

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

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

CA(IB) No.714/KB/2018, IA(IB) No.744/KB/2018 in CP (IB) No. 446/KB/2017

In the matter of:

An application under Rule 11 of the National Company Law Tribunal Rules, 2011;

-And-

In the matter of:

Section 9 of the Insolvency and Bankruptcy Code, 2016;

-And-

In the matter of:

Shreeshyam Metaliks Private Limited, a private Non-government Company, limited by shares, registered under the provisions of the Companies Act, 1956 bearing CIN: U271060R2004PTC007700 and having its registered office at Shyam Kutirmaswari Pada, Jharsuguda- 768201, Orissa.

... **Applicant/Operational Creditor**

-Versus-

In the matter of:

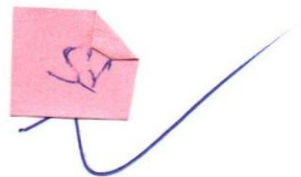
Concast Steel & Power Limited, a public Non-Government Company, limited by shares, registered under the provisions of the Companies Act, 1956 bearing CIN: U51909WB1995PLC072045 and having its registered office at 21, Hemant Basu Sarani, 5th floor, Room No.511 and 512, Centre Point, Kolkata- 700 001, W.B. ;

... **Respondent/Corporate Debtor**

-And-

In the Matter of:

Concast Bengal Industries Contractors Workers Union, (Junbadia branch) represented by Sri Pradip Das, son of late Lal Mohan Das, residing at Village-Kalyanpur, P.O.



Gouripur, District and Post Office-Bankura, West Bengal;

Counsel appeared:

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| 1. Mr. M.S.Tiwari, Advocate |] SFIO |
| 1. Mr.Kshitiz Chhawchharia |] Resolution Professional |
| 2. Mr. Jishnu Chowdhury, Advocate |] For the R.P. |
| 3. Mr.Soorjya Ganguli, Advocate |] |
| 4. Ms. Pooja Chakraborti, Advocate |] |
| 1. Mr. Siddhartha Datta, Advocate |] For the CoC |
| 2. Ms.Suhani Dwivedi, Advocate |] |
| 1. Mr. Rahul Auddy, Advocate |] MSTC |
| 1. Mr. Ratnanko Banerjee, Sr. Advocate |] Respondents |
| 2. Ms. Noelle Banerjee, Advocate |] |
| 3. Mr. Dipanjan Dey, Advocate |] |

Date of Pronouncement of Order: 26.09.2018

ORDER

M/s. Shreeshyam Metaliks Private Ltd. has filed this application under section 9 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against the Corporate Debtor, Concast Steel & Power Limited to start Corporate Insolvency Resolution Process (in short, "CIRP") of the Corporate Debtor as the Corporate Debtor was unable to pay the Operational debt to the tune of Rs.2,58,44,678.00 and the interest thereon @ 12%p.a.

2. This authority by order dated 07.11.2017, admitted the application to start CIRP of the Corporate Debtor. One, Mr. Sanjay Kr. Agarwal was appointed as Interim Resolution Professional (IRP). On 22.11.2017, IRP

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made public announcement of the CIRP of the Corporate Debtor by publishing notices in Business Standard and Aajkal, English and Bengali newspapers. Both the newspapers are having wide circulation within West Bengal.

3. It appears from record that the Corporate Debtor was having four manufacturing units in working condition. They are situated at Sodepur, Bankura, Jharsuguda and Vizag. Out of them, three manufacturing units at Sodepur, Jharsuguda and Vizag are already shut down and not working since 2016-17 i.e. prior to filing of this petition. The unit situated at Bankura is still working in full capacity. It further appears from record that the CoC in their first meeting held on 22.12.2017 replaced the IRP, Mr. Sanjay Agarwal by appointing Mr. Kshitiz Chhawchharia as the Resolution Professional (RP). Mr. Chhawchharia took over the affairs of the Corporate Debtor from the IRP, Mr. Agarwal.

4. On 19.01.2018, the RP made fresh public announcement of CIRP of the Corporate Debtor in above-mentioned newspapers. He called for Expression of Interest (EoI) as well as Resolution plan from the prospective resolution applicants. It is seen from record that 60 prospective applicants sent EoI but out of them three EoIs were filed with required fees. It is also seen that none of them thereafter submitted any resolution plan.

5. CIRP period of 180 days was to complete on 05.05.2018. Hence, the CoC in its meeting dated 13.04.2018 instructed the RP to make application under section 12 of the I&B Code for extension of CIRP period for 90 days and accordingly, period was extended. The CIRP period was to be completed on 04.08.2018. In spite of extension of CIRP period, the RP did not receive

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any resolution plan. Hence, in the last meeting dated 31.07.2018, the CoC instructed the RP to file application under section 33 of the I&B code, 2016 requesting this Authority to pass order of liquidation of the Corporate Debtor (CA(IB) No.744/KB/2018).

6. While the main CP(IB) No.446/KB/2017 was pending for consideration, the Workmen Union of the Corporate Debtor filed CA(IB) No.714/KB/2018 with a prayer that one of the Units of the Corporate Debtor at Bankura may be liquidated as a going concern, in view of sub-clause © to sub-section (14) of Regulation 32 of I&B Code. The RP filed his response to this application.

7. I heard the arguments of the Ld. Sr. Counsel appearing for the Workmen Union, Ld. Counsel appearing for the RP. I also heard arguments of Ld. Advocate appearing for the CoC.

