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IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH

**CA (IB) No. 173/KB/2018**

**In**

**Company Petition CP (IB) No.361/KB/2017**

In the matter of :

State Bank of India – Financial Creditor

Vs.

Electrosteel Steels Limited – Corporate  
Debtor

Mr. Dhaivat Anjaria,

PricewaterhouseCoopers Private Limited,  
252, Veer Savarkar Marg, Shivaji Park.  
Dadar, Mumbai – 400 028 - Applicant

Vs.

1. The Director of Mines, State of Odisha,  
Department of Steel & Mines,  
Head of Department Building,  
Unit-V, Government of Odisha,  
Bhubaneswar – 751 001
2. The General Manager  
South Eastern Railways, Garden Reach,  
Kolkata – 700 043
3. The General Manager, East Coast  
Railways, Central Railway Building, Rail

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Sadan, Chandrasekharpur, Bhubaeswar -  
751017

4. The Director, Rail Movement (under railway Board), Fairlie Place, 3<sup>rd</sup> Floor, (Eastern Railway Building), Strand Road, Kolkata - 700 001
5. Sr. Divisional Operating Manager, Chakrdharpur Division, SER, Chakrdharpur-833102
6. Sr. Divisional Operating Manager, East Coast Railway, Khurda Road Division, Khurda - 7523050
7. Sr. Divisional Operating Manager, South Eastern Railways, Kharagpur Division, Kharagpur -721301

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

For the Financial Creditor :

1. Mr. Souvik Mazumdar, Advocate
2. Mr. Arif Ali, Advocate

For the Operational Creditor (Prefabs(Bihar) Pvt. Ltd.):

1. Mr. Akash Sharma, Pr. CS

For the Resolution Professional :

1. Mr. Siddhartha Datta
2. Mr. Vivek Misra
3. Ms. Isha Sinha
4. Mr. Jay Saha

For the Respondent No. 2 to 7 :

1. Mr. Arun Kumar Mishra, Advocate

For the Corporate Debtor :

1. Mr. Sachhida Nand Pandey, Advocate

Date of pronouncement of Order : 09-03-2018

Per Jinan K. R.

### O R D E R

1. This is an application filed under Section 60(5)(a)(c) read with Section 25 of the Insolvency and Bankruptcy Code, 2016 by the Resolution Professional praying for issuing direction to the Respondent Nos. 2 to 7 not to withhold permission for providing railway wagons (rakes) to the Company, the Corporate Debtor, for transportation of coking coal and iron ore; and make all the arrangements for the transportation of the said coking coal and iron ore; during the period of Corporate Insolvency Resolution process, as the company has a deemed consent to operate in terms of the provisions of the Air Act and the Water Act and incidental relief to permit the Corporate Debtor to procure, store and transport iron ore and coking coal for running the Corporate Debtor's Company as a going concern.

2. An Application bearing No. CA(IB)/33/2018 has been moved by the Ld. Resolution Professional for directing the respondent No. 1 not to withhold the permission to the Company to procure, store and transport coking coal and iron ore from their jurisdiction to Bokaro Plant during the CIR process as against the Respondent Nos. 2 to 7, and in the said application, this Adjudicating Authority has already issued orders directing appropriate authority to take decision on the application submitted by the Resolution Professional within a week of the submission of the application

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by the Resolution Professional keeping in view the provisions of Section 20 of the Insolvency and Bankruptcy Code, 2016.

3. It is submitted on the side of the Ld. Resolution Professional that despite submitting the application, the respondent did not issue permission as sought for, enabling the Resolution Professional to procure/store and transport iron ore and coking coal which are the essential materials for running the Company.

4. Annexure 'C' to the application, attention to which has been brought to my notice, shows that the Respondent, the Director of Mines, Odisha, Bhubaneswar had sent a reply to the Resolution Professional that procurement of raw materials by the Company can be allowed on receipt of the CTO issued by the JSPCB as per the requirement of OMPTS Rules, 2016.

5. According to the Ld. Counsel on the side of the Resolution Professional, the Corporate Debtor filed an application before the JSPCB on 29-09-2016 for the CTO for a period of five years and despite this, the JSPCB, gives a CTO dated 13-02-2017 for a period of one year which was valid till 31-12-2017.

6. This Adjudicating Authority admitted the application for initiating the Corporate Insolvency Resolution Proceedings vide order dated 21-07-2017 i.e. on the date of admission of the application filed for initiating the Corporate Insolvency Resolution Process as against the Corporate Debtor.

7. The CIRP period in the case in hand would expire on 17.04.2018. The Corporate Debtor is a going concern. Upon admission of the CP(IB) No.361/KB/2017 this adjudicating authority declares moratorium as per Section 14 of the I&B Code 2016. It is good to read Section 14 of the I&B Code, 2016 :

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**14.(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely :-**

**(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;**

**(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;**

**(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);**

**(d) the recovery of any property by an owner or less or where such property is occupied by or in the possession of the corporate debtor.**

8. The moratorium being declared in the case in hand withholding permission to the Corporate Debtor from procuring the essential material which is Iron Ore while the moratorium is in force is quite illegal.

