

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

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

**Cont. A. (IB) No. 747/KB/2018
In
C.A. (IB) No. 563/KB/2018
In
C.P. (IB) No. 543/KB/2017**

In the matter of:

An application u/s. 74(2) of the Insolvency and Bankruptcy Code, 2016;

-And-

In the matter of:

An application us. 425 of the Companies Act, 2013;

-And-

In the matter of:

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

-And-

In the matter of:

Section 12 of the Contempt of Courts Act, 1971;

-And-

In the matter of:

SBER Bank; **Financial Creditor**

-Versus-

Varrsana Ispat Limited; **Corporate Debtor**

-And-

In the matter of:

Mr. Akshay Jhunjunwala, a director of Verrvana Ispat Limited and working for gain at Everest House, 46C, Chowringhee Road, 15th Floor, Room No. 15B, Kolkata 700071;

... .. **Applicant**

-Versus-

1. Central Bank of India, Corporate Finance Branch, 33 1/1, Netaji Subhas Road, Kolkata 700001;
2. The Manager, Central Bank of India, Corporate Finance Branch;
3. Mr. V. K. Singh, Finance General Manager, Central Bank of India, Corporate Finance Branch;
4. Mr. A. Bhavani Prasad, Deputy General Manager, Central Bank of India, Corporate Finance Branch;
5. Mr. T. K. Roy, Chief Manager, Central Bank of India, Corporate Finance Branch;
6. Indian Overseas Bank, International Business Branch, 6, Royd Street, Kolkata 700016;

7. The Manager, India Overseas Bank, International Business Branch;

8. Mr. Rishi Singh, Assistant General Manager, India Overseas Bank, International Business Branch;

9. Mr. Gaurav Singh, Assistant Manager, India Overseas Bank, International Business Branch;

... .. **Contemnors/Respondents**

10. Anil Goel, Resolution Professional in respect of Verrvana Ispat Limited having its office at Everest House, 46C, Chowringhee Road, 15th Floor, Room No. 15B, Kolkata 700071;

... .. **Proforma Respondent**

Counsels appeared:

- | | | |
|----|-------------------------------------|----------------------|
| 1. | Mr. Arun Gupta, FCA |] For the Resolution |
| 2. | Mr. Rohit Sharma, Pr. CS |] Professional |
| 1. | Mr. Ratnanko Banerjee, Sr. Advocate |] For the |
| 2. | Mrs. Manju Bhuteria, Advocate |] applicant in |
| 3. | Mr. Shaunak Mitra, Advocate |] Cont.A. (IB) No. |
| 4. | Mr. Saubhik Chowdhury, Advocate |] 767/KB/2018 |
| 5. | Mr. Dripto Majumdar, Advocate |] |
| 1. | Mr. Ramesh Ch. Prusti, Advocate |] For the Indian |
| 2. | Ms. Manini Kabi |] Overseas Bank |
| 1. | Mr. Gautam Chakraborty, Advocate |] For the Central |
| | |] Bank of India |

Order pronounced on 14/09/2018

ORDER

1. This is an application filed by one of the directors of the suspended Board of Directors of the corporate debtor u/s. 425

of the Companies Act, 2013 for initiating contempt proceeding against the respondent nos. 1 to 9 for the alleged willful, deliberate and contemptuous disobedience and violation of the order dated 12/07/2018 in C.A. (IB) No. 563/KB/2018.

2. C.A. (IB) No. 563/KB/2018 has been filed by the then Director of the corporate debtor alleging that the Central Bank of India and Indian Overseas Bank, who are the bankers of the corporate debtor refused to open Letter of Credits during the Corporate Insolvency Resolution Process period which is in progress, thereby disrupting the operation of the corporate debtor and prayed for issuing direction to both bankers to open fresh Letter of Credits so as not to disrupt the operation of the corporate debtor.

3. Notice to both the bankers were served. Despite service of notice to both banks, the banks did not turn up and upon hearing the Resolution Professional and the applicant, this Bench passed an order on 12/07/2018, directing the Banks to open the Letter of Credits in favour of the corporate debtor and not to recover any of the debt from the corporate debtor while the period of Moratorium is in force. In the order referred

to above, a typographical error has occurred with regard to the name of the Central Bank. The name of the Bank was typed mistakenly as Central Overseas Bank. This mistake itself is seen taken as one of the grounds of defence set up by the Central Bank for non-compliance of the order.

4. Being satisfied that the notices were served on the respective banks, the aforesaid order was passed ex-parte in C.A. (IB) No. 563/KB/2018 and the application was disposed of and neither the Central Bank of India nor the Indian Overseas Bank challenged the above said order noncompliance of the order by the respective banks amount to disobedience. Truly whether the disobedience is deliberate or willful is to be inquired into in detail for coming to a conclusion that the respondents are guilty of contempt or not. In such circumstances the applicant in C.A. (IB) No.563/KB/2018 filed the instant contempt application for initiating contempt proceeding against the Banks and their officers.

5. Notices were ordered in this application and were served upon the respondents. The respondents entered appearance and challenged the maintainability of the application by filing

reply affidavits. According to the Ld. Counsel for the Central Bank, this application is not maintainable because a director of a suspended Board of Directors of a corporate debtor cannot file an application of this nature as he has no *locus standi*. The said contention is unsustainable under law because the applicant come forward on the strength of the order which was passed by this Bench in C.A.(IB) No. 563/KB/2018. C.A.(IB) No. 563/KB/2018, filed under sub-section 5 of Section 60 of the Insolvency and Bankruptcy Code, 2016. Anybody can file an application u/s. 60(5) of the Code. So after getting an order in his favour though on ex-party, filing of this application for contempt appears to me, is perfectly maintainable.


6. Being found that the application is maintainable and upon hearing Ld. Sr. Counsel for the applicant and Ld. Counsel for the Central Bank and the India Overseas Bank, I am *prima facie* satisfied that the respondents against whom the allegations are leveled have to be summoned to Show Cause as to why the respondent should not be imprisoned or otherwise penalised or dealt with for having committed willful disregard of the order of this Tribunal in C.A.(IB) No. 563/KB/2018 dated 12/07/2018 and thereby, I am inclined to

issue Rule Nisi read with Rule 19 of Rules made by the Hon'ble High Court at Calcutta under Contempt of Court Rules, 1975, as there are no such Rules having framed applicable to this Tribunal.

7. In the result, I issue Rule Nisi by directing the respondents to appear in person at 1.00 P.M. on 27/09/2018.

8. List the Cont. A. (IB) No. 747/KB/2018 along with the C.P. (IB) No. 543/KB/2017 on **27/09/2018** for further consideration.

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


/s/ (Jinan K.R.)
Member (J)

Signed on this, the 14th day of September, 2018.

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