

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH  
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**CA (IB) No. 92/CTB/2019  
Connected with  
TP No. 42/CTB/2019  
Arising out of  
CP (IB) No. 251/KB/2017**

**CORAM: 1. Ms. Sucharitha R. (J)  
2. Shri Satya Ranjan Prasad (T)**

**In the matter of:  
INSOLVENCY AND BANKRUPTCY CODE, 2016.**

**In the matter of:  
An application under Section 14 read with Section 17 and Section 60 (5) of  
the Insolvency and Bankruptcy Code, 2016.**

-And-

**In the Matter of:  
Rural Electrification Corporation, a company incorporated under the  
provisions of the Companies Act, 1956 and having its Registered Office at Core  
- 4, SCOPE Complex, 7, Lodhi Road, New Delhi - 110 003.**

... .. **Financial Creditor**

-Versus-

**Ferro Alloys Corporation Limited, a company incorporated under the  
provisions of Companies Act, 1956 having its Registered Office at D.P. Nagar,  
Village P.O. Randia, District - Bhadrak, Odisha - 756 335.**

... .. **Corporate Debtor**

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-And-

**In the Matter of:**

**Resolution Professional of Ferro Alloys Corporation Ltd.**, having his office situated at PricewaterhouseCoopers Professional Services LLP, Building No. 10, 17<sup>th</sup> Floor, Tower C, DLF Cyber City, Gurugram – 122 002.

... .. **Applicant**

-Versus-

1. **Central Bank of India**, having its office situated at Mid-Corporate Finance Branch J K Centre, Door No. 50-81-25, Sithma Peta, Visakhapatnam, Andhra Pradesh – 530 016

... .. **Respondent No. 1**

2. **Syndicate Bank**, having its office situated at Daba Garden Branch, D No. 30-15-141, 1<sup>st</sup> & 2<sup>nd</sup> Floor, Pavan Commercial Complex, Main Road, Daba Gardens, Visakhapatnam, Andhra Pradesh – 530 020.

... .. **Respondent No. 2**

3. **Bank of India**, having its office situated at Visakhapatnam Main Branch, 1<sup>st</sup> Floor, Isnar Plaza Towers, 2<sup>nd</sup> Line, Dwarakanagar, Visakhapatnam, Andhra Pradesh – 530 016.

... .. **Respondent No. 3**

4. **State Bank of India, Overseas Branch**, having its office situated at 9-1-57, GNT Road, Visakhapatnam, Andhra Pradesh – 530 013.

... .. **Respondent No. 4**

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**Counsels on record:**

1. Mr. D. Basu Adv.] For the REC Ltd.

1. Mr. Saurav Panda, Adv. ]

2. Ms. Charu Bansal, Adv. ] For the Resolution Professional.

3. Mr. Raj Mohanty, Adv. ]

1. Mr. Prasenjeet Mohapatra, Adv.]

2. Jr. Standing Counsel, GST ] For the CA No. 162 & IA No.176 of 2019

1. Mr. A.N. Das ]

2. Mr. N. Sarkar ] For Intervenor in CA (IB) No. 160/CTB/2019.

3. Mr. Aamir Khan ]

1. Mr. K.C. Satapathy ] For Financial Creditor, BOI.

1. Mr. Jishnu Saha, Sr. Adv. ]

2. Mr. Rajarshi Dutta, Adv. ]

3. Mr. N.S. Aulwalia, Adv. ]

4. Mr. Saswat Acharya, Adv. ] For the erstwhile Promoters.

5. Mr. Adhish Sharma, Adv. ]

6. Mr. A. Mohanty, Adv. ]

7. Mr. A.K. Dey, Adv. ]

1. Mr. Lalatendu Mohanty ] For the CA No. 92/CTB/2019.

1. Mr. Diwakar Maheshwari, Adv. ]

2. Mr. Amit Patnaik, Adv. ] For the Sterlite Power.

3. Ms. Pratiksha Mishra, Adv. ]

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**Date of Pronouncement of Order: 2<sup>nd</sup> day of March, 2020**

**ORDER**

**Per Ms. Sucharitha R., Member (J):**

1. This application has been filed by Resolution Professional of Ferro Alloys Corporation Limited under Section 14 read with Section 17 and Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 against the Central Bank of India, Syndicate Bank, Bank of India and State Bank of India. Applicant seeks certain directions against respondent on account of their unilateral action of appropriating the receivables of the Corporate Debtor deposited in the cash credit account and the working capital account of the Corporate Debtor.
  
