IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Before Shri Madan B. Gosavi, Hon'ble Member (J)

CP (IB) No. 754/KB/2017 alongwith CA(IB) No.111/KB/2017

In the matter of:
An application under section 30(6) read with section 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency & Bankruptcy Code, 2016 Read with Regulation 39(4) of The Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

-And-

In the matter of:

Asset Reconstruction Co. India Limited;

... **Petitioner / Financial Creditor**

-Versus-

In the matter of:

Sunil Ispat & Power Limited,

.... **Respondent/Corporate Debtor**

-And-

In the matter of:

Arun Kumar Gupta, Resolution Professional appointed under Section 16 read with section 22(3)(a) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the said IBC), S/o Mr. S. M. Gupta, carrying on his profession from office at P-15, Bentinck Street, Kolkata- 700 001;

...**Applicant/ Resolution Professional**

Counsel appeared:

1. Mr. Arun Kumar Gupta, FCA,	] R.P.
2. Mr. Wrishik Ganguly,	] For the R.P.
3. Mr. Sumit Binani, PCA,	] Successful Resolution Applicant

Sd

ORDER (Amended)

This Tribunal delivered its judgment in the above-captioned case vide Order dated 08.02.2019. On 11th February, 2019, the Ld. Counsel for the petitioner mentioned about one mistake in paragraph 9 at page 5 of the Order regarding the resolution of Corporate Debtor's name in CIRP.

Accordingly, under Rule 154(1) of the National Company Law Tribunal Rules, 2016, I am substituting the para 9 at page 5 of the Order dated 8th February, 2019 as follows:

> "***9. After going through the plan and having heard the Resolution Professional in person, I am satisfied that the resolution plan of Sunil Ispat & Power Limited as approved by the CoC under sub-section (4) of section 30 of I&B Code meets all requirements as stated under sub-section (2) of section 30 of I&B Code. Hence, I approve the same plan by the following order***:"

Other contents of the Order of this Tribunal dated 8th February, 2019 will remain the same.

Registry is hereby directed to communicate the order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post and also by email.

Let the certified copy of the order be issued upon compliance with requisite formalities.

Sd

(Madan B. Gosavi)
Member (J)

Signed on this, the 12th day of February, 2019.

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...**Applicant/ Resolution Professional**

Counsel appeared:

1. Mr. Arun Kumar Gupta, FCA,] R.P.
2. Mr. Wrishik Ganguly,] For the R.P.
3. Mr. Sumit Binani, PCA,] Successful Resolution Applicant

Date of Pronouncement of Order: 08.02.2019

ORDER

Asset Reconstruction Co. India Limited - the Financial Creditor has filed this application under section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **Sunil Ispat & Power Limited-** the Corporate Debtor to start Corporate Insolvency Resolution Process (in short, "CIRP") of the Corporate Debtor as they committed default in paying the financial debt of Rs. 25,75,25,402/-, i.e. the debt assigned to them by the State Bank of India.

2. This authority vide order dated 31.07.2018 admitted the corporate debtor in CIRP. Mr. A.K.Gupta was appointed as IRP. On 02.08.2018, the IRP made public announcement by publishing notice in English "Financial Express" and in Bengali "Ekdin" newspaper declaring that CIRP of the corporate debtor is initiated and called from its creditors their claim with the proof. He received total eight claims from the creditors. Out of them, five were financial creditors and three were operational creditors. He formed CoC consisting of five financial creditors allowing them the voting share percentage on the basis of their claims. They are : (i) Housing & Urban Development Corporation Ltd. (41.25%), (ii) Assets Reconstruction Company India Ltd. (26.37%), (iii) Central Bank of India (12.38%), (iv) Syndicate Bank (9.95%) and (v) Bank of Baroda (10.05%). The CoC held their first meeting on 28.08.2018. The IRP is appointed as RP by 100% votes. He was instructed to make public announcement and call for EoI and resolution plan from the prospective resolutin applicants. In pursuant to that advertisement, the RP received EoI from 15 applicants but out of them, only seven applicants filed EoI with process fees of Rs.1 lakh each. He submitted before the CoC that all such EoI are under their consideration. The CoC only

