

303



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Coram : (1) Shri Madan B. Gosavi,
Hon'ble Member (J)
&
(2) Shri Virendra Kumar Gupta,
Hon'ble Member(T)

CP (IB) No. 520/KB/2018 alongwith CA(IB) 814/KB/18

In the matter of:

An application for initiation of Corporate Insolvency
Resolution Process under Sections 8 and 9 of the
Insolvency and Bankruptcy Code, 2016 read with Rule
6(1) of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

Ankit Metal & Power Ltd., having its office at 35, Chitta
Ranjan Avenue, Kolkata- 700 012 and address for communi-
cation – Mrs. Swati Agarwal, 6A, K.S.Roy Road, 3rd floor,
Kolkata- 700 001, CIN-L27101WB2002PLC09479;

...Operational Creditor

-Versus-

In the matter of:

West Bengal Industrial Development Corporation Limited,
having its registered office at Protiti, 23, Aurobindra Nath
Tagore Sarani, Kolkata- 700 017,

....Corporate Debtor

Counsel appeared:

1. Ms. Manju Bhuteria, Advocate] Operational Creditor



1. Mr. Reetobrata Mitra, Advocate]
2. Mr. Paritosh Sinha, Advocate] Corporate Debtor
3. Mr. Saubhik Chowdhury, Advocate]
4. Mr. Dripto Majumdar, Advocate]

Date of Pronouncement of Order: 18.03.2020

ORDER

Per Shri Madan B. Gosavi, Member (J):

Ankit Metal & Power Ltd. filed this application under section 9 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **West Bengal Industrial Development Corporation Limited**,– Respondent Corporation to start Corporate Insolvency Resolution Process (in short, “CIRP”) alleging that the Respondent Corporation committed default in paying the sum of Rs.3,05,06,461/.

2. The following facts are not in dispute.

3. By letter dated 24.11.2004 (page-40), the applicant company was declared to be eligible to get 25% subsidy on fixed capital investment on certain terms by the Respondent Corporation, as per scheme floated by the State. West Bengal Electricity Distribution Co. Limited by its letter dated 23.11.2012 informed the respondent corporation that the applicant is entitled to receive sum of Rs.4,08,02,666/- as incentive amount under the provisions of West Bengal Power Incentive Industries Scheme, 2005.

4. It is seen from the pleadings of the applicant and the record produced that the applicant was pursuing with the respondent corporation to pay incentive amount at the earliest. On 13.12.2012, the applicant wrote respondent

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corporation for sanction of bridge loan against its claim of Rs.4,08,02,666/- towards incentive amount. The respondent corporation granted the applicant bridge loan of Rs.2,02,85,393/- against incentive amount and paid to the applicant by a cheque no.45783 dated 14.02.2013 drawn on HDFC Bank. Since the respondent corporation did not pay the incentive amount to the applicant, notice dated 23.11.2017 was sent to the respondent corporation calling upon it to pay a sum of Rs.4,08,02,666/- together with the interest @ 18%p.a. As the respondent corporation did not pay the amount, this applicant then again sent notice under section 8 of IBC dated 02.01.2018 to the respondent corporation and filed this application to initiate CIRP of the respondent corporation.

5. The respondent corporation appeared in this proceeding. Mr. Gautam Chakraborty, Deputy Manager (Legal) filed affidavit-in-reply on behalf of the respondent-corporation. He has contended that the respondent has granted a bridge loan to the applicant. Hence, it is a financial service provider. The proceeding under IBC cannot be initiated against it.

6. He further contended that the respondent corporation was merely acting as an agent of West Bengal Electricity Distribution Company Ltd. If any amount towards incentive is to be received by the applicant, the applicant has to claim the same from West Bengal Electricity Distribution Co. Ltd. and not from the respondent-corporation. Moreover, this application is barred by law of limitation. The application is not maintainable. Same may be rejected.

