



**THE NATIONAL COMPANY LAW TRIBUNAL  
COURT VI, NEW DELHI**

**I.A. 169/2023**

**IN**

**COMPANY PETITION NO. 421/ND/2022**

*Application under under Section 60(5) of the Insolvency and  
Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016*

In the matter of:

**M/S. SILVER BANK LIMITED**

Registered Office at:

13<sup>th</sup> Floor, Nexteracom 1 Cyber City,

Ebene Mauritius

...Financial Creditor

**Versus**

**M/S. MIDEAST INTEGRATED STEELS LIMITED**

Registered Office at:

H-1, Zamrudpur Community Centre,

Kailash Colony, New Delhi-110048

...Corporate Debtor



**Coram:**

**Shri. Bachu Venkat Balaram Das, Hon'ble Member  
(Judicial)**

**Shri. Rahul Bhatnagar, Hon'ble Member (Technical)**

**Counsel for the Corporate Debtor:** Aditya Nayyar

**Order Pronounced on: 17.01.2023**

**ORDER**

**PER- RAHUL BHATNAGAR , MEMBER (TECHNICAL)**

1. The present Applicant has been filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016 praying for the following reliefs:
  - i. To dismiss the petition under section 7 of IB Code; or in the alternative,
  - ii. To keep the admission of the Financial Creditor's application in abeyance for a period of 6 months or such other period as may be deemed fit by this Hon'ble Tribunal in the facts and circumstances of the present case; and



iii. To pass any other or further orders/directions as this Hon'ble Tribunal may deem fit and appropriate in the present circumstances of the matter and in interest of justice.

2. The Corporate Debtor has prayed for dismissal of IB-421/ND/2022 filed by the Financial Creditor u/s 7 of IBC, 2016 for an alleged financial debt of Rs. 12,96,95,768.63 (Rupees Twelve Crores Ninety Six Lakhs Ninety Five Thousand Seven Hundred and Sixty Eight and Sixty Three Paise) on the ground that the situation is not ripe to call it a default as sought to be made out by the Financial Creditor as the material available on record and the other factors relevant for consideration necessitate the dismissal of the above cited petition of the Financial Creditor in question or otherwise the respondent whose administration is being ably run and who is discharging its debts in a planned manner would be pushed to the corporate insolvency resolution process and get entangled in a proceeding with no point of return. In these circumstances, initiation of CIRP would adversely impact the overall financial health and viability



of the corporate debtor. In support, the Corporate Debtor has placed reliance on the judgements of the Hon'ble Supreme Court rendered in the case of *Indus Biotec (P) Ltd Vs. Kotak India Venture (Offshore) Fund, 2021 (6) SCC 436, Para 21* and in the case of *Vidarbha Industries Power Ltd. v. Axis Ban Ltd. 2 8 SCC 352*.

- 3.** We have gone through the present Application filed by the Corporate Debtor. A bare reading of the Application makes it evident that the present Application has been wrongly filed u/s 60(5) of the IBC, 2016 instead of Section 65 of the IBC, 2016. Section 60(5) of the IBC, 2016 states as follows:

*Section 60(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—*

*(a) any application or proceeding by or against the corporate debtor or corporate person;*

*(b) any claim made by or against the corporate debtor or corporate person, including claims by or*



*against any of its subsidiaries situated in India;  
and*

*(c) any question of priorities or any question of law  
or facts, arising out of or in relation to the  
insolvency resolution or liquidation proceedings of  
the corporate debtor or corporate person under this  
Code.*

The prayers of the Corporate Debtor made in the present application cannot be granted u/s 60(5) as a separate provision u/s 65 has been provided for the same. Section 65 of the IBC, 2016 states as follows:

*“65(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*

*(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.”*



The case of the Corporate Debtor is that being a solvent company whose administration is being ably run and who is discharging its debts in a planned manner, it should not be subjected to CIRP. Be that as it may, it does not in any way imply that the petition bearing number IB-421/ND/2022 has been filed maliciously or fraudulently. Even assuming that the Application has been filed u/s 65 of the IBC, 2016, there does not appear any ground for invoking Section 65 of the IBC, 2016 in this matter. The prayer of the Corporate Debtor can also not be entertained at this stage since the pleadings in the main matter i.e IB-421/ND/2022 have already been completed and the matter is listed for final arguments. The present Application by the Corporate Debtor appears nothing but an attempt to delay the proceedings under the IBC, 2016. The proceedings under IBC, 2016 are time bound and such delays cannot be entertained by this Tribunal. However, the judgements relied upon by the Corporate Debtor will be considered by this bench while deciding IB-421/ND/2022.



4. This bench, after taking into consideration the facts and circumstances of the present case, dismisses the present application.

5. I.A. 169/2023 stands disposed of in terms of the above order.

Let a copy of order be served to parties.

RAHUL  
PRASAD  
BHATNAGAR

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RAHUL PRASAD  
BHATNAGAR  
Date: 2023.01.18  
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**(RAHUL BHATNAGAR)**

**MEMBER (TECHNICAL)**

BACHU VENKAT  
BALARAM DAS

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VENKAT BALARAM DAS  
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**(BACHU VENKAT BALARAM DAS)**

**MEMBER (JUDICIAL)**