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**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 10.03.2021

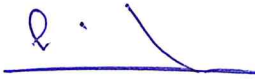
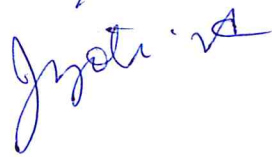
THROUGH VIDEO CONFERENCING

CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

| CP/CA No. | Purpose | Sec | Name of Petitioner | Petitioner Advocate | Name of Respondent | Respondent Advocate |
|--------------------------|--|------------------------------|------------------------------------|---|--|--|
| CP(IB)No. 228/BB/2018 | For hearing- IA 133/2020 for direction to promoters of CD IA 341/2020 for direction to RP to admit claim - CIRP | Sec 9 of I&B code 2016 | M/s Indu Corporation Pvt Ltd | Thakordas & Madagarka r Advocate | M/s Bhuwalka Steel Industries Ltd | Mr. Shivadutt Bannanje RP , A Murali for IA 133/2020 (Jyoti Anumolu), Amir Arsiwala for IA 341/2020 |

ADVOCATE FOR PETITIONER/s:

A. MURALI & JYOTHI ANUMOLU
FOR RESOLUTION PROFESSIONAL / APPLICANT
SHIVADUTT
R.D.  Jyothi 

ADVOCATE FOR RESPONDENT/s:

ORDER

Heard Shri A. Murali along with Ms. Jyothi Anumolu, learned Counsel for the RP/Applicant in IA No.133 of 2020 and Shri Shivadutt Bannanje, learned Resolution Professional.

I.A. No.133 of 2020 in CP (IB) No.228/BB/2018 is disposed of by separate order.

None appears for the Applicant in IA No.341 of 2020. IA No.341 of 2020 in CP (IB) No.228/BB/2018 is disposed of by separate order.

Post the case on **06.04.2021** along with IA No.132 of 2020.


Member (T)


Member (J)

Krishna

Verified

Court Officer

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A.No.133/2020 in
C.P. (IB)No.228/BB/2018
U/Sec. 60 r/w Sec.66 of the IBC, 2016
And Reg.35A of the IBBI (Insolvency Resolution
Process for Corporate Persons) Regulation, 2016

Shivadutt Bannanje

Resolution Professional of

M/s. Bhuwalka Steels Industries Ltd.

R/Add: No.228, Classic Orchid, Behind
Meenakshi Temple, Bannerghatta Road,
Bengaluru – 560 076.

- Applicant

In the matter of:

M/s. Indu Corporation Pvt. Ltd.

R/Off: 'Nishuvi' 4th Floor, No.75,
Dr. Annie Besant Road, Worli,
Mumbai – 400 018.

- Petitioner/Operational Creditor

Versus

M/s. Bhuwalka Steels Industries Ltd.

R/Off: 10th Mile, Old Madras Road,
Bandapura Village, Karnataka,
Bangalore – 560 049.

- Respondent/Corporate Debtor

Date of Order: 10th March, 2021

Coram:

1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)



Parties/Counsels Present:

For the Resolution Professional : Mr. Shivadutt Bannanje, RP
For the Applicant : Mr. A Murali, Adv.
a/w Ms. Jyoti Anumolu, Adv.

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. I.A.No.133/2020 in C.P.(IB)No.228/BB/2018 is filed by Shivadutt Bannanje, (Resolution Professional) ('the Applicant'), Under Section 60 read with Section 66 of the Insolvency and Bankruptcy Code, 2016 And Regulation 35A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 by *inter alia* seeking to consider the application and direct the promoters to make good the losses suffered by the Corporate Debtor, etc.
2. The facts of the case as mentioned in application by *inter alia* stated as following:
 - (1) Initially, C.P.(IB)No.228/BB/2018 filed by M/s. Indu Corporation Private Limited ('Petitioner/Operational Creditor'), U/s.9 of the IBC, 2016, and the same was admitted by the Adjudicating Authority, vide its Order dated 08.04.2019, by initiating CIRP in respect of the Corporate Debtor, appointing Mr. Shivadutt Bannanje, as IRP, imposing moratorium etc. Subsequently, he was confirmed as Resolution Professional.
 - (2) The second meeting of the CoC was conducted on 18.06.2019, wherein it was decided to appoint the Registered Valuers and the Forensic Auditor to carry out valuation and the forensic audit for the Corporate Debtor respectively. Further, the Forensic Auditor had submitted the draft Forensic Audit report to the Resolution Professional and which was placed before the CoC in their meeting dated 30.01.2019. The Final Forensic Audit report was submitted by the Forensic Auditors on 18.02.2020 to the Resolution Professional.



