

**In the National Company Law Tribunal
Kolkata Bench
Kolkata**

Before Shri Jinan K.R., Hon'ble Member (J)

Cont. A. (IB) Nos. 282 & 283/KB/2018

[CA(IB) Nos. 203 & 202/KB/2018]

In C.P. (IB) No. 361 /KB/2017

In the matter of:

An application u/s. 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

An application under Rule 11 of the National Company Law Tribunal Rules, 2016;

-And-

In the matter of:

State Bank of India;

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Petitioner/Financial Creditor

-And-

In the matter of:

Electrosteel Steels Limited;

...

...

Respondent/Corporate Debtor

-And-

In the matter of:

Renaissance Steel India Private Limited, Shiv Mahal, B-47, 2nd floor, Connaught Place, New Delhi 110001;

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Applicant

-Versus-

1. Mr. Dhaivat Anjaria, Resolution Professional, Electro Steels Limited, 801, Uma Shani Apartments, Kanke Road, Ranchi 834008, Head Office at G.K.Tower, 19, Camac Street, Kolkata 700017;
2. Vedanta Limited, 1st Floor, C Wing, Unit 103, Corporate Avenue, Atul Projects, Chakala, Andheri (East), Mumbai City, MH 400093;

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Respondents

-And-

In the matter of:

Renaissance Steel India Private Limited, Shiv Mahal, B-47, 2nd floor, Connaught Place, New Delhi 110001;

...

...

Applicant

-Versus-

1. Mr. Dhaivat Anjaria, Resolution Professional, Electro Steels Limited, 801, Uma Shani Apartments, Kanke Road, Ranchi 834008, Head Office at G.K.Tower, 19, Camac Street, Kolkata 700017;
2. Tata Steel Limited, Bombay House, 24, Homi Mody Steet, Fort, Mumbai 400001;

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Respondents

Counsel appeared:

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| 1. | Mr. S. K. Kapur, Sr. Advocate |] For the |
| 2. | Mr. Siddhartha Dutta, Advocate |] Resolution |
| 3. | Ms. Suhani Dwivedi, Advocate |] Professional |
| 4. | Mr. Deepanjan Dutta Roy, Advocate |] |

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| 1. | Mr. Ratnanko Banerji, Sr. Advocate |] For Applicant |
| 2. | Mr. Shaunak Mitra, Advocate |] |
| 3. | Ms. Iram Hasan, Advocate |] |
| 4. | Mr. Debayan Sen, Advocate |] |

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| 1. | Mr. Samik Chakraborty, Advocate |] For Applicant in |
| 2. | Ms. Mudrika Khaitan, Advocate |] CA(IB) 643/KB/
] 2018 |

Order pronounced on 04/10/2018

O R D E R

1. Both the applications are taken together for convenience and since common points arise for determination and also for avoiding repetition of facts.

CA (IB) No.282/KB/2018.

2. This application is filed under Rule 11 of NCLT Rules 2016 read with Section 12 of the Contempt of Court Act 1971 and 425 of Companies Act, 2013 praying for initiating proceedings for Contempt of Court against the Resolution Professional for willful and deliberate disobedience of the Order dated 20.03.2018 passed by this Tribunal. This application was filed on 02.04.2018 while the CIRP process was pending for consideration.

3. Briefly stated the facts for consideration of the application are the following:

4. The applicant herein filed CA (IB) No.203/KB/2018 under Section 60(5) of the Insolvency and Bankruptcy Code 2016 (In short, **I & B Code, 2016**) as against the Resolution Professional of Corporate Debtor - Electrosteel Steels Limited for his alleged inaction on the objections filed by the applicant in respect of the eligibility of Vedanta Limited and filed one another application CA

(IB) No.202/KB/2018 for the alleged inaction on the objections filed by the applicant in respect of eligibility of Tata Steel Limited to the Resolution Professional under Section 29A of the I & B Code, 2016. The applicant prays for passing appropriate order directing the respondent in the said applications to decide the objections raised by the applicant on the eligibility of Vedanta Limited and Tata Steel Limited and certain other orders as detailed in the respective applications. Upon hearing and considering the above said two applications, this Tribunal allowed both the applications passing the following directions:

(i) A copy of the decision taken by the RP in respect of eligibility of resolution applicant Tata Steel Limited and Vedanta Limited as per Section 29A with supporting reasons for taking the decision is to be given to the applicant within three days of the date of this order with proper acknowledgment.

