



**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

INTERLOCUTORY APPLICATION NO.478 OF 2023 IN

COMPANY PETITION NO. (IB) NO.37/ALD/2021

An application Under Section 12A of Insolvency and Bankruptcy Code, 2016 read with Regulation 30A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

IN THE MATTER OF:

SARVESH KASHYAP,

INTERIM RESOLUTION PROFESSIONAL of

BRIJBIHARI METALLICS PRIVATE LIMITED

.....APPLICANT/ IRP

Versus

SEVEN STAR STEELS LIMITED

.....RESPONDENT

IN THE MATTER OF:

SEVEN STAR STEELS LIMITED

.....OPERATIONAL CREDITOR

VERSUS

BRIJBIHARI METALLICS PRIVATE LIMITED

.....CORPORATE DEBTOR

Order Pronounced on 23.11.2023



CORAM:

Sh. Praveen Gupta : Member (Judicial)
Sh. Ashish Verma : Member (Technical)

Appearances:

Ms. Debaleena Ganguly, Adv. : *For the Operational Creditor*

Sh. Anil Kumar, PCS : *For the Applicant/ IRP in IA No.478/2023 with IRP Mr. Sarvesh Kashyap present in person*

ORDER

1. This Application has been filed by the Interim Resolution Professional under section 12A of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking the following relief:-

“....

a) Recall the Order dated 24.08.2023 passed by this Hon'ble Adjudicating Authority and allow the applicant, to withdraw the Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 in the matter of M/s Seven Star Steels Limited V/S M/s Brijbihari Metallics Private Limited., Company Petition No. (IB) No. 37/ALD/2021;

b) Pass an order for the discharge of Sarvesh Kashyap, Interim Resolution Professional of Brijbihari Metallics Private Limited;



c) Pass such other or further order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case.

....”

- 2.** It is stated in the application that M/s Seven Star Steels Limited (Operational Creditor) initiated the Corporate Insolvency Resolution Process against M/s Brijbihari Metallics Private Limited, the corporate debtor, by filing an application under Section 9 of the Insolvency and Bankruptcy Code 2016, r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016. This Tribunal, vide an order on 24.08.2023, initiated the CIRP against the corporate debtor. The Insolvency Resolution Professional (IRP) received a copy of the order on 27.08.2023. Copy of order dated 24.08.2023 has been annexed as **Annexure-1** with the Application.
- 3.** It is stated that as per Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, IRP made the public announcement in Form A on the followings platform:-

 - a. *Times of India - English and Navbharat Times - Hindi Newspaper (Kanpur Edition) on August, 29, 2023 i.e.*



*within 3 days from the date of receipt of order. A copy of the Public Announcement has been annexed as **Annexure – 2** with the Application.*

b. Website of the Corporate Debtor. The Corporate Debtor does not hold any website therefore a new website was created and a public announcement was posted on the website of the Corporate Debtor i.e. www.brijbiharimetallics.com

c. Designated website of Insolvency and Bankruptcy Board of India at www.ibbi.gov.in on 29th August, 2023 which was confirmed by the Board on 29/08/2023.

A copy of the confirmation received from IBBI has been annexed as **Annexure – 3** with the Application.

4. It is also stated that notification regarding the commencement of the Corporate Insolvency Resolution Process (CIRP) was conveyed via email to the Operational Creditor of the Corporate Debtor, along with their legal representative. Additionally, notifications were dispatched to other creditors in accordance with the provisional balance sheet of the Corporate Debtor with the request to submit their



claims in response to this intimation. A copy of the communications with the Operational Creditor and to the other creditors of the Corporate Debtor has been annexed as **ANNEXURE - 4 (Colly)** with the Reply.