(3) The major observations by the Forensic Auditors in their report are briefed hereunder:

(a) Dues to various creditors were squared up by transfer to other parties or by way of adjustment as discounts in the books of the Company. However, these parties claimed their dues which were shown as contingent liabilities in the Financial Statement of FY 2018-19. This creates doubt whether such adjustments were properly made by the Corporate Debtor after obtaining confirmations from these parties or unilateral entries were passed in the books. Out of total contingent liabilities of Rs.173.35 Crores disclosed by BSIL as on 31.03.2018 & 31.03.2019, five parties contributed to 75.7% of total contingent liabilities amounting to Rs. 131.23 Crores. It appears that discounts claimed from these parties & transfer of other party dues to them aggregating to Rs.96.9 Crore are possibly included in amount of contingent liability. No inference could be drawn for remaining amount of Rs.35.14 Crore reported as contingent liability. In view of the above, the Forensic Auditors are unable to conclude on correctness or otherwise about the contingent liabilities of Rs.173.35 Crore disclosed by the Company in its Audited Financial Statements as of 31.03.2018 & 31.03.2019.

(b) The Company has transferred amounts receivable of Rs.132.45 Crore from other related parties to its related party Shri Durga Tradelinks Pvt. Ltd. The Corporate Debtor has made a provision for doubtful debts in audited financial statements of FY 2018-19 for amount of Rs.74.27 Crore receivable from Shri Durga Tradelinks Pvt. Ltd. as on 31.03.2019. The Corporate Debtor has not informed whether it had taken any tangible efforts for recovery of these receivables from Shri Durga Tradelinks Pvt. Ltd. and also whether any legal actions for recovery of dues is envisaged even though the Corporate Debtor and Shri Durga Tradelinks Pvt. Ltd. are owned and controlled by members



of Bhuwalka family. On this background, it can be concluded that the Company has siphoned out the amount of Rs.74.27 Crore through its related party. In view of the above, transactions between the Corporate Debtor and Shri Durga Tradelinks Pvt. Ltd. are questionable and do not appear to be transactions in the ordinary course of business.

- (c) Further, an aggregate amount of Rs.80.28 Crore which was receivables from the customers has been written off as bad debts without any significant efforts to recover the same, in spite of the sound financial position of those customers. Hence, the writing off of such transactions does not appear to be normal transaction.
- (d) Accounts of the Company were declared NPA by IDBI Bank & Indian Overseas Bank on 31.03.2014 and by Canara Bank on 30.06.2014. During FY 2015-16 and FY 2016-17, the Corporate Debtor purchased goods worth Rs.15.15 Crore from Shri Durga Tradelinks Pvt. Ltd. and made payments of Rs.32.45 Crore against sales of 83.84 Crore during this period and it also received funds of Rs.67.20 Crore. Thus, net amount receivable by Corporate Debtor on account of these transactions was Rs.33.94 Crore. Despite these receivables, the Corporate Debtor transferred dues from other parties aggregating to Rs.36.19 Crore to Shri Durga Tradelinks Pvt. Ltd. These transactions do not appear to be in the ordinary course of business.
- (e) In this manner, the Company siphoned out funds of Rs.74.27 Crore which would have been otherwise available for payment to banks (i.e. Secured lenders) of the Company. As such, the Company/Promoters may be classified as 'wilful defaulters' as per Circular No. RBI/2015-16/100 DBR.No.CID.BC.22/20.16.003/2015-16 dated 01.07.2015 issued by Reserve Bank of India.

3. Heard Mr. A. Murali, along with Ms. Jyoti Anumolu, learned Counsels for the Applicant and Mr. Shivadutt Bannanje, learned RP. We have carefully perused

the pleadings of the Party and the extant provisions of the Code, Rules and Regulations made thereunder.