(ii) The applicant is allowed to submit its reply or its further objections, if any, to the decisions taken by the RP, to him in person or through e-mail within three days of the date of receipt of the copy of the decision as directed above;

(iii) The RP is directed to place all the objections of the applicant with supporting documents before the CoC with a copy of this order for its independent consideration as per proviso to Section 30 of the Code.

4. The above said directions are allegedly not complied with by the Resolution Professional. It is alleged that the Resolution Professional has willfully not complied with the above said directions of this Tribunal and that the Resolution Professional is intentionally withholding material information on the decision taken by him from the Resolution Applicant and Committee of Creditors (In short, **CoC**).Alleging non compliance of the directions, the applicant filed both these applications for taking action as against Resolution Professional (RP) for disobedience of Order dated 20.03.2018.

5. Both these applications are seriously challenged by the Resolution Professional. The Resolution Professional denied the allegations in total and submits that in compliance with the directions passed by this Adjudicating Authority, the Resolution Professional issued a copy of his decision in respect of eligibility under Section 29A of the Code to the Resolution Applicant, namely, Tata Steel Limited and Vedanta Limited along with

reasons in support of his decision to the applicant by way of e-mail on March 23, 2018 along with all its attachments, which were annexed and marked as **Exhibit 3** in his reply affidavit in the zip file annexed with the e-mail. The following documents were attached:

(I) Tata Steel Limited

- (a) Cover letter (duly signed by me) setting out the documents annexed in the zip folder;
- (b) A copy of the March 20 Order;
- (c) A copy of the e-mail dated January 31, 2018 received from Mr. Abhishek Dalmia, Chairman of Renaissance Group.
- (d) A copy of the applicant's decision along with the analysis of the note and opinion submitted by RSIPL.
- (e) A copy of the memorandum of Shardul Amarchand Mangaldas & Co., law firm and legal advisers to the RP.
- (f) A copy of the legal opinion from Jonathan Davies - Jones, Queen's Counsel, addressed to me.

(II) Vedanta Limited:

- (a) Cover letter (duly signed by me) setting out the documents annexed in the zip folder;
 - (b) A copy of the March 20 Order;
 - (c) A copy of the e-mail dated January 31, 2018 received from Mr. Abhishek Dalmia, Chairman of Renaissance Group.
 - (d) A copy of the applicant's decision along with the analysis of the note and opinion submitted by RSIPL.
 - (e) A copy of the memorandum of Shardul Amarchand Mangaldas & Co., law firm and legal advisers to the RP.
 - (f) A copy of the legal opinion from Chibesakunda & Co., a law firm in Zambia, addressed to the applicant.
6. Regarding the second direction, the applicant has submitted objections on his decision by e-mail dated March 23, 2018 in respect of the eligibility of Vedanta Limited, vide its e-mail dated March 26, 2018 and in respect of eligibility of Tata Steel Limited, vide its e-mail dated 26.03.2018 and in respect of the direction No.3, he shared the objections vide e-mail to all the members of the CoC dated March 27, 2018. The objections placed before the CoC deliberated and discussed and unanimously decided that based upon their independent consideration they concurred with

the Resolution Professional regarding the eligibility of Tata Steel Limited and Vedanta Limited and rejected RSIPL. The objections filed by RSIPL on 27.03.2018 do not put forward any new ground for disqualification under the Code and the objections relate to the decision taken by the RP to qualify Tata Steel Limited and Vedanta Limited. The CoC also complied with the directions passed by the Hon'ble Tribunal. The extract of the minutes of the 9th CoC meeting annexed with his reply affidavit proves the decision of the CoC.

7. In letter and spirit, the directions of the Tribunal referred to above have been complied with. Since he complied with all the directions of this Adjudicating Authority, the applications filed by the applicant are devoid of any merit and to be dismissed.

8. Heard the Ld. Sr. Counsel appearing on the side of the applicant and Ld. Sr. Counsel appearing on the side of the Resolution Professional. Perused the records.

