

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

I.A. No. 806/KB/2020
In
CP(IB) No. 723/KB/2019

*An Application under section 60(5) of the Insolvency and Bankruptcy Code,
2016 read with section 18 of the Insolvency and Bankruptcy Code, 2016*

In the matter of:

Rishav Coke Product Private Limited

....Operational Creditor

Versus

Modern India Con-cast Limited

.....Corporate Debtor

And

In the matter of:

Mr. Samir Kumar Bhattacharyya [Resolution Professional of Modern India
Con-cast Limited],

.... Applicant

Versus

- 1. Cosmic Ferro Limited;**
- 2. Pramod Kumar Agarwal;**
- 3. Srikrishna Agarwal;**
- 4. Samindra Narayan Mitra;**
- 5. Dilip Khetan;**
- 6. Akash Agarwal;**
- 7. Priyanka Mishra.**

....Respondents

Date of pronouncing the order: 22 February 2023

Coram:

Shri Rohit Kapoor : **Member (Judicial)**
Shri Balraj Joshi : **Member (Technical)**

Appearances (via video conferencing/ physical):

For the Applicant:

Mr. Rishad Medora, Advocate
Mr. Shaunak Mukhopadhyay, Advocate
Mr. Sayantan Bose, Advocate

For the Respondent SBI in IA 783/KB/2021:

Mr. Soumalya Ganguli, Advocate
Ms. Sudarshana Dutta, Advocate
Mr. Aditya Atheya, Advocate

For the Respondent in IA 980/KB/2021 & IA 103/KB/2022:

Mr. Joy Saha, Sr. Advocate
Mr. Supriyo Gole, Advocate

For the Liquidator:

Mr. Jishnu Chowdhury, Advocate
Mr. Vikash Singh, Advocate
Ms. Zeenat Shabab, Advocate

For Cosmic Ferro in IA 806/KB/2020:

Mr. Dharendra Nath Sharma, Advocate
Mr. Naresh Balodia, Advocate

ORDER

Rohit Kapoor, Member (Judicial)

1. This Court convened through hybrid mode.
2. The instant interlocutory application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC) has been filed by **Samir Kumar**

Bhattacharyya (*the Resolution Professional of the Corporate Debtor*),
seeking the following reliefs:

- a) *To direct the respondents to repay its dues immediately in the account of Corporate Debtor;*
 - b) *Such further order or orders to be passed and/or direction be given as to this Adjudication Authority may deem fit.*
3. The case of the Applicant herein is that after the Corporate Debtor was admitted into Corporate Insolvency Resolution Process *vide* order dated 22 October 2019. The Applicant, *vide* the said order, was appointed as the Resolution Professional of the Corporate Debtor.
4. During the scrutiny of the Corporate Debtor's books, the Applicant came to know that a sum of ₹1,87,43,801.88/- was owed by the Respondents to the Corporate Debtor and accordingly the Applicant requested the Corporate Debtor on multiple occasions to return the said sum, however the same was not returned by the Respondents.
5. **Submissions on behalf of the Respondent No. 1 (Cosmic Ferro Alloys Ltd.):**
- 5.1 The Respondent has submitted that the claims of the Applicant are not maintainable and are misconstrued. The Applicant has proceeded on the basis that an alleged decree has been passed against Respondent No. 1. The instant application is really in the nature of an execution for realization of money which no legal forum has ascertained or quantified or adjudicated.
- 5.2 The amount claimed from the respondent is not an asset of Corporate Debtor and cannot be either realized or recovered. The purported claim against the respondents is subject to determination by a Court or

authority. However, no such determination has yet taken place [kindly see Section.

5.3 During the pendency of the application, CD went into liquidation and Mr. Samir Kumar Bhattacharyya who was the Resolution Professional was replaced by the Liquidator, namely, Mr. Sanjal Kumar Gupta. As such, the application is otherwise also not maintainable in view of the subsequent facts and is liable to be dismissed.

5.4 Proceedings under IBC are not recovery proceedings and further the Adjudicating Authority does not have jurisdiction to adjudicate upon the disputes which requires judicial review and cannot be decided in a summary proceeding without evidence. Further the Code is not meant for recovery proceedings.

5.5 Section 60(5) of the Code of 2016 being a residual jurisdiction cannot be stretched to such an extent to take away the adjudicatory powers of a civil court. Further, the non-obstante clause of Section 60(5) which speaks of any other law for the time being in force, will obviously can not include the provisions of the Code itself. The Hon'ble Supreme Court in *Essar Steel -vs- Satish Kumar Gupta*¹ has held that section 60(5)(c) is in the nature of residuary jurisdiction vested in NCLT so that NCLT can decided the question of law or facts arising out of or in relation to the insolvency resolution or liquidation under the Code. Applying this ratio, the purported claim of the applicant, which had not been adjudicated by any legal forum, cannot be recovered as a mode of execution without due process of law. Further, this purported claim is prior to the CIRP commencement.

¹ (2020)8 SCC 531

6. **Analysis and Findings:**

- 6.1 Heard the Ld. Counsel on behalf of the Applicant and the Ld. Counsel for the Respondents and perused the records.
- 6.2 The instant application was filed by the resolution professional for recovery of a sum of Rs. 1,87,43,801.88/- which the Corporate Debtor claimed as being due and owed to it by the said Cosmic Ferro Alloys Ltd. However, during the pendency of the said IA No.806 of 2020 for adjudication, an order of liquidation was passed on 05.01.2021 and the Applicant was appointed as the liquidator in place of the Resolution Professional. Although the Liquidator has been appearing in the matter there has been no formal amendment of IA No.806 of 2020 substituting the Resolution Professional with the liquidator.
- 6.3 Further, while the said IA No.806 of 2020 was pending adjudication the assets and properties of the Corporate Debtor (in liquidation) were sold as a going concern to one Kashvi Power & steel Pvt. Ltd.
- 6.4 Having regard to the fact that the assets and properties of the said company Modern India Con-Cast Limited has now been sold to the said Kashvi Power & Steel Pvt. Ltd. as a 'going concern' and having further regard to the fact that the corporate existence of Modern India Concast Limited has been revived, IA No.806 of 2020 is *dismissed*.
- 6.5 The purchaser of its assets as a 'going concern' *i.e* Kashvi Power & Steel Pvt. Ltd is at liberty to pursue the claim of the said company against the said Cosmic Ferro Alloys Ltd. in accordance with law and before such forum as may be deemed to be appropriate. It is made clear that the Adjudicating Authority has not touched upon the question of maintainability or the merits of the claim of Modern India Con-Cast Limited against Cosmic Ferro Alloys Ltd.

In the National Company Law Tribunal,
Kolkata Bench (Court- I)

Mr. Samir Kumar Bhattacharyya vs. Cosmic Ferro Ltd. & Ors.
I.A.(IBC) 806/KB/2020 in C.P (IB) 723/KB/2019

- 6.6 As such, **I.A. (IBC) No. 806/KB/2020** is hereby *dismissed*.
- 6.7 **CP (IB) No. 723/KB/2019** to come up on **14.4.2023** for filing the progress report.
- 6.8 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 22nd day of February, 2023

SM(LRA)