IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P. (IB) No. 543/KB/2017

In the matter of:

An Application under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with applicable provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016.

And

In the matter of:

SBER Bank, a company registered under the Companies Act, 1956 as a 'Foreign Company' and a banking company within the meaning of Banking Regulation Act, 1949 and having its registered office at Upper Ground Floor, Gopal Dass Bhawan, 28 Barakhamba Road, New Delhi-110001.

-Applicant/Financial Creditor

Versus

Varrsana Ispat Ltd., a Public Company, limited by shares, registered under provisions of the Companies Act, 1956 and having its registered office at Everest House, 46-C, Chowringhee Road, 15th

Sd/- Sd/-

Floor, R N 15 B, Kolkata-700071, in the state of West Bengal under the aforesaid jurisdiction.

-Corporate Debtor

CORAM: 1. Shri Jinan K.R., Member (Judicial)
2. Shri Harish Chander Suri, Member (Technical)

Counsels on Record:

For the Resolution Professional

1. Mr. Anil Goel, Resolution Professional
2. Mr. Aniruddha Roy, Advocate for RP
3. Mr. Arun Gupta, FCA
4. Mr. Anil Soreka, Advocate
5. Mr. Rohit Sharma, CS

For Central Bank of India

1. Mr. Joy Saha, Sr. Advocate
2. Mr. Gautam Chakraborty, Advocate

For Indian Overseas Bank (Respondent No. 6, 7 and 8)

1. Mr. Ramesh Chandra Prusti, Advocate
2. Mr. Balaram Pandit, Advocate
3. Ms. Mahuya Ghosh, Advocate

For Applicant in Cont.A.747/KB/2018

1. Mr. Ratnanko Banerjee, Sr. Advocate
2. Mr. Shaunak Mitra, Advocate
3. Mr. Saubhik Chowdhuri, Advocate
4. Mr. Dripto Manjumdar, Advocate

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Date of pronouncement of Order: 6th August, 2019.

ORDER

Per Shri Jinan K.R., Member(J)

1. This is an application filed by the Financial Creditor/**SBER BANK** for initiating Corporate Insolvency Resolution Process as against the Corporate Debtor/**Varrsana Ispat Limited** under Section 7 of Insolvency and Bankruptcy Code, 2016 (in short "I & B" Code, 2016). This Bench passed an order dated 16.11.2017 admitting the application for the initiation of Corporate Insolvency Resolution Process (in short "CIRP") against the Corporate Debtor and appointed Mr. Anil Goel as Interim Resolution Professional (in short "IRP"). The appointment of IRP, Mr. Anil Goel was re approved by the Committee of Creditors (in short "CoC") and vide order dated 02.04.2018, the appointment of Mr. Anil Goel as Resolution Professional (in short "RP") has been confirmed.
2. The RP has filed final progress report on 31.07.2019 submitting that the CoC were unable to approve any resolution plan for the reason of attachment of assets of the Corporate Debtor. The Ld. RP has submitted that the request for de-atachment asked for by the RP before the Adjudicating Authority (NCLT) and before Hon'ble Supreme Court being not granted in his favour no prospective resolution applicant showed their willingness to take over the Corporate Debtor company and sought for exclusion of period allegedly un-utilised on account

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of pending litigation upto the Hon'ble Supreme Court and the period yet to be taken before the apeelate Authority of PMLA. Vide separate order, CA(IB)No.735/KB/2018 was dismissed.

3. The CIRP in the case in hand, expired on 13.08.2018. Before the expiry of CIRP period, the RP has convened eight (8) meetings of CoC and the summary of the said meeting submitted by the RP shows that seven(7) prospective resolution applicants were turned up showing interest in the CD. Though one among the 7 resolution applicants was identified as H1 bidder, i.e. Mono Steel India Limited., the CoC was dissatisfied with terms detailed in the resolution plan. In the eighth meeting of CoC dated 06.08.2018 the CoC have had a detailed discussions about modified resolution plans submitted by Mono Steel India Limited. However, the members of CoC decided to put the resolution plan for e-voting but since the difference in between the Financial Creditors regarding the claim of certain Financial Creditors, admitted by the RP, the resolution plan has not been passed by the CoC in the eight (8) CoC meetings. In the meanwhile, the CIRP period of 270 days was expired.

4. The application filed by the RP for releasing the attachment of the assets of the Corporate Debtor by Deputy Director of Enforcement has been dismissed by this Bench, vide order dated 12.07.2018. The RP has preferred an appeal before the Appellate Tribunal as Company Appeal (AT) (Insolvency) No. 493 of 2018. In view of the pendency of appeal preferred by RP as against the attachment of assets of the Corporate Debtor by Deputy Director of Enforcement was pending before the Hon'ble

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Appellate Tribunal this Bench did not pass an order of liquidation, though the RP failed to submit any resolution plan before the expiry of 270 days.