9. Upon the application moved by the Resolution Professional this adjudicating authority already issued directions to the respondents herein vide order dated 11.01.2018 to consider the application filed by the Resolution Professional for renewal of permission for procuring Iron Ore by the first respondent. However, the first respondent vide letter dated 05.02.2018 opined that unless the Corporate Debtor produce CTO issued by JSPCB as per the requirement of the OMPTS Rules 2016, he could not issue a permission. The said direction issued by the first respondent is challenged in the application herein.

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10. Upon filing this application, notices were issued to all the respondents. Respondent No.2 to 7, though entered appearance, neither chosen to file any objection nor contested with application. Despite service of notice to Respondent No.1 on 23.02.2018, the first respondent neither turned up for contesting this application nor raised any objections.

11. Upon the above said contention of the Ld. Resolution Professional and upon hearing the argument advanced by the Ld. Resolution Professional, the short question arises for determination as to whether the first respondent can deny permission which seems to have expired while the moratorium is in force for want of renewal of CTO by the JSPCB.

12. According to the Ld. Counsel for the Resolution Professional, the Corporate Debtor submitted application for obtaining CTO in time but despite application submitted for issuing CTO to JSPCB it did not sanction or reject the application filed by the Resolution Professional dated 24.08.2017. It appears from the records that the Corporate Debtor preferred an application for issuing CTO for a period of five years before JSPCB, which gave the CTO dated 13.02.2017 for a period of one year which was valid till 31.12.2017. So the validity of CTO since expired during the moratorium declared in the instant application is in force. At this juncture, Ld. Counsel appearing on behalf of the Resolution Professional submits that deemed consent to operate in terms of the provisions of the Air Act and the Water Act is to be legitimately inferred for want of rejection or allowing the application within a period of three months of the date of application filed by the Resolution Professional before the JSPCB. When the statutory authority is duty bound to pass appropriate order in an application submitted before the authority, it is bound to pass an order either rejecting or allowing the application within the stipulated period. That being so, even after expiry of more than six months, the JSPCB not issued CTO nor rejected the application submitted by the Resolution Professional.

13. In the above said circumstances, I can have a legitimate inference of deemed consent to operate in terms of the provisions of the Air and Water Act. Moreover, it appears to me that being the period of CTO expires after the declaration of moratorium and before the expiry of the moratorium, the status of CTO shall continue as on the date of declaration of the moratorium. The effect of moratorium is that the status of any legal action to be initiated against the corporate debtor as on the date and the moratorium shall be deemed to have continued till the CIRP period expires.

14. The supremacy of the IB Code over any other law is an issue settling the rest by the Hon'ble Supreme Court in Innovative Industries Vs. ICICI Bank & Anr. The Hon'ble Supreme Court has held that the Insolvency and Bankruptcy Code 2016 is an act to consolidate and demand the laws relating to reorganization and insolvency resolution, inter alia, of corporate persons. It is a settled law that a consolidating and amending act like the present central enactment forms a code complete in itself and is exhaustive of the matters dealt with therein. There can be no doubt, therefore, that the code is a Parliamentary law that is an exhaustive code on the subject matter of insolvency in relation to corporate entities, and is made under Entry 9, List III in the 7<sup>th</sup> Schedule which reads as under:

***9 Bankruptcy and Insolvency. Sec. 238: Provisions of this Code to override other laws: - The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.***

15. Section 238 of the Code no doubt override over other laws and hence the Code take precedence over the OMPTS Rules, 2016 too. As per Section 20(1) of the Insolvency and Bankruptcy Code 2016, a Resolution Professional shall make every endeavour to protect the operation of Corporate Debtor as a going concern. Therefore, this application deserves

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consideration. Despite earnest efforts on the side of the Ld. Resolution Professional, the respondent did not take any action which warrants the adjudicating authority to issue direction as prayed for to see that the Corporate Debtor is a going concern till the CIRP period is over.

16. The above said discussions leads to a conclusion that withdrawal of permission for want of CTO while the moratorium is in force is illegal and is inoperative and it is in violation of the Section 14 of the I&B Code, 2016. In view of the above, the application in hand is liable to be allowed. Accordingly, it is allowed as per the following directions:

- (1) The first respondent is directed not to withdraw permission already given to the Corporate Debtor and to ensure that status quo as on 21.07.2017 when the moratorium was declared, shall continue till the CIRP period expires;
- (2) The first respondent is directed to issue necessary permission forthwith upon the production of copy of this order.

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(Jinan K.R.)  
Member(Judicial)

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