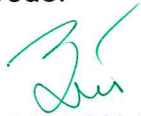
4. In the IA under consideration, the Applicant has relied upon the Forensic Report to make out a case that there were fraudulent transactions carried out by the CD with various parties, included related parties, and which are caught within the mischief of section 66 of the Code. However a perusal of the Forensic Report itself seems to be based on assumptions which have neither been examined in any detail nor cross checked by confronting the parties to the transactions. The report itself states that some parties claimed their dues which were shown as contingent liabilities in the Financial Statement of FY 2018-19 and this "creates doubt" whether such adjustments were properly made by the Corporate Debtor. The "discounts are possibly included in the amount of contingent liability". "No inference could be drawn for remaining amount of Rs.35.14 Crore reported as contingent liability". These statements make it clear that the Forensic Auditors are unable to come to any definite conclusion on the correctness or otherwise of the contingent liabilities of Rs.173.35 Crore disclosed by the Company, as these transactions require further scrutiny and investigation. Further, against doubtful debts, it is not sure if any tangible / legal efforts were made to collect the amounts before write off of receivables from Durga Tradelinks, which has members of the Bhuwalka family. In the absence of this information, it cannot be concluded by the Applicant that the amounts were fraudulently written off. These are only considered to be questionable and can only be a starting point for more enquiry. Such other transactions with customers are also considered doubtful. Further, the observations that the receivables from the customers have been written off as bad debts without any significant efforts to recover the same, are only an assumption made by the Auditors, as of now. Again, the purchase and payments to Durga Tradelinks and alleged transfer of excess dues from other companies were done in the normal course of business or otherwise remains to be established.



5. All the above transactions require to be investigated by seeking explanations from the parties to the above transactions as against the business carried on. These conclusions cannot be reached unilaterally based on a forensic report alone which too, as mentioned above, only assumes that these transactions may be fraudulent and not in the ordinary course of business. The conclusions have been reached in a summary manner to say that Rs.74.27 crore have been siphoned of. The Applicant should have carried out enquiries independently and given opportunity to the parties concerned before coming to any such conclusion. We are of the considered view that the RP cannot, on the basis of a forensic report alone, that too based on assumptions, bring the matter before this Adjudicating Authority u/s 66, without making basic enquiries and scrutiny, and before confronting the parties concerned. Further, he should have made all the concerned parties in the above referred transactions as respondents in the present IA, so that they could be questioned as also given opportunity to file their objections, if any. This has not been done, and the Application is defective to that extent. A unilateral Auditor's Report which itself is inconclusive and based on assumptions cannot form the basis for seeking to invoke the provisions of section 66 of the Code. This is clearly premature.
6. We make it clear that we are not giving any finding that the transactions referred to in the Forensic report are of a preferential or a fraudulent nature or not. We are only saying that they require some preliminary examination by the RP/ Applicant of other surrounding circumstances and by confronting all the parties involved in the transactions, so that some definite view can be formed, and brought before this Tribunal for adjudication.
7. In view of the above, I.A.No.133/2020 in C.P.(IB)No.228/BB/2018 is considered premature and is hereby disposed of with the directions that the Applicant will carry out basic enquiry of all surrounding facts to make out his case, make enquiries from all concerned parties with reference to the transactions highlighted in the forensic report, and come to some definite conclusion before referring the matter to this Tribunal u/s 66 of the Code. He may then consider



adding the parties to the transactions as Respondents, so that they can be directed to file their objections, if any, and heard before reaching any conclusion. The Applicant is granted liberty to revive this petition / file a fresh petition after carrying out the above and suitably modifying its Application as may be in consonance with the requirements of the provisions of section 66 of the Code.



ASHUTOSH CHANDRA
MEMBER, TECHNICAL



RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

Amar

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A.No.341/2020 in
C.P. (IB)No.228/BB/2018
Under Section 60(5) of the IBC, 2016

American Express Banking Corp.

R/Off: MGF Metropolitan, 7th Floor,
Saket District Center,
New Delhi – 110 017.

- Applicant

In the matter of:

M/s. Indu Corporation Pvt. Ltd.

R/Off: 'Nishuvi' 4th Floor, No.75,
Dr. Annie Besant Road, Worli,
Mumbai – 400 018.

- Petitioner/Operational Creditor

Versus

M/s. Bhuwalka Steels Industries Ltd.

(Through Its Resolution Professional)
R/Off: 10th Mile, Old Madras Road,
Bandapura Village, Karnataka,
Bangalore – 560 049.

- Respondent/Corporate Debtor

Date of Order: 10th March, 2021

Coram:

1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant : None
For the RP : Mr. A Murali, Adv.
A/w Ms. Jyoti Anumolu,
Mr. Shivadutt Bannanje, RP