9. CP (IB) No.361/KB/2017 was filed by the State Bank of India under Section 7 of the Insolvency and Bankruptcy Code 2016 for initiating Corporate Insolvency Resolution Process (In short, **CIRP**) as against the Corporate Debtor, Electrosteel Steels Limited. The Resolution Professional herein was appointed upon admission of

the application filed by the State Bank of India and the Resolution Professional initiated CIRP Process and successfully completed the CIRP process by identifying the resolution applicant and the Resolution Plan of Vedanta Limited has been approved by the CoC, and thereafter it was approved by the Adjudicating Authority.

10. Aggrieved by the Order, the applicant preferred an appeal before the National Company Law Appellate Tribunal (NCLAT), New Delhi. The Hon'ble NCLAT New Delhi confirmed the order of the Adjudicating Authority by approving the Resolution Plan and dismissed the appeal preferred by the applicant herein.

11. The applicant herein challenged the findings of CoC that Vedanta Limited and Tata Steel Limited are eligible under Section 29A of the I&B Code. The Adjudicating Authority has held that the resolution applicant Vedanta Limited and Tata Steel Limited are eligible and not barred under Section 29A(d) of the I&B Code 2016. That order was challenged before the Appellate Tribunal New Delhi. Confirming the order of the Adjudicating Authority the Hon'ble Appellate Tribunal dismissed the application. It is at this juncture this application came up for consideration.

12. Since both the applications were filed for initiating action against the Resolution Professional for the alleged disobedience of

the direction dated 20.03.2018, the moot point for determination is whether the applicant succeeded in proving a prima facie case of contempt as against the Resolution Professional. At the outset, I would say that there is no prima facie case made out for issue of notice so as to have the Resolution Professional appear in person. The burden is heavy on the side of the applicant to prove that there is deliberate disobedience of the directions of the Court by the RP.

13. The applicant herein is an unsuccessful bidder who had hotly contested the process of approval of Resolution Plan by the Resolution Professional in order to take over the stressed assets of the corporate debtor, namely, Electrosteel Steels Ltd. The Resolution Professional, in the case in hand, was in receipt of 4 (four) Resolution Plans. One among the applicants was the applicant / Renaissance Steel India Private Limited herein. While the Resolution Plans were under consideration before the Resolution Professional the applicant herein filed two applications, i.e., CA(IB) Nos. 202 & 203/KB/2018, challenging the decision of the Resolution Professional in holding that Vedanta Ltd. and Tata Steel Ltd., who are the other 2 Resolution Applicants, are eligible u/s. 29A(d) of the I & B Code, 2016. Those applications were allowed in part vide Order dated 20/03/2018 issuing 3 (three)

directions referred to above. Dissatisfied with the decisions taken by the Resolution Professional in respect of Resolution Applicants, Vedanta Ltd. and Tata Steel Ltd. in terms of the directions issued, the applicant filed the instant applications praying for initiating proceedings for contempt and for issuing directions to comply with the directions issued as against the Resolution Professional vide Order dated 20/03/2018 and further directions to the Committee of Creditors (In short, **CoC**) not to take decision in respect of the Resolution Plan of Tata Steel Ltd. and Vedanta Ltd. without considering its objection. These applications were filed on 02/04/2018.

14. Since the main relief sought for is to initiate contempt proceedings against the Resolution Professional it was taken up separately without mixing up with several applications pending for consideration in CP(IB) No. 361/KB/2017 and thus came up for consideration belatedly. The relief sought for other than to initiate proceeding for contempt as against the Resolution Professional has become infructuous since CP(IB) No. 361/KB/2017 was disposed of by this Bench vide order dated 17/04/2018.

15. Ld. Sr. Counsel appearing for the applicant submits that the Resolution Professional has willfully not complied with the

directions of the Hon'ble Tribunal and that Resolution Professional is initially withholding material facts based on which decision taken by him from the Resolution Applicant and CoC and therefore, the Resolution Professional is liable for contempt and prays for issuance of Rule 'Nisi'

16. The Ld. Resolution Professional in his reply explained in detail as to the compliance of the directions in letter and spirits. The explanation submitted by the Resolution Professional in the reply affidavit referred to above is self-explanatory. What is challenged at the time of hearing of these applications is that the Resolution Professional has not given copies of analysis done by KROLL Associates (India) Pvt. Ltd. and copies of opinion from Mr. Harish N. Salve, Sr. Advocate, addressed to the Resolution Professional as shown in **Annexure D**. Items no. 4 and 5 in the **Annexure D** are the above two documents allegedly not delivered to the applicant along with the copies of the decision of RP.