5. It is further stated that intimation of the initiation of the Corporate Insolvency Resolution Process was also sent to various Government Authorities including the Registrar of Companies, Income Tax Department, Provident Fund Department, Employees State Insurance Corporation, GST Department, and Inspector of Factories, Statutory Auditors through speed post/emails.
6. It is further stated that no CoC was constituted after the initiation of CIRP against the Corporate debtor due non-receipt of any claim till the last date of submission of claim i.e. 07.09.2023. In fact, the Operational Creditor who initiated the CIRP has also not filed his claim.
7. It is further stated that a list of creditors under Regulation 13(2) (d) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was filed before this tribunal vide filing no. 0902109/00942/2023 on 13.09.2023. A copy of the receipt



of the e-filing of a list of creditors has been annexed as **ANNEXURE-5** with the Application.

8. It is further stated in the application that a report of certifying the Constitution of the Committee of Creditors under Regulation 17(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was not filed as no creditor filed their claim.
9. It is further stated that a progress report in the matter of M/s Brijbihari Metalics Private Limited was filed by the Interim Resolution Professional before the Hon'ble Adjudicating Authority vide filing no. 0902109/00941/2023 on 13.09.2023. A copy of the receipt of e-filing of a progress report is attached and marked as **ANNEXURE - 6**.
10. It is further stated that the Interim Resolution Professional filed an application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016, r/w Rule 11 of the National Company Law Tribunal Rules, 2016 on 19.09.2023, with filing number 0902109/00952/2023. A copy of the receipt of the e-filing of the application under 60 (5) of the Insolvency



and Bankruptcy Code, 2016 has been annexed as **ANNEXURE – 7** with the Application.

11. It is further stated that the Counsel of the Operational Creditor, M/s Seven Star Steels Limited vide his email dated 05.10.2023 informed the IRP that both the parties have entered into an MOU dated 05.10.2023 and decided to settle their dues and agreed to withdraw the application filed for initiating corporate insolvency resolution process of the corporate debtor. Copy of the email of the counsel and MOU dated 05.10.2023 duly signed by both parties are annexed as **ANNEXURE-8 (Colly)** with the Application.

12. Furthermore, it is stated that pursuant to the Memorandum of Understanding (MOU) dated 05.10.2023, the Operational Creditor/Applicant, has formally communicated their intention to withdraw the application for initiating the Corporate Insolvency Resolution Process of the Corporate Debtor. This intent was confirmed by the submission of the duly signed and executed Form-FA. A Copy of duly signed and executed Form FA provided by the Operational Creditor has been annexed as **Annexeure-9** with the Application.



- 13.** It is stated that Corporate Debtor in terms of the MOU dated 05.10.2023 has paid an amount of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand only) vide DD No. 296828 dated 03.10.2023 drawn on Canara Bank towards CIRP Expenses and fees of IRP incurred till filing of this application. Copy of the DD No. 296828 dated 03.10.2023 drawn on Canara Bank has been annexed as **ANNEXURE – 10** with the Application. As per the last order dated 10.10.2023 passed by this Tribunal, a statement was made by the IRP present in person that this is the total lump sum amount towards the CIRP cost and nothing would be remaining whatsoever till the order under Section 12A is passed by this Tribunal.
- 14.** In view of the aforesaid circumstances, this application is being filed with the prayer to allow the withdrawal of the abovementioned application initiating the corporate insolvency resolution process of the corporate debtor.
- 15.** Taking into consideration the said submissions made by the Learned Counsel for the Applicant/RP as well as the averments made in the Application, instant application stands allowed and, in the circumstances, CP (IB) No.37/ALD/2021 stands withdrawn. Consequently, the CIRP



initiated against the Corporate Debtor also stands withdrawn.

16. The IRP is directed to hand over the management to the Board of Directors whose powers stood suspended by virtue of the initiation of the CIRP by this Tribunal while admitting the Petition in CP (IB) No.37/ALD/2021 vide Order dated 24.08.2023. The Corporate Debtor is released from all rigours of the IBC, 2016. The IRP is discharged from all his responsibilities. The Corporate Debtor shall operate through its own Board.

17. Accordingly **IA No.478/2023** stands allowed and **CP (IB) No.37/ALD/2021** stands dismissed as withdrawn.

18. Ordered Accordingly.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

Date: - 23.11.2023

Ankita Sharma
(LRA)