5. However, the Hon'ble Appellate Tribunal has disposed the appeal vide order dated 02.05.2019. Immediately after the disposal of the appeal, the RP preferred an appeal before the Hon'ble SC. In view of the pendency of the appeal before the Hon'ble SC we are also asked not to pass any order of liquidation. In the meanwhile the Ld. RP continues the resolution process and convened meeting even after the period of expiry. The 9th CoC meeting was held on 20.08.2018. 10th CoC meeting was held on 03.12.2018. 11th CoC meeting seen held on 19.02.2019. 12th CoC meeting was held on 11.04.2019. 13th CoC meeting was held on 13.05.2019 and the last and 14th meeting of CoC on 21.06.2019.

6. From the report filed by RP, it is made clear that there is no possibility of identifying any resolution applicant for taking over the stressed assets of the Corporate Debtor Company because of the attachment of assets by the Deputy Director of Enforcement. In the meanwhile, the Hon'ble Supreme Court. Vide order dated 22.07.2019, has confirmed the order of appellate authority and thereby there is no impediment in proceeding with this application. Though the Ld.RP rquested to adjourn the matter till the disposal of the appeal prefered by him before the appellate authority, we are not inclined to grand further time and directed to file final report. Accordingly the RP

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Sd-filed the final report with out a resolution of COC for passing an order of liquidation.

7. According to the RP there is no possibility of getting a prospective resolution applicant since all the assets are under attachment. He would submit that an appeal before the Appellate Authority under PMLA against the attachment order by Enforcement Director being pending this application is premature for passing an order for liquidation. According to him he is expecting an order in favour of the RP and if an order lifting the attachment if passed by the Appellate Authority under PMLA there is every possibility of getting bidders for take over the said assets. We do not find any justifiable reason for adjourning further in anticipation of getting a favourable order as submitted by the RP. On the other hand about one year lapsed after the completion of the CIRP period. He was unsuccessful to get prospective bidders subject to the result of the pending appeal before the PMLA. The corporate debtor company is otherwise is in operation may be due to the effective management of the affairs of the company by the RP.

8. Ld. Senior Counsel Mr. Joy Saha appearing for one of the Financial Creditors who is the member of CoC on the other hand objected the submissions on the side of the Ld. RP as to continuation of the proceeding without an end in anticipation of an order may or may not be passed in favour of the RP in the appeal pending before the Appellate Authority under PMLA.

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9. Having heard the RP at length and upon perusal of the summary of minutes of 14th CoC meeting, and the records we are of the considered opinion that this is a fit case wherein an order for liquidation is to be passed. The CoC has failed in approving any resolution plans with in the period of CIRP. In the said circumstances, it is unfair and unjust to continue the proceedings in the case in hand. On the other hand, the RP being failed in submitting a resolution plan under Section 30(6) of the I & B Code, 2016, an order for liquidation is liable to be passed under Section 33 of I & B Code, 2016.

10. The Liquidator is empowered to sell the Corporate Debtor company under liquidation as a going concern. The Liquidator can explore all the possibility as to whether the Corporate Debtor can be sold as a going concern failing which, he is also empowered to take steps under Section 230 of the Companies Act, 2013. That being the powers given to the Liquidator, we do not find any justifiable reason to exclude the period of the litigation pending up to the Hon'ble Supreme Court and wait further till the disposal of the appeal pending before the PMLA. Accordingly, we are inclined to pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in chapter 3. The Ld. RP was asked as to whether he is willing to continue as the Liquidator. He showed his readiness to submit written consent within a week. Accordingly, Mr. Anil Goel can be appointed as the Liquidator. In view of

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what is said above we are ordering liquidation of the CD, upon the following directions:-

ORDER

(i) Corporate Debtor M/s **Varrsana Ispat Limited** having CIN: U99999WB2000PLC124804, and having its registered office at Everest House, 46-C, Chowringee Road, 15th Floor, R.N. 15 B, Kolkata, in the state of West Bengal is ordered to be liquidated.

(ii) **Mr. Anil Goel** of AAA Insolvency Professionals LLP, B-143-144, Lajpat Nagar-I, New Delhi-110024, email id: aaa@aaainsolvency.com having Registration No. IBBI/IPA-001/IP-P00118/2017-18/10253 is appointed as the liquidator.

(iii) Liquidator is directed to issue public announcement stating that the Corporate Debtor is in liquidation, in one of the leading English newspaper as well as in one vernacular newspaper having wide circulation where the registered office of the corporate debtor is situated as per Section 33(1) (b) (ii) of the Code read with Reg. 12 (1) of IBBI (Liquidation Process) Regulations, 2016.

(iv) The Registry is directed to communicate this order to the Registrar of Companies, West Bengal and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi.

