

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (Court – II)
KOLKATA**

C.P. (IB) No. 6/KB/2018

IA (IBC) No. 1473/KB/2023

IA (IBC) No. 1012/KB/2021

IA (IBC) No. 1020/KB/2021

IA (IBC) No. 1026/KB/2021

***An application Section 54 of the Insolvency and Bankruptcy Code, 2016
read with regulation 45, 37A, 38 of the Insolvency and Bankruptcy Board of
India (Liquidation Process) Regulations, 2016.***

-And-

***An application under Section 33(5), 35(1) & 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with regulation 39 of the Insolvency and
Bankruptcy Board of India (Liquidation Process) Regulations, 2016.***

In the matter of:

(1) Yash Smelter Privat Limited (CIN – U27100WB2009PTC134892), having its registered office at 13, Ramdhan Ghosh at 13, Ramdhan Ghosh Lane Belurmath, Howrah – 711202.

... Corporate Debtor

-Versus-

(2) Agarwal Alloys, a proprietorship firm having its registered office at 10/30, Guha Road, Ghusuri, Howrah – 711107.

... Operational Creditor

-And-

In the matter of:

(1) Shashi Agarwal, the Liquidator of Yash Smelter Private Limited residing at 21N, Block – A, New Alipore, Kolkata – 700053.

... Applicant/Petitioner

-Versus-

(2) MaaJeen Steel Traders, having Office at 1 Seth Para Suram, Bajaj Road Liluah – 711204.

- (3) **Soil & Enviro Industries Pvt. Ltd.**, having its registered office at 40/6 Gariahat Road, 1st Floor, Kolkata – 700031.
- (4) **Aashi Infrastructure Pvt. Ltd.**, having its registered office at 38/5 Minapara Road, Kolkata – 700040.
- (5) **Gaurav Bansal**, Erstwhile Director residing at 13, Ramdhan Ghosh Lane, Belurmath, Howrah – 711202.
- (6) **Jai Prakash Bansal**, Erstwhile Director residing 13, Ramdhan Ghosh Lane, Belurmath, Howrah – 711202.

... Respondents

Date of hearing: 03/10/2023

Date of pronouncing the order: 20/10/2023

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**
Shri Arvind Devanathan : **Member (Technical)**

Appearances (via video conferencing/physically):

Mr. D. Talukder, Adv.] For the Respondent in IA(I.B.C)/1020(KB)2021
Mr. A. Mishra, Adv.] For the Liquidator
Mr. Shashi Agarwal, CS] Liquidator-in-Person

ORDER

Per: Bidisha Banerjee, Member (Judicial)

IA (IBC) No. 1473/KB/2023

1. Heard. Ld. Counsels/representatives for the parties.
2. This application has been preferred by the liquidator of Yash Smelter, the Corporate Debtor to seek the following reliefs, inter alia: -
 - (a) The Corporate Debtor, namely, Yash Smelter Private Limited (CIN – U27100WB2009PTC134892) be dissolved.

- (b) The Stakeholder Consultation Committee will pursue pending applications being IA(I.B.C)/1020(KB)2021, IA(I.B.C)/1026(KB)2021 & IA(I.B.C)/1012(KB),2021 against the three sundry debtors be passed.
- (c) Any other order or directions as the Hon'ble National Company Law Tribunal may deem fit.
3. Mr. Shashi Agarwal, the liquidator of Yash Smelter Private Limited, would invite our attention to Page 78 of the application, which is an extract from the minutes of 10th Meeting of the Stakeholders Consultation Committee of Yash Smelter Private Limited held on 12th June, 2023, the extract of the minutes of the said meetings being as under: -
- “That application pending against the Sundry Debtors shall continue as per the decision of SCC Committee and upon realisation can be distributed among the stakeholders only after necessary approval of Hon'ble NCLT as per Section 53 of IBC”.
4. Placing the above, the liquidator would submit that the claims, if any, against the Sundry Debtors if realised the said amount can be distributed among the stakeholders with the approval of this Tribunal, as per Section 53 of IBC.
5. As such we are of the considered opinion that the application against the Sundry Debtors preferred by the liquidator, being IA 1012 of 2021, IA 1020 of 2021 and IA 1026 of 2021, will also be taken up for consideration with the instant application.

