

DIVISION BENCH

O-101

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/176(KB)2018
IA/398(KB)2020, IA/548(KB)2021,
IA/589(KB)2021, IA/590(KB)2021

**Present: 1. Hon'ble Member(J), Shri Rajasekhar V.K.
2. Hon'ble Member(T), Shri Harish Chander Suri**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 08th July, 2021, 10:30 A.M

Name of the Company	STATE BANK OF INDIA Vs. IMPEX METAL & FERRO ALLOYS LIMITED		
Under Section	IBC under Sec 7		
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

Counsel / Authorised Representative appeared through video conference:

1. Ms. Manju Bhuteria, Advocate] For erstwhile RP
2. Mr. Subodh Kumar Agarwal,] Self
Erstwhile RP

1. Mr. Om Narayan Rai, Advocate] For Liquidator
2. Mr. Samir Bhattacharyya, Liquidator] Self

1. Mr. Vaibhav Mahajan, Advocate] For applicants

ORDER

1. Ld. Counsel for the parties present.
2. **IA/398(KB)2020**

(a) The only question for consideration is whether the sum given as advance for supply of materials by the Corporate Debtor during the CIRP period and in respect of which only part supply was made by the Corporate Debtor should be treated as part of CIRP cost by the Liquidator.

(b) It is the Liquidator's case that whether any sum forms part of CIRP cost or not cannot be decided by the Liquidator unless there is a concurrence for doing so on the part of the erstwhile Resolution Professional. In the present case, he submits that there is no communication from the Resolution Professional regarding his decision to treat it as a part of CIRP cost. In spite of notice of the present application was given to the respondent, Mr. Subodh Kumar Agrawal, erstwhile Resolution Professional, he was not present on the last three occasions when the matter was heard. Mr. Subodh Kumar Agrawal, erstwhile Resolution Professional, is present in person today and tendered his

unconditional apology in not being present in spite of receiving notice for appearance. We accept the unconditional apology. The applicant has relied upon the judgment dated 03/02/2021 passed by the Hon'ble NCLAT in **Company Appeal (AT) (Insolvency) Nos. 190 and 191 of 2020** in support of his contention that the said claim should be treated as part of CIRP cost.

(c) We have perused the judgments and of the opinion that it applies on all fours with the fact of the present case. In these circumstances the ends of justice would be met if we direct the erstwhile Resolution Professional to send communication to the Liquidator certifying that the said amount should be treated as part of CIRP cost. With that communication of the erstwhile Resolution Professional, it shall be possible to treat the amount as CIRP cost keeping in view of the judgment of the Hon'ble NCLAT referred to above.

(d) With these directions IA/398(KB)2020 shall stand disposed of.

3. **IA/548(KB)2021** is an application seeking early hearing of IA/398(KB)2020. Since IA/398(KB)2020 has already been heard today, nothing survives in IA/548(KB)2021 and the same shall stand disposed of.

4. **IA/589(KB)2021** – Ld. Counsel appearing for the erstwhile Resolution Professional seeks some time to review the position and to make necessary submission. List this matter on **22/07/2021**. IA / 590(KB)2021, IA 570(KB)2021 and IA/572(KB)2021 will be tagged along on that day.

(Harish Chander Suri)
Member (Technical)

(Rajasekhar V.K.)
Member (Judicial)

hb.