

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

CP (IB) No.175/KB/2017

Coram: Shri Jinan K.R., Member (Judicial)

In the matter of:

An application under 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and in the matter of Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF:

**Sreerampur Ispat Private Limited,
Creditor**

... Operational

**8, Ganesh Chandra Avenue,
"Saha Court" 2nd Floor,
Kolkata 700 003**

And

**Barjora Steel & Re-rolling Mills Private Limited,..
Debtor**

Corporate

**135A Biplabi Rashbihari Bose Road,
1st Floor, Hare Street,
Kolkata 700 001**

Counsel Appeared:

1. Ms. Nitu Poddar, Pr. C.S. - Authorized Representative of Resolution Professional

Date of pronouncing the order: 21.03.2018

Sd

ORDER

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

1. This is an application filed under Section 9 of Insolvency and Bankruptcy Code 2016 (in short, I&B Code) by Sreerampur Ispat Private Limited (Operational Creditor) for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Barjora Steel & Re-rolling Mills Pvt. Ltd. (Corporate Debtor). Vide an Order dated 18.05.2017 this application has been admitted and Mr. Vinod Kumar Kothari was appointed as an Interim Resolution Professional (IRP). The Interim Resolution Professional's appointment was subsequently approved by the Committee of Creditor (CoC) and he was reappointed as a Resolution Professional. The progress report dated 26.02.2018, filed by the Ld. Resolution Professional came up for consideration on 19.03.2018. He filed the Progress Report expressing his inability in continuing the Corporate Insolvency Resolution Process of the Corporate Debtor with a recommendation for initiating the liquidation process against the Corporate Debtor.

2. Mr. Vinod Kumar Kothari even if was appointed as the Interim Resolution Professional vide order dated 20th May 2017, the order of appointment was not communicated to him at the instance of the Operational Creditor or at the instance of the Corporate Debtor. The Operational Creditor in the application proposed the name of one Mr. Kailash Chandra Dhanuka as an IRP. However, the adjudicating authority being satisfied that the name of the Interim Resolution Professional proposed by the Operational Creditor is none other than an associate of the applicant who filed the application not

appointed the insolvency professional proposed by the operational creditor but appointed Mr. Vinod Kumar Kothari.

3. Dissatisfied with the change of IRP proposed by the Operational Creditor he filed an application for correction of the order as if the adjudicating Authority has committed a mistake in not appointing the resolution professional proposed by the operational creditor. Vide order dated 5th July, 2017 the adjudicating authority declined to change the Resolution Professional already appointed and directed the operational creditor to communicate the order of the appointment of Interim Resolution Professional to the Operational Creditor. Despite explanation sought for, the Operational Creditor did not communicate the order of appointment to the Resolution Professional. However, the Resolution Professional on getting verbal information regarding the appointment, accepted the appointment at a belated time on 28.11.2017 in which 180 days of corporate insolvency resolution process already expired. However, he showed his willingness to continue the process and issued the publication but for want of non-cooperation of the Corporate Debtor, he failed to collect the requisite information and documents from the Corporate Debtor for the purpose of preparation of Information Memorandum, thereby he was unable to call for expression of interest for enabling him to obtain Resolution Plan.

4. The Ld. Resolution Professional in his report stated that he was unable to appoint valuers for valuation of assets of the Corporate Debtor for want of sanction of necessary fund by the Committee of Creditor (CoC). He also stated that though he tried his level best to carry out the statutory obligation, there has been no progress in the resolution process of the Corporate Debtor, and that to the understanding of the CoC there is no major probability of revival of the Corporate Debtor and CoC did not grant any interim finance and thereby he

could not move further in achieving the objective of the Resolution Process and he was compelled to file the report. In the meanwhile the maximum period permitted for completion of the corporate insolvency resolution process under section 12 was expired and at this juncture the 3rd progress report filed by him came up for consideration.

5. Heard the Ld. Pr. C.S. appearing for the Ld. Resolution Professional. Perused the reports and the documents annexed to the Report.

6. It is submitted on behalf of the Ld. Resolution Professional that for not granting any financial aids by the applicant as well as the Financial Creditors who are the members of the CoC and since the account of the Corporate Debtor has been long standing as Non-Performing Assets (NPA), and since he could not expect any financial aid from the CoC and since his efforts to see that the Corporate Debtor Company is to restart its operation through one of its directors of the Corporate Debtor namely Mr. Roongta was also failed for want of fund mobilization at the instance of the director of Corporate Debtor, he could not continue the process further.

7. The Corporate Insolvency Resolution process is a time bound process and there has already been an inordinate delay for the initiation of the said process and in the above said peculiar circumstances and that Corporate Debtor's continued non-cooperation despite direction issued and CoC members reluctant to sanction any financial aid to the Resolution Professional, and resolution professional was unable to spend money out of his pocket he could not appoint valuers for valuation of assets of corporate debtor, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulation, 2016.

8. The above said factors indicate that there is zero co-operation from the side of Corporate Debtor, there is zero cooperation on the side of the applicant as well as Financial Creditors and other Operational Creditors who are the members of the CoC, there is zero cooperation from the Corporate Debtor too and the work done by the Resolution Professional is limited to publication of corporate insolvency resolution process. Though, the resolution cost spent by the resolution professional has got first charge over the assets of the corporate debtor, no lenders came forward to sanction necessary fund to the resolution professional to complete the process. The maximum period permitted for completion of the Corporate Insolvency Resolution Process being expired on 14.01.2018 and the resolution professional failed in receiving any resolution plan under sub section (6) of section 30 of I&B Code, I have no other option other than to pass an order requiring the corporate debtor to be liquidated.

9. In view of the above said circumstances I hereby pass an order requiring the Corporate Debtor the Barjora Steel & Re-rolling Mills Pvt. Ltd. to be liquidated in the manner as laid down in Chapter III of Part II of I&B Code, 2016, upon the following directions:

- (i) Shri Vinod Kumar Kothari is appointed as the liquidator.
- (ii) Shri Vinod Kumar Kothari is directed to issue public announcement that the Corporate Liquidator is a Liquidator in terms of Regulation 12 of Insolvency and Bankruptcy Regulation 2016.
- (iii) The Registry is directed to communicate this order to the Registrar of Companies, West Bengal and to the Insolvency and Bankruptcy Board of India (IBB), New Delhi.

- (iv) 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.
- (v) 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.
- (vi) 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.

10. Copy of this order be sent to the Liquidator for taking necessary steps.

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

List it on 04.06.2018 for filing input.

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(Jinan K.R.)
Member (Judicial)

Signed on 21st day of March 2018.

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