2. Applicant states that by Order dated 6<sup>th</sup> July, 2017, Hon'ble NCLT, Kolkata Bench had passed an Order of admission under Section 7 of Insolvency and Bankruptcy Code, 2016 of the Corporate Debtor. Thereafter, the Hon'ble NCLAT in Company Appeal (AT) No. 92 of 2017 has dismissed the appeal and upheld the Order of the Hon'ble NCLT, Kolkata Bench. Thereafter, Hon'ble Supreme Court on 8<sup>th</sup>

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January, 2019 has also upheld the Order of the NCLT. Meanwhile, various extensions for Corporate Insolvency Resolution Process were granted by this Adjudicating Authority on various dates and finally the Resolution Plan was also approved on 30<sup>th</sup> January, 2020.

3. This application is filed to reverse the payment of appropriation of all the four respondents during Corporate Insolvency Resolution Process. Reply has been filed three respondents. The respondents have unilaterally stated that no payment is due for reversal. However, some payments towards the cash credit and working capital were paid by the erstwhile Resolution Professional in this matter towards the outstanding dues. The applicant in support of his claim quotes the judgment of the Hon'ble NCLAT in "*Indian Overseas Bank Vs. Mr. Dinkar T. Venkatsubramaniam, Resolution Professional for Amtek Auto Ltd., Company Appeal (AT) (Insolvency) No. 267 of 2017.*" The applicant/respondents both have filed statement of account for the relevant period. The reading of the same, it is clear that during the Corporate Insolvency Resolution Process various credits were given towards the loan account of the Corporate Debtor by all the four respondents. However, it is said by the respondents that some of the payments were paid by the erstwhile Resolution Professional on behalf of the Corporate Debtor. Hence, it is not appropriated towards the loan due

of the Corporate Debtor by the respondents. Hence, no violation of Section 14 of Insolvency and Bankruptcy Code, 2016.

4. This Adjudicating Authority by Order dated 27.09.2019 directed the Resolution Professional to call for a meeting between the applicant and the respondents to sort out the issue regarding the actual amount to be reversed by each respondent. The meeting was held on 9<sup>th</sup> October, 2019 and all the four respondents participated in the meeting. The Resolution Professional submitted the outstanding payment from each of the respondents.

5. The outstanding balances as per the claim form (Form C) submitted by the said lenders and their outstanding as on August 31, 2019 are as under: -

(INR in Cr.)

<b>Financial Creditor</b>	<b>As per Form – C</b>	<b>31<sup>st</sup> August, 2019</b>
<b>Bank of India</b>	12.33	-
<b>Central Bank of India</b>	13.29	12.70
<b>Syndicate Bank</b>	3.23	-
<b>State Bank of India (incl SBBJ)</b>	1.00	-
<b>Total</b>	<b>29.85</b>	<b>12.70</b>

Hence, it is clear that amounts were credited towards loan accounts of Corporate Debtor, and adjusted by respondents during CIRP period.

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6. Accordingly, the following amount ought to be reversed by each banker which was credited towards the loan accounts of the Corporate Debtor during the Corporate Insolvency Resolution Process when moratorium was in place. This Adjudicating Authority vide Order dated 27.09.2019 has directed the Resolution Professional to call for a joint meeting with all the respondents to sort out the various entries reflected in the statement of accounts of each respondent and take steps for reversal of the same. However, in the meeting, the respondents did not agree for the refund of the amount appropriated during the moratorium. The applicant submits that the following amount ought to be reversed by each respondent as per the tabular column given below: -

**(In Lakhs)**

<b>Particulars</b>	<b>Fund Based * (including Term loan)</b>	<b>Non-Fund Based</b>	<b>Total</b>
Bank of India	590.95	1,236.22	1,827.17
Central Bank of India	36.50	1,383.39	1,419.89
Syndicate Bank	-	326.87	326.87
State Bank of India	99.61	500.17	599.78
<b>Total</b>	<b>727.06</b>	<b>3,446.65</b>	<b>4,173.71</b>

7. The 1<sup>st</sup> respondent, the Central Bank of India states that the Corporate Debtor was availing Cash Credit Hypothecation facility under Consortium, and Term Loan outside the consortium. After the initiation of the Corporate Insolvency Resolution Process, the respondent/bankers alongwith the other consortium bankers have frozen the operations of the Corporate Debtor. The cash credit facility was continuing on the basis of

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the renewal. At the time of filing of this reply, there is no facility offered by respondents to the Corporate Debtor. The liability of 26.07 crores which included Non-fund-based limit of Rs. 13 crores. The liability came down to 12.37 crores when the LC Bills matured for payment on due dates and the Company paid the Bill under LC out of its normal cash flow as a going concern. Hence, it cannot be termed as recovery of the liability by the bank. A legally binding and legally unavoidable inter-bank commitment made in the LCs issued by the Central Bank of India on behalf of the Company ought to be honoured. Hence, the respondent was compelled to re-call the advances and advice the borrower company to repay the dues in full. The liability of Central Bank of India came down because of Company's unavoidable contractual retirement of the Bills drawn under the letter of credit. As on 19.09.2019, sum of Rs. 12.70 crore is outstanding by the Corporate Debtor to the Central Bank of India. It is admitted fact that their payments during the Corporate Insolvency Resolution Process towards the operations and facilities offered by Central Bank of India.