IA (IBC) No. 1012/KB/2021

1. Heard. Ld. Counsels/representatives for the parties.
2. This application has been preferred by the liquidator of Yash Smelter, the Corporate Debtor to seek the following reliefs, inter alia: -

- (a) Pass an order admitting the claim of the corporate debtor (in liquidation) against the respondent and pass orders directing the respondent to pay off the debts due from them at the earliest without any further delay.
- (b) In the alternative leave may be granted to the applicant in terms of Section 33(5) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 to institute appropriate legal proceedings against the respondents.
3. In IA 1012 of 2021, the liquidator has claimed an amount of Rs. 46,60,339/- from the respondents.
4. It is evident from a communication dated 9th April, 2021 (Annexure – D) that the liquidator by way of his letter to MaaJeen Steel Traders, claimed that an amount of Rs. 46,60,339/- is due and payable by said respondent along with the interest on the date of default which if not cleared within seven days; the matter would be reported to the adjudicating authority. It seems that the letter was duly delivered to MaaJeen Steel Traders.
5. Further on 12th July 2021, the liquidator has communicated to Mr. Gaurav Bansal the erstwhile Director, the letters sent to the MaaJeen Steel Traders followed by communication dated 12th July, 2021.
6. The respondent MaaJeen Steel Traders has denied the claim and has averred that the Respondent No. 1 procured Mild Steel Scrap (M S Scrap) from the Corporate Debtor on various dates and the Corporate Debtor issued various invoices from 21/05/2018 to 30/05/2018 of Rs. 63,86,443.20/-. However, the said materials were of inferior grade and upon receipt of the materials the Respondent *vide* letter dated 05/06/2018 informed this to the Corporate Debtor that the materials supplied against invoice nos. 46 dated 21/05/2018 are of very inferior grade. The Corporate Debtor had assured that such inferior grade materials will be replaced within a week and the Corporate Debtor also assured that subsequent supply will be of standard grade material. That another lot was received on 22/05/2018, however, the same was also of inferior grade.

The Respondent again asked the Corporate Debtor to immediately take back the entire stock of materials delivered and issue a credit note against the entire material supplied. The said letter dated 05/06/2018 was duly hand delivered, received and acknowledged by the Corporate Debtor on 07/06/2018, however no action was taken by the Corporate Debtor.

The parties after several meetings finally on 13/12/2018 concluded that the Corporate Debtor will take back the material and issue credit note *vide* letter dated 30/01/2019 the Respondent firmly clarified that if the materials are not collected by 31/03/2019 then the Respondent will have no other option to dispose of the entire material at the best available prices and remit it to the Corporate Debtor and the balance amount would be reversed in their books of accounts, in order to square up the transactions.

As despite of repeated reminders, the Corporate Debtor failed to collect back the low-quality materials and issue the credit note to the Respondent, the Respondent No. 1 was constrained to sell the entire material at best available price. The said material was sold for Rs. 17,26,104/- (INR Seventeen Lakhs Twenty-Six Thousand One Hundred & Four Only) and the entire amount of Rs. 17,26,104/- was deposited to the Corporate Debtor Company on 30/04/2019. A final letter dated 02/05/2019 in this regard was issued to the Corporate Debtor dated 02/05/2019 which was duly hand delivered, received and acknowledged by the Corporate Debtor on 06/05/2019.

7. The response of the liquidator in his rejoinder is quite evasive.
8. In absence of supporting documents there cannot be any adjudication of the disputes, hence prayer (a) cannot be allowed. Therefore, in the event of supporting documents are available with the Stakeholders Committee they shall at liberty to pursue the remedies, and distribute the receivables in accordance with law as in prayer (b). **Prayer (b) is thus allowed.**
9. Accordingly, this **IA (IBC) No. 1012/KB/2021** is **disposed of** with the liberty.