7. We heard the Ld. Counsel for the applicant and the Ld. Counsel for the respondent-corporation at length.

8. The following points of controversy arise for our determination. Our findings thereto with the reasons are as follows:

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1. Whether the respondent-corporation is a financial service provider within the meaning of Section 3(17) of IBC as against the applicant? - **Yes.**
2. Whether the respondent-corporation is the Corporate Debtor and whether incentive amount claimed by the applicant is the operational debt? - **No.**
3. Whether the application is time-barred? - **Yes.**

Reasons:

Point No.1 – Section 3(17) of IBC defines financial service provider means a person engaged in a business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator. The applicant itself produced on record the letter dated 13.12.2012 (page 15) wherein the applicant has requested the respondent-corporation to grant and disburse the bridge loan of Rs.3,26,42,132/- by letter dated 21.01.2013 (page-57). The respondent-corporation granted and disbursed the loan in favour of the applicant. From the above facts, it appears to us that respondent-corporation has been authorised to grant such loan and advance to the industrial units within the state. Although the respondent-corporation did not produce on record such authorisation or licence granted to it by the financial service provider or by the state but the fact remained on record that it has granted and disbursed the applicant loan of Rs.2,04,00,000/-. In view of the above admitted facts, we hold that the respondent-corporation is the financial service provider in relation to the applicant's claim herein. **We answer point no.1 in the affirmative.**

Point No.2 – Section 3(8) of IBC defines Corporate Debtor means a corporate person who owes a debt to any person. Section 3(11) defines debt means a

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liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. The claim is basically right to payment and a right to remedy. While reading all above definitions together, we have scanned out the facts of this case.

2.1 By letter dated 23.11.2012, West Bengal Electricity Distribution Co. Ltd. recommended that the applicant is entitled to receive power incentive under the provisions of West Bengal Power Incentive Industries Scheme, 2005. It shows that this incentive amount is payable by West Bengal Electricity Distribution Co. Ltd. and not by the respondent-corporation. The respondent-corporation produced on record notification dated 19.05.2005 (Annexure-D to affidavit-in-reply) whereunder the respondent-corporation is appointed as the authorised agent of the State Government for operation of West Bengal Power Incentive Scheme, 2005. Hence, any amount payable to the applicant as incentive has to be paid by the state government or West Bengal Electricity Distribution Co. Ltd. and certainly not by West Bengal Industrial Development Corporation Ltd., i.e. the respondent-corporation. We hold that the respondent-corporation does not owe any debt to the applicant. It is not the corporate debtor of the applicant.

2.2 Besides above, the moot question arises for our consideration is that whether amount payable towards incentive can be a debt? The word incentive has not been defined in IBC. Incentive has a meaning as explained in the Black's Law Dictionary, Eighth Edition as, "**Compensation plan in which increased productivity is rewarded with higher pay**". In short, the amount payable towards incentive is always the amount to be paid as a reward. Such amount cannot be debt against the person who declared such award. So, considering plain facts on record, we hold that amount payable towards incentive cannot be

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a debt within the meaning of section 3(11) and respondent-corporation cannot be Corporate Debtor within the meaning of Section 3(8) of IBC.

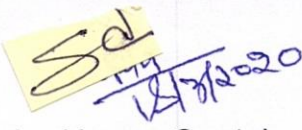
Point No.3: From the above admitted facts as available on record, it is clear that the applicant became entitled to claim amount towards incentive in the year, 2012. In such situation, it was necessary for the applicant to file any application/ proceeding for recovery of that amount within three years from the date on which the right to apply accrues, then the application being filed in the year 2018, we hold that it is filed beyond period of limitation. **We answer point no.3 in the negative.**

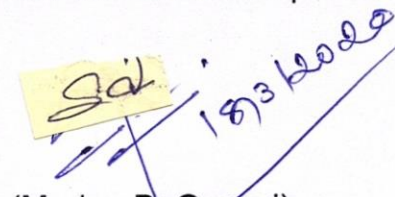
9. In view of evidence on record and evidence as discussed above, we hold that the application is not maintainable and the same stands rejected. We pass the following order.

ORDER

- i) Application in CP(IB) No.520/KB/2018 stands rejected.
- ii) Registry is hereby directed to communicate the order to the Operational Creditor and Corporate Debtor by Speed Post and also by email.
- ii) CP(IB) No.520/KB/2018 alongwith CA(IB) 814/KB/18 is disposed off.

Let the certified copy of the order be issued to all the concerned parties upon compliance with requisite formalities


(Virendra Kumar Gupta)
Member (T)


(Madan B. Gosavi)
Member (J)

Signed on this, the 18th day of March, 2020.