

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

Item No. 130
(IB)-202(PB)/2017

IN THE MATTER OF:

Punjab National Bank

.... Applicant/petitioner

Vs.

Bhushan Power and Steel Ltd.

.... Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016

Order delivered on 22.04.2019

Coram:

CHIEF JUSTICE (RTD.) M. M. KUMAR

HON'BLE PRESIDENT

SH. S. K. MOHAPATRA

HON'BLE MEMBER (TECHNICAL)

PRESENT:

Mr. Amit Singh Chaddha, Sr. Adv. with Srishti Govil., Adv.
Mr. Sahil Mongia, Mr. Monish Panda, Mr. Amit Kr.
Bhattacharya, Advs. with Ms. Kiran Sharma, CS in CA No.
437/19.

Mr. Arun Kathpalia, Sr. Adv. with Manmeet Singh, Ms.
Anjali A., Nishtha Chaturvedi, Advs. for JSW Steel
Mr. Amit Kr. Bhattacharya, Adv. in CA-1008, 1009, 1010
&1011/2018 (Intervenor).

Mr. Monish Panda, Advs. in CA-729/18.

Mr. Abhinav Vasisht, Sr. Advocate with Mr. Shantanu
Chaturvedi, Mr. Anoop Rawat, Mr. Saurav Panda, Mr.
Shreyas, Ms. Charu Bansal, Advs. for RP

Mr. Ramji Srinivasan, Sr. Adv. with Mr. Bishwajit
Dubey, Mr. Spandan Biswal, Ms. Srideepa
Bhattacharya, Mr. Nikhil Ramdev, Ms. Sylona
Mohapatra, Advs. for CoC

Dr. U.K Chaudhary, Sr. Adv. with Mr. Dhruv Gupta,
Mr. Arvind Kr. Gupta, Ms. Purti Marwaha, Ms. Henna
George, for Ex. Directors. (applicant in CA-327 &
286/2019 and for non-applicant in CA-254/2019

Mr. A.S Chandioke, Ms. Sweta Kakkad, Ms. Aditi
Mohapatra, Ms. Priya Agarwal, Mr. Arvind Kumar, Ms.
Henna George, Advs. for promoters

Mr. Virender Ganda, Sr. Adv. with Mr. Nikhil Palli,
Mr. Ayandeb Mitra, Advs. in CA-287/19

Mr. Arun Kathpalia, Sr. Adv. with Mr. Manmeet Singh,
Ms. Anjalai Anchayil, Ms. Bani Brar, Mr. Siddharth
Nath, Advs. in CA-254/19.(JSW Stell Ltd.)

Ms. Srishti Kapoor, Adv. in CA-537/2018

Mr. Nikhil Palli, Adv. in CA-287, 288, 289 of 2019.

Mr. Jishnu Chowdhary, Mr. Siddharth Sharma, Mr.
Arjun Asthana, Ms. Sreenita Ghosh, Advs. in CA-
1008/2018.

Mr. Sanjay Bhatt, Ms. Niharika Sharma, in CA-537,
1355/18.(EBNER Industries.)



Mr. Ramesh Chandra, Mr. Anirudh Pandey, Mr. Amithabh, Mr. Aditya P. Pandey, Adv. in CA-1116/18. Mr. Ashish Rana, Mr. Pronoy Choudhary, Mr. Sahil Dhawan, Mr. Suresh Baxy, Mr. Anurag Kr. Singh, Adv. in CA-935/2018. Mr. Manu Beri, Adv. in CA-1247/18. Mr. Amitabh, CS with Mr. Anirudh Kr. Pandey, Mr. Abhinaw Kumar, Adv. in CA -1116/18. Mr. Amir Kallem, Ms. Shweta Kapoor, Adv. for Shell India Ltd.