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(v) The Order of Moratorium passed under Section 14 of the I&B Code, 2016 shall cease to have effects and a fresh moratorium under Section 33 (5) shall commence.

(vi) This order is deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33 (7) of I&B Code, 2016.

(vii) Since the CD company is a going concern, the liquidator is at the liberty to sell the CD company as a going concern as per the provisions of the Code and regulation.

(viii) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of the Insolvency and Bankruptcy Code, 2016.

(ix) Upon proceeding with the liquidation the Liquidator shall file a ***preliminary report*** as per regulation 5 read with Reg.13 of the IBBI (Liquidation)Regulations, 2016 at the registry within 75 days from the liquidation commencement date and continue to file ***progress reports*** as per Reg.15(1) within 15 days after the end of the quarter in which he is appointed.

(x) The fee payable to the Liquidator shall form part of the liquidation cost as provided under Reg. 4(1) of the IBBI (Liquidation Process) Regulations, 2016.

(x) The free copy of this order is to be sent to the RP/Liquidator, Financial Creditor and the Corporate Debtor

Sd- Sd-by Speed Post as well as by email for information and for taking necessary steps.

(xi) Urgent photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

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(Harish Chander Suri)
Member(T)

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6/8/19.
(Jinan K.R)
Member(J)

Signed on this, the 6th day of August, 2019.

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IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

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C.P. (IB) No. 543/KB/2017

CA (IB)No.735/KB/2018

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-**Financial Creditor**

Versus

Varrasana Ispat Ltd., a Public Company, limited by shares, registered under provisions of the Companies Act, 1956 and having its registered office at Everest House, 46-C, Chowringhee Road, 15th Floor, R N 15 B, Kolkata-700071, in the state of West Bengal under the aforesaid jurisdiction.

-**Corporate Debtor**

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Anil Goel, son of Late Shri Dwarka Dass, Insolvency Professional having registration no. IBBI/IPA-001/IP-P00118/2017-2018/10253 and residing at B-31, First Floor, Kailash Colony, New Delhi-110048.

-Resolution Professional/Applicant

CORAM: 1. Shri Jinan K.R., Member (Judicial)
2. Shri Harish Chander Suri, Member (Technical)

Counsels on Record:

For the Resolution Professional

1. Mr. Anil Goel, Resolution Professional
2. Mr. Aniruddha Roy, Advocate for RP
3. Mr. Arun Gupta, FCA
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3. Mr. Saubhik Chowdhuri, Advocate
4. Mr. Dripto Manjumdar, Advocate

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Date of pronouncement of Order: 6th August, 2019.

ORDER

Per Shri Jinan K.R., Member(J)

1. This is an application filed by the Resolution Professional (in short "RP") for excluding the period of litigation in respect of the assets of the Corporate Debtor pending before Hon'ble Appellate Tribunal as well as the Appellate Authority under PMLA under Section 65(5)(c) of the Insolvency and Bankruptcy Code, 2016 (in short "I & B Code, 2016").
2. It is submitted by Ld. RP that he had preferred an appeal before the Hon'ble Appellate Authority as against the attachment of assets of the Corporate Debtor issued by the Enforcement Director on 04.12.2017 and got an order of stay on 21.12.2017 from the Appellate Authority. During Corporate Insolvency Resolution Process (in short "CIRP") period, that appeal has not been disposed of and it is still pending. If the attachment order is not lifted, no possibility of receiving higher bid as expected for a going concern. Upon said contentions, he prays for passing an order of exclusion of the period of CIRP from the date of filing of the appeal till the disposal of appeal filed before the Appellate Authority, PMLA.
3. According to the Ld. Counsel for RP, the application preferred before the Adjudicating Authority for passing an order of de-attachment was dismissed. He also filed an appeal before the Appellate Tribunal which was disposed of confirming the order of Adjudicating Authority on 02.05.2019 and aggrieved by the order of dismissal of the appeal, he had preferred an appeal before the Hon'ble Supreme Court and Hon'ble Supreme Court has dismissed the appeal on 22.07.2019 and the appeal preferred before the PMLA

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for de-attachment of the assets of Corporate Debtor is still pending for consideration and therefore, he needs further time to complete the process. Upon hearing the submission on the side of the RP and perusing the Hon'ble Appellate Tribunal order, we do not find any justifiable reason to exclude the period of CIRP only for the reason of pendency of the appeal before the Appellate Authority of PMLA. Accordingly, this application deserve no consideration. This application is dismissed however no order as to cost.

CA(IB)No.735/KB/2018 is disposed of accordingly.

Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

Sd

(Harish Chander Suri)
Member(T)

Sd
6/8/19

(Jinan K.R)
Member(J)

Signed on this, the 6th day of August, 2019.

Deeksha(steno)