under section 70 IBC.

4. The point for determination is whether this petition is maintainable before the Adjudicating Authority?

5. The prayer sought by the petitioner in this petition is covered under Section 70 IBC. Section 70 deals with misconduct of the corporate debtor during the corporate insolvency resolution process and the quantum of punishment imposable against the corporate debtors. A perusal of Section 236 of IBC states that the offences under IBC shall be tried by the Special Court established under chapter XVIII of the Companies Act, 2013. Further section 236(2) states that the complainant in all such cases shall be the Insolvency and Bankruptcy Board of India or Central Government or any person authorised by the central Government. In respect of the Application in relation to chapter VII is concerned only the special court is having jurisdiction to try and hear the said applications. In so far as the relief as sought for by the applicant it is clear that the Adjudicating Authority is not a special court established by companies Act 2013. Hence the present application filed by the applicant is not maintainable before this Authority. Thus, Section 236 of IBC bars this Authority taking cognizance in this regard.

6. On the petitioner side relied upon NCLAT order passed in Company Appeal (AT) (Insolvency) No. 219 of 2019 Committee of Creditors of Amtek Auto Ltd. through Corporation Bank. Vs. Mr. Dinkar T. Venkatasubramanian and

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Others ... With Company Appeal (AT) (Insolvency) No. 442 of 2019 Liberty House Group Pte Ltd. vs Mr. Dinkar T. Venkatasubramanian and Others. 2019 SCC Online NCLAT 449. Where the NCLAT set aside the order of NCLT which granted liberty to the 'Resolution Professional' and the 'Committee of Creditors' to move before the Insolvency and Bankruptcy Board of India or the Central Government for wilful contravention of the terms of resolution plan by the successful Resolution Applicant. The NCLAT instead permitted them to move an application under section 213 of Companies Act 2013 R/W section 74 (3) of IBC before the Adjudicating Authority/National Company Law Tribunal to decide as to whether the matter is required to be referred to the Insolvency and Bankruptcy Board of India or the Central Government for taking any action under Section 74(3) and Section 213 read with Section 447 of the Companies Act, 2013. In such case, the Adjudicating Authority will decide the same after notice to the 'Successful Resolution Applicant' / 'Corporate Debtor' after following the procedure of Section 213 of the Companies Act, 2013

7. The another NCLAT citation relied by the petitioner side is Company Appeal (AT) (Insolvency) No. 574 of 2019 Mr. Lagadapati Ramesh ...Appellant Vs. Mrs. Ramanathan Bhubaneshwar ...Respondent Here it is held that the Adjudicating Authority is not competent to straight away direct any investigation to be conducted by the SFIO. However, the Adjudicating Authority (Tribunal) being competent to pass order under Section 213 of the Companies Act, 2013, if prima facie case was made out, it could refer the matter to the Central Government

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for investigation. The other citations relied by the petitioner counsel are also similar in nature.

8. These citations are not relevant to the case in our hands. Here the petitioner filed the petition to punish the corporate debtors under section 70 IBC after holding them their acts amounts to misconduct.

9. The below is the agenda of IBBI appeared in [https:// ibbi.gov.in / Agenda_07_150318.pdf](https://ibbi.gov.in/Agenda_07_150318.pdf) under the heading Subject: Complaints received under Section 236 of the Code. as follows:

10. In view of the foregoing, it is proposed to have the following guidelines to deal with complaints under section 236 of the Code, whether on receipt of a complaint from a stakeholder or noticed by the IBBI on its own as under:

- a) Every anonymous complaint/ allegation received by the IBBI complaining / alleging misconduct of a debtor, a creditor, a resolution applicant or any other person other than a service provider shall be forwarded / referred to Prosecution Division in the Administrative Law Wing.
- b) Every misconduct of a debtor, a creditor, a resolution applicant or any other person, as may be noticed by any Division of the IBBI in discharge of its functions, shall be referred to the Prosecution Division.
- c) On receipt of the reference under (a) or (b) above, the Prosecution Division shall assign a number to each such reference.

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- d) The Prosecution Division shall gather information from the complainant, operational Division, and the debtor, the creditor the resolution applicants, or the other person, as the case may be, and evidence, if any, regarding the alleged misconduct, within 30 days of then receipt of the complaint.
- e) A DGM level officer of the Prosecution Division shall form an opinion within 45 days of receipt of complaint if there exists a prima facie case for filing a complaint before the Special Court. If he is of the opinion that there exists a prima facie case, he shall put up the matter to the ED in charge of Prosecution Division who shall decide whether complaint is to be filed before the Special Court or not. In cases where the DGM is of the opinion that there exists no prima facie case, he shall close the complaint after recording reasons for the same.
- f) In case where the ED in charge of Prosecution Division is satisfied that a complaint should be filed, he shall cause filing of the complaint under section 236 of the Code to the Special Court having jurisdiction over the matter according to the procedure of Criminal Procedure Code, 1973.

11. As discussed earlier in view of the bar provided under section 236 IBC this Adjudicating Authority is not a competent Authority to take cognizance in this regard, in consequence this petition is dismissed as not maintainable.

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12. In the result this petition is **DISMISSED** as not maintainable. Liberty is granted to the petitioner to make appropriate compliance with the Insolvency and Bankruptcy Board of India or to the Central Government on the allegation of misconduct of the respondents and to pursue for the appropriate remedies.

13. The Registry is directed to send e-mail copies of the order forthwith to Liquidator appointed and to all the parties and their Ld. Counsel for information and for taking necessary steps,

14. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Sd

Satya Ranjan Prasad
Member (Technical)

Kaushal

Sd

P. Mohan Raj
Member (Judicial)

Signed on this the 09th March, 2022.

सत्य प्रति प्रमाणित होना
CERTIFIED TO BE TRUE COPY

[Handwritten Signature]
11/03/2022

उप कुलसचिव
Deputy Registrar
राष्ट्रीय कम्पानी विधि अधिकरण
National Company Law Tribunal
कटक बेंच
Cuttack Bench