



**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

**IA (IB) No. 01/CB/2023
Connected With
CP (IB) No. 168/CB/2019**

In the matter of:

An Application under Section 60(5) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016;

-And-

In the matter of:

Swain Aluminium Pvt. Ltd., a Company having its registered office at House-2, Green Park, Sailashree Vihar, Bhubaneswar- 751 021;

...Corporate Debtor

-And-

In the matter of:

Swain Aluminium Pvt. Ltd., a Company having its registered office at House-2, Green Park, Sailashree Vihar, Bhubaneswar- 751 021;

... Applicant

-Versus-

Registrar of Companies, Cuttack, Odisha, at 2nd & 3rd Floor, Corporate Bhawan, Sector 1, CDA, Cuttack, Dist.-Cuttack, Odisha-753 014.

... Respondent

Coram:

Shri P. Mohan Raj	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)

Counsel on Record:

For Applicant:

Mr. S. S. Das Senior Advocate for
Mr. Shantanu Das, Advocate &
Mr. Ramashish Acharya Advocate.

For Respondent:

Nil



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Order reserved on: 28.02.2023
Order Pronounced on: 21.03.2023

ORDER

Per P. Mohan Raj, Member, (Judicial)

1. This is an application filed under section 60(5) of IBC 2016 R/w Rule 11 of NCLT Rules 2016. The applicant sought direction against the respondent directing him to waive the non-compliances of the erstwhile management of the corporate debtor from filing the annual returns of corporate debtor for the financial years 2017-2018 enabling the present management of the corporate debtor to file statutory filings including INC-22A, to shift the Registered office of the applicant company and also to carry out other day-to-day filings as per law after the effective date i.e., 01.11.2021.

2. Notice to the respondent served, despite of service of notice Respondent not appeared and not filed any reply.

3. The Applicant is successful resolution applicant, the resolution plan submitted by him was approved by this Adjudicating Authority in I.A.No.55/CB/2021 in C.P.No.168/CTB/2019 as envisaged under section 31(1) IBC 2016 on 01.11.2021.

4. The applicant expressed its difficulty in filing Form INC-22A for the purpose of shifting the registered office of the company. The applicant facing this difficulty because of non-filing of returns of the corporate debtor for the financial years 2017-2018 by the erstwhile management of the company. The CIRP was ordered against the corporate debtor on 20.02.2020 and Resolution plan was approved on 01.11.2021. Section 32A of IBC 2016 provides immunity to the successful resolution applicant from the liability of a corporate debtor for an offence or omission committed by the erstwhile management of the corporate debtor prior to the commencement Corporate Insolvency process. The non-liability of the successful resolution applicant in respect of dues of the corporate debtor prior to



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approval of resolution plan is reiterated by the Apex court in Ghanashyam Mishra and son's vs Edelweiss Asset Reconstruction (2021) SCC 657.

5. In this case also the applicant could not submit a form INC-22A due to non-filing of returns for the financial year 2017-18, prior to the admission of corporate debtor into CIRP, so the applicant who is successful resolution applicant should not suffer for non-compliance acts of the erstwhile management of corporate debtor. Further in S.No.8 of the Approved plan, permission is granted to the applicant to prefer present application for redressal and in S.No.15 of the plan the applicant is exonerated under section 32A of IBC 2016 from the liabilities of non-compliance of any statutory liabilities by the corporate debtor prior to the date of approval of resolution plan. In the circumstances the plea of the applicant is accepted.

6. In the result respondent is hereby directed to waive the non-compliances of the erstwhile management of the corporate debtor in order to enable the present management/applicant to comply with the statutory filing including INC-22A to change the registered office of the applicant and also to carry out its other day-to-day filings after the effective date 01.11.2021. Thus, the application is **Allowed**.

7. The registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and taking necessary steps,

8. Certified copy of the order may be issued, to all the, if applied for, upon compliance with all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.03.21 14:31:18 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN
RAJ
Date: 2023.03.21 15:45:14 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this 21st day of March, 2023.

Kaushal p.s.