found these applicants were eligible to submit resolution plan. One of such applicants, M/s. Apex Shoppers Pvt. Ltd. was not made eligible creditor of the turnover of more than Rs.100 crores during last three financial years. It appears that in further process only four applicants submitted the resolution plan. They were - (i) M/s. Bharat Benefication and Power Pvt. Ltd. (ii) M/s. Maruti Ferrous Private Ltd. (iii) Shree Rupanadham Steel Pvt. Ltd. and (iv) Sunil Sponge Private Ltd. The RP submitted all four resolution plans before the CoC. In meeting dated 10.12.2018, the CoC decided to adopt open bidding process to finalise one plan. That open bidding process was held in the 6th CoC meeting dated 20.02.2018. After lot of deliberations, the CoC accepted the resolution plan submitted by M/s. Maruti Ferrous Private Ltd. declaring the same to be H-1 bidder. However, H-1 bidder was directed to revise the plan without changing the final amount. In the 7th CoC meeting dated 10.01.2019, revised plan as submitted by M/s. Maruti Ferrous Pvt. Ltd. is approved by the CoC by 100% voting shares. The CoC directed the RP to submit that resolution plan for approval of this authority. Accordingly, the RP filed this application [CA(IB) No.111/KB/19)] under section 13(6) read with section 31 of I&B Code for approval of the resolution plan.

3. Section 31(1) of I&B Code mandates this authority to approve the resolution plan as approved by the CoC provided the plan meets all requirements as defined under sub-section (2) of section 30 of I&B Code. Section 30(2) of I&B Code states that RP to submit resolution plan for the approval of this authority, if (i) the plan provides the payment of insolvency resolution cost, (ii) it provides for payment of debt of operational creditors subject to provision of section 53 of I&B Code, (iii) the plan provides the management of affairs of the corporate debtor after approval of plan by this authority, (iv) it provides mechanism for supervision of effective implementation

of the plan, (v) it does not contravene any provisions of law and (vi) it conforms other requirements as specified by the Board.

4. It is also the requirement of the law that successful resolution applicant has to file affidavit stating that it is eligible to submit the plan as not disqualified under section 29A of I&B Code (related party of the Corporate Debtor). It is also the requirement of law that RP shall file affidavit stating that the plan submitted for the approval of the authority is as per the provisions of law.

5. Keeping before my site, the above provisions of law, I have carefully gone through the resolution plan of M/s. Maruti Ferrous Private Ltd. submitted for my approval.

6. I find that page no.225 (Annexure "F") is the compliance certificate of the RP under Regulation 39(4) of IBBI (Insolvency Resolution Process for the Corporate Person) Regulations, 2016 setting out the details of the CIRP in a nutshell and certifying that the plan does not contravene provisions of any law. At page 233 of the application, the Successful Resolution Applicant's affidavit is produced affirming the fact that the successful resolution applicant does not suffer in disqualification as stated under section 29A of the I&B Code, 2016.

7. Ld. RP pointed out at page 61 of the plan the provision is made to incur the CIRP cost of Rs.35 lakhs. At page 64 of the plan, it is mentioned that during CIRP, the RP did not receive any claim from employees and workmen of the corporate debtor. Hence, no provision is made thereto. It appears from record that the RP verified operational creditor's claim worth Rs.19,82,08,779/- (including government dues and taxes). It is suggested in the plan that they may be waived or written off. However, I hold that such jurisdiction is not conferred

on this authority under I&B Code. The charge of the government dues/taxes shall remain subsisting. This plan is approved subject to these observations.

8. At page 58 of the plan, the mechanism is provided for management of affairs of the corporate debtor and at page 54, it is mentioned that the monitoring committee is formed who shall have close supervision and implementation of the plan. I find that RP as a whole does not contravene any provisions of law. It meets all the requirements as specified by the Board. 1

9. After going through the plan and having heard the Resolution Professional in person, I am satisfied that the resolution plan of Liberty House Group Pte Ltd. as approved by the CoC under sub-section (4) of section 30 of I&B Code meets all requirements as stated under sub-section (2) of section 30 of I&B Code. Hence, I approve the same plan by the following order:

ORDER

The Resolution Plan of M/s. Maruti Ferrous Private Limited,which is approved by the CoC with a 100% voting share is hereby approved under provisions of section 31(1) of the Insolvency & Bankruptcy Code, 2016, which will be binding on the Corporate Debtor, its employees, members, creditors, coordinators and other stakeholders involved in the Resolution Plan.

2. The revival plan of the company in accordance with approved Resolution Plan shall come into force with immediate effect subject to payment of government dues and taxes.

3. The moratorium order passed under Section 14 shall cease to have effect.

4. The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.

5. Before parting with, it appears to me that we have to endorse my appreciation to the work rendered by the Resolution Professional, Mr. Arun Kumar Gupta, FCA for seeing that the Resolution Plan is approved by the CoC so as to give a rebirth to the dying company.

Accordingly, CP(I.B.) 754/KB/2017 alongwith CA(IB) 111/KB/ 2019 are disposed off.

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

Sd/-
(Madan B. Gosavi)
Member (J)

Signed on this, the 8th day of February, 2019.