IA (IBC) No. 1020/KB/2021

1. Heard. Ld. Counsels/representatives for the parties.
2. This application has been preferred by the liquidator of Yash Smelter, the Corporate Debtor to seek the following reliefs, inter alia: -
 - (a) Pass an order admitting the claim of the corporate debtor (in liquidation) against the respondent no. 1 and pass orders directing the respondent to pay off the debts due from them at the earliest without any further delay.
 - (b) In the alternative leave may be granted to the applicant in terms of Section 33(5) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 to institute appropriate legal proceedings against the respondents.
3. By Sashi Agarwal, the liquidator of Yash Smelter the Corporate Debtor against Soil & Enviro Industries Pvt. Ltd.; the liquidator has demanded an amount of Rs. 39,11,741/- from the said respondent by way of letter dated 12.10.2020.
4. There is, however, a response from the said respondent to the demand made on 12th October, 2020, the respondent on 16th October, 2020 responded to the same alleging that the amount is unlawfully raised and requested the liquidator to rescind his notice dated 12th October, 2020 failing which the said respondent shall be constrained to approach appropriate forum for redressal.
5. Nothing is reported from the end of the respondents about any order from any forum in favour of the said respondent so far.
6. The said respondent has submitted by its response dated 28th July, 2020 that the materials supplied were defective and instantly rejected by its clients.
7. The liquidator by way of rejoinder and supplementary affidavit has placed a copy of ledger confirming a due of Rs. 39,11,741/- against Soil & Enviro Industries Pvt. Ltd. along with relevant GST return filed by the Corporate Debtor, to support his claim, the debt is not acknowledged though.

8. However, erstwhile Director Jai Prakash Bansal has responded on 31.07.2021 that: -

- **In the matter of Soil & Enviro Industries Pvt. Ltd.**

We neither received any material nor any payment received till date. As discussed with them they had adjusted our dues against inferior quality ground.

- **In the matter of Star Forging.:**

We fully denying the copy attached against goods returned by the party. No counter signature belongs to us or on behalf of our Company which are attached. The company seal in the name of Yash Smelter Pvt. Ltd. illegally made for this purpose.

9. The reply of Soil & Enviro Industries Pvt. Ltd. shows that on 06.05.2019 it had asked the Director Yash Smelters to lift materials from their factory site and asked for replacement. The further cause of action is not evident but the above communication dated 31.07.2021 speaks for itself.

10. Having noted that reliefs prayed for in this IA, the liquidator or the Stakeholders Committee is permitted to pursue such remedies as are available in law as prayed for.

11. This IA (IBC) No. 1020/KB/2021 is thus **disposed of** with the liberty.

IA (IBC) No. 1026/KB/2021

1. Heard. Ld. Counsels/representatives for the parties.
2. This application has been preferred by the liquidator of Yash Smelter, the Corporate Debtor to seek the following reliefs, inter alia: -
 - (a) Pass an order admitting the claim of the corporate debtor (in liquidation) against the respondent no. 1 and pass orders directing the respondent to pay off the debts due from them at the earliest without any further delay.

- (b) In the alternative leave may be granted to the applicant in terms of Section 33(5) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 to institute appropriate legal proceedings against the respondents.
3. The liquidator has claimed that an amount of Rs. 41,92,462/- is due and payable from Aashi Infrastructure Private Limited the respondent in the said application and there is no response from the said respondent till date.
4. The Liquidator by a letter dated 12.07.2021 has asked the erstwhile Director, Yash Smelter for his comments on the following by seven days confirms the facts stated by the Debtors: -
- (a) That Soil & Enviro Industries Pvt. Ltd. one of the Debtors have replied to the letter sent to them on 09/04/2021 stating that the goods were returned to you due to inferior quality.
- (b) Star Forging one of the Debtors have replied to the letter sent to them on 09/04/2021 having receipt on 18/04/2021 stating that the goods were returned and replacement was awaited but did not receive the same.
- (c) Aashi Infrastructure Pvt. Ltd. and MaaJeen Steel Traders were sent letter for the payment due on 09/04/2021 but no reply have been received by them till date.
5. The erstwhile Director has replied as under: -
- **In the matter of Soil & Enviro Industries Pvt. Ltd.**
We neither received any material nor any payment received till date. As discussed with them they had adjusted our dues against inferior quality ground.
 - **In the matter of Star Forging.:**
We fully denying the copy attached against goods returned by the party. No counter signature belongs to us or on behalf of our

Company which are attached. The company seal in the name of Yash Smelter Pvt. Ltd. illegally made for this purpose.

6. In view of such IA 1026 of 2021 is disposed of and in the same manner as IA 1012 of 2021 and IA 1020 of 2021 granting liberty to the SCC to proceed against the said Sundry Debtors in accordance with law, in the event supporting documents are available.
7. Accordingly, this IA (IBC) No. 1026/KB/2021 is also **disposed of** with the aforesaid liberty.
8. IA (IBC) No. 1473/KB/2023 will appear for further consideration on **06.11.2023**.

(Arvind Devanathan)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Order signed on this, the 20th day of October, 2023.

AR.