

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

I.A. NO. of 2020
IN
CP (IB) No. 168/CTB/2019

IN THE MATTER OF:

An Application under Section 27 of The Insolvency And Bankruptcy Code 2016.

AND

IN THE MATTER OF:

An Application under Section 10 of The Insolvency And Bankruptcy Code 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

AND

IN THE MATTER OF:

SWAIN ALUMINIUM PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its Registered Office situated at House-2, Green Park, Sailashree Vihar, Bhubanesware – 751 021. (in CIRP)

..... **Corporate Applicant /
Corporate Debtor**

VERSUS

COMMITTEE OF CREDITORS, Represented through Indian Overseas Bank, Lewis Road Branch, at Plot No. 191, Lewis Rod, Bhubaneswar, Dist. Khurda, Odisha 751014.

..... **Applicant**

Counsels appeared through Video Conference:

- | | | |
|----------------------------|---|---|
| 1. Mr. Saradindu Jena |] | Interim Resolution Professional
In the matter of Swain Aluminium
Private Limited |
| 2. Mr. Umesh Chandra Sahoo |] | Advocate for CoC, IOB |

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)

Date of hearing: 15th July, 2020.

Order pronounced on 15th July, 2020.

ORDER

Per Shri Jinan K.R., Hon'ble Member (J)

1. Indian Overseas Bank, one of the financial creditors of corporate applicant representing the CoC filed this application under section 22 (3) (b) of the Code praying for replacement of the IRP Mr. Saradindu Jena, with Mr. Binay Kumar Singhania on the strength of passing a resolution by 100% vote share of the financial creditors.

2. This application has been filed requesting for urgent hearing in the matter since much time has elapsed in view of the nation wide lock down due to Covid 19 pandemic and, also the appointment of new Resolution Professional is required to be done urgently. Having been satisfied with the urgency trying to set up, the application is admitted and listed for hearing on today (15.07.2020).

Heard both sides. Perused the records.

3. The Corporate applicant who filed the application under section 10 of the Code was allowed by the Adjudicating Authority, by its order dated 20.02.2020 and CIRP was ordered to initiate as against the applicant/CD the Swain Aluminium Private Limited and appointed Mr. Saradindu Jena, Ou No. 510, 5th Floor, Esplanade One, 721, Rasulgarh, Orissa 751101 as the Interim Resolution Professional.

4. In the first meeting of the Committee of Creditors held on 19.03.2020, the resolution to approve Mr. Saradindu Jena (IRP) as the Resolution Professional was rejected by the members with 100% voting. It was also resolved in the same meeting to appoint the proposed Resolution Professional, Mr. Binay Kumar Singhania by replacing the current IRP for the remaining CIRP period.

5. The written consent of Mr. Binay Kumar Singhania in the specified form to act as RP for M/s Swain Aluminium Private Limited was also obtained vide his letter dated 19.03.2020.

6. When it was heard, the IRP Mr. Saradindu Jena appeared in person and submitted that no decision regarding fixing his remuneration so far has been taken by the CoC. He further stated that payment to valuers, security agencies and the expenses already incurred are not paid yet. He also made a prayer to consider his confirmation as the RP since he has already started working in this capacity. He also pleaded for payment of his remuneration at par with what is offered to the newly proposed RP.

7. The Ld. Counsel for the applicant, Mr. Umesh Chandra Sahoo submitted that the payments due to the IRP and others will be taken care of. On being asked by the Bench, whether this matter should be adjourned till the payments legally due are made or whether they can give an undertaking to this effect, the Ld. Counsel submitted that the applicant is ready to give an undertaking to the effect that it would be settled and paid within 15 days. The said submission is recorded.

8. In view of the matter that the CoC unanimously decided to replace existing IRP with new RP and proposes an insolvency professionals name, the AA has nothing to do with the proposal for replacement of the IRP. I am afraid the prayer of IRP for confirming him as RP for enabling him to claim the fees due to him at par with the newly appointed RP, cannot be entertained under any of the provisions of the Code, or Regulations. However, the CoC is liable to fix a reasonable fee considering the volume of work he already undertaken till the date of replacement proposal approved by the Adjudicating Authority. He is also entitled to claim whatever expenses he rendered upon production of proper receipt/bills etc. The CoC can verify the same and to its satisfaction allow all the vouchers /bills if it relates to resolution cost. With the above observations this IA is liable to be allowed upon the following directions:

ORDERS

i) The appointment of Mr. Binay Kumar Singhania, having registration no. IBBI/IPA-001/IP-P00041/2017-18/10102, C/o BKS & Co., Diamond Heritage, 16 Strand Road, Unit 519, 5th Floor, Kolkata, West Bengal, 700001 proposed by the Committee of Creditors to

act as Resolution Professional in CIRP of M/s Swain Aluminium Private Limited, is hereby approved in terms of Section 22 (3) (b) of the IB Code, 2016.

ii) The CoC shall fix the fees and expenses due to the IRP within 15 days of the submission of voucher/bills etc if not submitted. If already submitted, settle the amount upon hearing him if found necessary and shall disburse the amount found due to him within 15 days of the receipt of the order.

iii) IA(IB)of 2020 in C.P. (IB) No. 168/CTB/2019 is allowed. C.P. (IB) No. 168/CTB/2019 is disposed of accordingly.

iv) Registry is hereby directed to communicate the order to all the Applicants, Respondents and to the out going IRP and Resolution Professional and IBBI through e-mail.

v) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Jinan K.R.)

Member (J)

Signed on this, the 15th day of July, 2020

Gk.