8. Ld. Sr. Counsel, Mr. Ratnanko Banerjee appearing for the Workmen Union submitted that it is not in dispute that the Unit at Bankura is working with full strength. There are more than 1300 permanent as well as casual employees working. He pointed out the list of pending Sale orders and submitted that if the sale orders are completed then the company may fetch revenue of more than Rs.2.17 crores. Ld. Sr. Counsel also pointed out EBIDTA statement for the period in between November, 2017 to June, 2018. He submitted that the Bankura Unit earned profit of Rs.6 lakhs during the above period. Ld. Counsel further submitted that if it is sold as a going concern, it may fetch more liquidation value. It will help maximization of the assets of the Corporate Debtor in liquidation. According to him, this course of action would be in consistence with the objects of the provisions of the I&B

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Code. He also submitted that if the unit is also liquidated along with other units, the employees and workers will lose job by virtue of provisions of section 33(7) of the I&B Code. Ld. Counsel brought to my notice that this authority has taken a similar view in the case of Gujarat NRE Ltd. (CP(IB) No.182/KB/2017).

9. As against this, the Ld. Counsel for the RP submitted that it is not practicable to liquidate one of the units of the Corporate Debtor as a going concern. He submitted that unit at Bankura is not at all earning profit as portrayed by pointing out the some figures of EBIDTA statement produced on record. He submitted that in fact the unit is also suffering losses. According to the Ld. Counsel, CoC has decided to liquidate the Corporate Debtor after considering all pros and cons of the matter. Their wisdom on financial matters may not be looked into doubt. He further submitted that the order passed by this authority in Gujarat NRE Coke Limited is based on altogether different facts. That company was ordered to be liquidated as a going concern because it was then earning profit of Rs.4 crores. He submitted that this authority is bound to accept the report of the RP and may pass order of liquidation of the Corporate Debtor as a whole.

10. Ld. Counsel for the CoC while supporting arguments of Ld. Counsel for the RP admitted that the financial creditors have suffered losses even during CIRP period. They are not in position to pump in more money to keep one unit in working condition. He requested that this authority may pass order of liquidation of the Corporate Debtor.

11. I have considered the arguments of all Ld. Counsels. It is not in dispute that out of four units of the Corporate Debtor, three are already

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closed. One at Bankura is working with full strength. There are about more than 1300 workers and employees (casual as well as permanent) are still working in that Unit. It is also not in dispute that some Sale orders are pending and they are worth more than Rs.2 crores. In such situation, I fail to understand as to why the RP wanted to close that plant and then to sell the same in liquidation. It is a common knowledge that the unit under operation will certainly fetch more liquidated value than the unit which has already been closed. As per amendment, Regulation 32(c) of the IBBI(Liquidation Process) (Amendment) Regulations, 2018 allows RP to liquidate the Corporate Debtor as a going concern, even in part.

12. It is true that order of this authority in Gujarat NRE Coke Ltd. cannot be used as a precedence herein. That company was then working with profit. Even in this case, Bankura unit is also earning some profit. I am not going in meticulous calculation of the income and expenditure figures which are produced before me. The facts remain on record and admitted by all the parties is that unit at Bankura is working at full strength and as many as 1300 employees are working in that unit. The unit has to complete the pending orders worth more than Rs.2 crores. If all the above facts are considered, I hold that the RP should use his professional skill and wisdom and liquidate the Bankura unit of the Corporate Debtor as a going concern. His such efforts would be within the object of provisions of I&B Code, i.e. maximisation of value of assets of Corporate Person and to promote entrepreneurship, etc. If the RP does not get any buyer for a period of three months to purchase that unit as a going concern, he should liquidate that unit as per provisions of section 33 of I&B Code. With the above observation, I proceed to pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in the Chapter III of Part II of I&B Code. I also pass an order under section 33 of

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the I&B Code, 2016 to start process of liquidation of the Corporate Debtor in the following terms:

ORDER

By this order, Corporate Debtor/ Concast Steel & Power Limited is liquidated subject to above observation.

2. Mr. Kshitiz Chhawchharia is appointed as the Liquidator.
3. It is directed that RP to liquidate the unit of Corporate Debtor at Bankura as a going concern by giving wide publicity of its liquidation process and if he does not get response from any buyer for a period of three months, he should approach this authority for further action.
4. Mr. Kshitiz Chhawchharia is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the IBBI(Liquidation Process) Regulations, 2016.
5. The Registry is directed to communicate this order to the Registrar of Companies, West Bengal and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi.
6. 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.
7. 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, except workers/employees working in Bankura unit of the Corporate Debtor.

8. 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.

9. Upon proceeding with the liquidation, the Liquidator shall file a **preliminary report** as per regulation 5 read with Reg.13 of the IBBI(Liquidation) Regulations, 2016 at the registry within 75 days from the liquidation commencement date and continue to file **progress reports** as per Reg.15(1) within 15 days after the end of the quarter in which he is appointed.

10. The fee payable to the Liquidator shall form part of the liquidation cost as provided under Reg. 4(1) of the IBBI (Liquidation Process) Regulations, 2016.

11. RP will file his preliminary report within 10.12.2018 with the Registry.

Copy of this order is to be sent to the Liquidator, Operational Creditor and corporate debtor by Speed Post as well as by Email for information and 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.

(Madan B. Gosavi.)
Member(J)

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26/9/2018

Signed on this the 26th day of September, 2018