17. According to the Ld. Sr. Counsel, non-inclusion of copies of the above said opinion sought for by the Resolution Applicant to enable him to have a decision as to the eligibility of the disputed Resolution Applicants, namely, Vedanta Ltd. and Tata Steel Ltd.

amounts to non-compliance of the directions of the Hon'ble Tribunal. None of the directions referred to above includes specific directions to the Resolution Professional to deliver the opinions which the Resolution Professional has obtained to be given to the applicant herein.

18. Generally the decisions of the Resolution Professionals are seen not reduced in writing and the decisions are found not supported with reasons. The Bench issued the said directions in order to enable the objector to receive the decisions of the Resolution Professional as to how he dealt with the objections raised by the applicant herein. The RP was ordered to give a copy of his decision along with the reasons for arriving at the conclusion about the objections. To arrive at a conclusion by the Resolution Professional, he can collect materials from any source of his choice as empowered by the provisions of the Code and Regulations. Collecting those materials or opinion may not be considered as reasons for arriving at his decision. He may have used that material for arriving at the decision regarding objections raised by the applicant.

19. The Resolution Professional has asserted that he has complied with all the three directions. The Ld. Sr. Counsel

appearing for the Resolution Professional submits that non-enclosure of Appendix 4 and 5, as stressed by the Ld. Sr. Counsel for the applicant was not at all disputed by the applicant when the Resolution Plan was considered by the Adjudicating Authority. According to him, the very same applicant filed CA(IB) No. 281/KB/2018 and raised the very same objections not against the Resolution Professional but against the CoC for disobedience of the directions of the Adjudicating Authority. The Adjudicating Authority considered the objections raised by the applicant in regard to the question of eligibility of Vedanta Ltd. and Tata Steel Ltd. A copy of the minutes of CoC was also brought to my notice on the side of the Resolution Professional. It is understood that the Resolution Professional has brought to the notice of the CoC the directions issued by the Adjudicating Authority in the CA(IB) Nos. 202 & 203/KB/2018 and CoC has elaborately discussed the objections raised by the applicant herein and concurred with the decision of the Resolution Professional.

20. According to the Ld. Sr. Counsel for the Resolution Professional the report called for from KROLL Associates (India) Pvt. Ltd. includes opinions regarding the eligibility of all the four (4) Resolution Applicants under consideration before the Resolution Professional and therefore, it cannot be segregated

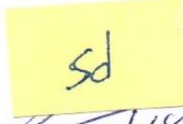
and sent to the applicant herein, as it contains confidential report about all the four (4) Resolution Applicants and according to him, it is for the said reason, the copy of the report submitted by KROLL Associates (India) Pvt. Ltd., was not given to the applicant herein.

21. By going through the explanation and the documents annexed with the applications and the reply affidavit, I am convinced that the Resolution Professional in the case in hand was not at all disobedient in complying with the directions. Nothing was brought out to show that the Resolution Professional is a contemnor, deliberately violating the directions. A mere omission of certain opinions called for by the Resolution Professional in determination of the objections as against the Resolution Applicants u/s. 29A of the Code, does not amount to willful or deliberate disobedience of the order of this Adjudicating Authority dated 20/03/2018. The law is settled as to what amounts to actionable contempt. ***“The power to punish for contempt has to be exercised not casually or lightly, but with great care and circumspection; and only where it is necessary to punish the contemner to uphold the majesty of law and dignity of the Courts”*** -- Held by the Hon'ble Supreme Court in **AIR 1979 (S.C.) 1528 (Babu Ram -versus- Sudhir Bhasin).**

22. The above said discussions lead to a conclusion that the applicant herein not at all succeeded in satisfying the Adjudicating Authority that a *prima facie* case has been made out for issue of notice for contempt. Therefore, both the applications require no consideration. It is liable to be dismissed, however, without costs.

23. In the result, both the applications are dismissed. No order as to costs.

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


4/10/18
(Jinan K.R.)
Member (J)

Signed on this, the 4th day of October, 2018.

Aloke/hb/.