8. The 3<sup>rd</sup> respondent, Bank of India in its reply has stated that the Corporate Debtor does not have any current account. Bank of India never appropriated any amount of the cash credit account of the Corporate Debtor. However, the erstwhile Resolution Professional himself has

remitted some amount in the credit of the cash credit account. Hence, there is no contravention of Section 14 and Section 17 (1) of the Insolvency and Bankruptcy Code, 2016. In respect to the claim of Rs. 25.32 crores as on 18.07.2019, which included fund-based outstanding of Rs. 12.86 crores and NFB outstanding or Rs. 12.46 crores. The respondent further states that there is no question of appropriation of any amount. However, the erstwhile Resolution Professional had paid the amount and settled the dues.

9. The 4<sup>th</sup> respondent, the State Bank of India in its reply states that they have recalled the loan accounts on 21.03.2017 much before the initiation of the Corporate Insolvency Resolution Process. The State Bank of India further states that the Corporate Debtor does not maintain any current account with this respondent. However, the Corporate Debtor availed various credit facilities which include cash credit from Overseas Vishakhapatnam Branch of State Bank of India. The loans were recalled on 21.03.2017 as on date of insolvency commencement, the debit balance in cash credit account was sum of Rs. 20.53 crores. The respondent further submits that 1.0033 crores are debit balance in cash credit account held in SBBJ, Kannayapeta Branch. The sum of Rs. 20.53 includes the non-fund-based limits i.e. LC & Bill discounting facilities granted to the

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Corporate Debtor. In view of the fact that the erstwhile Resolution Professional himself remitted the amounts towards the credit of the cash credit account, this respondent has not violated/contravened provisions of Section 14 and Section 17 (1) (d) of the Insolvency and Bankruptcy Code, 2016. In respect to the claim of Rs. 20.52 crores as on 13.07.2017 which included fund based outstanding of Rs. 1.46 crore and non-fund-based outstanding of Rs. 19.06 crore. The fund-based facilities have been paid off by the company management i.e. the erstwhile Resolution Professional. Hence, it is incorrect to states that the respondent has appropriated the fund towards the loan account during the Corporate Insolvency Resolution Process. Since, it was a unilateral act of the erstwhile Resolution Professional who has paid during the moratorium period. So, this respondent categorically states that they have not violated the provisions of Section 14 and 17 of the Insolvency and Bankruptcy Code, 2016. However, the erstwhile Resolution Professional has inadvertently paid the loan amount.

10. There is no representation for Syndicate Bank. However, from the foregoing submissions of the respondents, it is clear that during the moratorium period various payments towards non-fund and fund-based accounts of the respondents were credited by the erstwhile Resolution Professional. Hence, these payments ought to be reversed as receivables

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of the Corporate Debtor. The meeting to sort out the issue between them have failed. The applicant has submitted the amount due and reversal by each respondent as given below: -

**(In Lakhs)**

<b>Particulars</b>	<b>Fund Based * (including Term loan)</b>	<b>Non-Fund Based</b>	<b>Total</b>
Bank of India	590.95	1,236.22	1,827.17
Central Bank of India	36.50	1,383.39	1,419.89
Syndicate Bank	-	326.87	326.87
State Bank of India	99.61	500.17	599.78
<b>Total</b>	<b>727.06</b>	<b>3,446.65</b>	<b>4,173.71</b>

11. In view of above, the following Order is passed: -

- (i) Central Bank of India (Respondent No. 1) is directed to reverse the due amount i.e. to the tune of Rs. 1,419.89 lakhs.
- (ii) Syndicate Bank (Respondent No. 2) is directed to reverse the due amount i.e. to the tune of Rs. 326.87 lakhs.
- (iii) Bank of India (Respondent No. 3) is directed to reverse the due amount i.e. to the tune of Rs. 1,827.17 lakhs.
- (iv) State Bank of India (Respondent No. 4) is directed to reverse the due amount i.e. to the tune of Rs. 599.78 lakhs.

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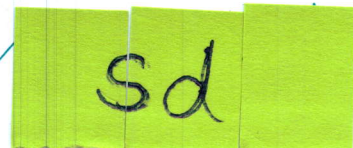
(v) This order shall be complied by all the respondents, within five weeks of receipt of this order.

11. Accordingly, this CA (IB) No. 92/CTB/2019 is **ALLOWED**.

12. Registry is hereby directed to communicate this Order to the applicant/petitioner & respondent. Let the certified copy of the Order be issued upon compliance with the requisite formalities.



**Shri Satya Ranjan Prasad**  
**Member (T)**



**Ms. Sucharitha R.**  
**Member(J)**

*Signed on this, the 2<sup>nd</sup> day of March, 2020.*

***Santosh\_P.S.***