ORDER

The successful resolution plan applicant namely JSW Steel Limited has filed an affidavit of Mr. P. Ashok Kumar stating that numerous proceedings have been initiated against the ex.-directors and some others. A reference has been made in that regard to FIR No. RCBD1/2019/E/0002 dated 05.04.2019. The details of known/suspect/unknown accused with full particulars have been given in annexure 'A' which reads as under:-

- “1. M/s. Bhushan Power & Steel Ltd., F-Block, 1st Floor, International Trade Tower, Nehru Place, New Delhi.
2. Sanjay Singhal, CMD of M/s. BPSL, R/o 53, Jorbagh, New Delhi and 4, Amrita Shergil Marg, New Delhi.
3. Smt. Aarti Singhal, Vice Chairman, M/s. BPSL, R/o 53, Jorbagh, New Delhi.
4. Ravi Prakash Goyal, Director, M/s. BPSL.
5. Ram Naresh Yadav, Full Time Director, M/s. BPSL.
6. Hardev Chand Verma, Director, M/s. BPSL.



7. Ravinder Kumar Gupta, M/s. BPSL.
 8. Ritesh Kapoor, R/o 1st Floor, 16, Road No. 57, West Punjabi Bagh, New Delhi.
 9. Unknown Public Servants and Private Persons.”
2. Notice of the application.
 3. Mr. Shantanu Chaturvedi, briefing counsel to Mr. Abhinav Vashisth, learned senior counsel for Resolution Professional, accepts notice and states that no reply would be necessary.
 4. We have heard Mr. Rajiv Nayar, learned senior counsel for successful resolution plan applicant namely JSW Steel Limited and Mr. Vashisth, learned senior counsel for the Resolution Professional.
 5. It does not require to be re-stated that for the acts of mis-demeanour/criminality either under the Companies Act, Income Tax Act, Excise Act, Prevention of Corruption Act, PLMB or any other criminal law nobody else except the doer of an act could be held liable. In the present case obviously they are the persons who are alleged to have committed some acts of mis-demeanour/criminal as indicated in the preceding para. There is no possibility of involving the management of JSW Steel Limited or causing any harm to them as the successful resolution plan applicant. It is also clear that the assets of the corporate debtor is in the custody of resolution professional through the National Company Law Tribunal and the



resolution professional is under the sacred obligation of protecting the assets of the Corporate Debtor. Hon'ble the Supreme Court in the case of Principal Commissioner of Income Tax v. Monnet Ispat and Energy Ltd. (Special Leave to Appeal (C) No. 6483/2018 decided on 10.08.2018) has made the following pertinent observations which read thus:-

“Given Section 238 of the Insolvency and Bankruptcy Code, 2016, *it is obvious that the Code will override anything inconsistent contained in any other enactment, including the Income-Tax Act. We may also refer in this Connection to Dena Bank vs. Bhikhabhai Prabhudas Parekh and Co. & Ors. (2000) 5 SCC 694 and its progeny, making it clear that income-tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons.*”

6. A perusal of the aforesaid observations has clarified that no attachment could be ordered by the Income Tax Department in respect of the assets of the Corporate Debtor. What is true in respect of Income Tax Act is equally true in respect of other statutes as well.

7. As a sequel to the above discussion, we expect the Resolution Professional to file appropriate application before the Complainant Authorities in FIR No. RCBD1/2019/E/0002 dated 05.04.2019 by



bringing to their notice the status of these proceedings including the factum that the resolution plan by the resolution plan applicant namely JSW Steel Limited has been approved by the CoC and is under consideration of the National Company Law Tribunal pursuant to the directions issued by Hon'ble Appellate Tribunal. The Resolution Professional shall free to attach copies of various orders including the order passed today along with the representation. These directions are being passed so as to allay any fear in the mind of the resolution plan applicant with regard to the preservation of the assets.

8. Part heard for tomorrow i.e. 23.04.2019.



(M. M. KUMAR)
PRESIDENT



(S. K. MOHAPATRA)
MEMBER (TECHNICAL)