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. I.A.No.341/2020 in C.P.(IB)No.228/BB/2018 is filed by American Express Banking Corporation ('Applicant'), Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by *inter alia* seeking to permit the Applicant to file its claim with the Resolution Professional of Bhuwalka Steels Industries Limited and, direct the Resolution Professional of Bhuwalka Steels Industries Limited to admit the claim of the Applicant in accordance with the regulations framed under the IBC, and to include the Applicant in the Committee of Creditors of the Corporate Debtor, and condone the delay in filing of the claim by the Applicant with the Resolution Professional of Bhuwalka Steels Industries Limited, etc.
2. The facts of the case as mentioned in the application are, *inter alia*, as follows:
 - (1) Initially, C.P.(IB)No.228/BB/2018 filed by M/s. Indu Corporation Private Limited ('Petitioner/Operational Creditor'), U/s.9 of the IBC, 2016, and the same was admitted by the Adjudicating Authority, vide its Order dated 08.04.2019, by initiating CIRP in respect of the Corporate Debtor, appointing Mr. Shivadutt Bannanje, as IRP, imposing moratorium etc. Subsequently, he was confirmed as Resolution Professional.
 - (2) The Applicant has been authorised to carry on banking business in India. It is engaged in the business of rendering credit facilities by way of issuance of Corporate/Credit/Charge cards. The credit facilities were availed by the Corporate Debtor from the Financial Creditor by using a corporate card. It was categorically agreed by the Corporate Debtor that the he is solely liable for all the charges incurred on him issued by the Financial Creditor and the Corporate Debtor shall be bound by the American Express Corporate Purchasing Card Account Agreement. However, the Corporate Debtor after making the last payment in January, 2014 defaulted in making further payments towards the said credit facility.



- (3) Accordingly, the Applicant initiated proceedings for recovery on 05.09.2014 against the Corporate Debtor by filing O.A No.2393 of 2014 before the Hon'ble Debt Recovery Tribunal (DRT), Bangalore. This application filed by the Applicant before the DRT came to be allowed on 02.02.2016. Pursuant to the aforesaid order, a Recovery Certificate came to be issued to the Applicant on 11.07.2017 for Rs.78,22,369.22/- along with cost expenses to the tune of Rs.1,40,008/- and current and future interest @ 18% p.a. with monthly rests from the date of filing of the said OA till the date of realization in full. It is pertinent to note that this Recovery Certificate has crystalized the debt owed by the Corporate Debtor to the Applicant and therefore, it is clear that the Corporate Debtor owed a financial debt to the Applicant.
- (4) However, during the pendency of the execution of the aforesaid Recovery Certificate a Petition bearing CP(IB)No.228/2018 came to be filed by one M/s. Indu Corporation Pvt. Ltd. being an Operational Creditor of the Corporate Debtor u/s 9 of the IBC, 2016. This Tribunal admitted the said Petition on 08.04.2019. Thereafter, in accordance with the provisions of Section 15 of the IBC, 2016 the RP made a publication announcement on 16.04.2019 inviting claims from the creditors of the Corporate Debtor. The last date of submission of claims as specified in the said publication was 29.04.2019.
- (5) The Applicant herein, approached the IRP with respect to the submission of its claim as a financial creditor to the tune of Rs.1,78,80,703.21 (Rs.78,22,369.00 + Rs.1,40,008.00 + Rs.99,18,325.99). However, the Applicant was informed by its advocates that the IRP insisted upon filing a certified copy of the award passed by the Hon'ble DRT in order to accept their claim. The Applicant was unable to obtain a certified copy of the said order prior to the last date of submission of the claims as specified in the public announcement and as such the claim of the Applicant could not be filed. Further, even though a copy of the recovery certificate was



subsequently obtained, the advocates for the Applicant informed that the claim was not being accepted by the Resolution Professional.

- (6) Unfortunately, only on the ground that a certified copy of the award/recovery certificate of the Hon'ble DRT could not be submitted, the claim of the creditor was out rightly refused by the IRP. Due to the fact that the Applicant could not file its claim against the Corporate Debtor with the IRP within the timeframe set out in Regulation 12 of the CIRP Regulations and the same was refused, he seeks an order from this Tribunal permitting him to do so and condoning the delay in doing so.
3. The Statement of Objections dated 08.09.2020 is filed on behalf of the Corporate Debtor to the Application by inter alia contending as follows:
- (1) It is stated that the Applicant has not filed its formal claim in Form-C till date. This has been admitted by the Applicant itself in para 14 of the instant application. Therefore the question of refusing the Applicant's claim does not even arise.
 - (2) It is further pertinent to note that despite the Respondent advising the Applicant whenever he was approached to file the claim in Form-C so that its claim can be considered, the Applicant, for reasons best known, did not do so. Therefore, the question of claim being rejected never arose.
 - (3) The Applicant has now approached this Tribunal at the culmination of the CIRP when a Resolution Plan has been approved by the CoC and is awaiting approval of this Tribunal, merely to disrupt the entire CIRP process. Entertaining the application at this stage will put the entire CIRP process in jeopardy and delay the process.
 - (4) The judgements relied upon by the Applicant in the instant application do not apply to the present facts of the case and are distinguishable. It is broadly submitted that the judgements relied upon by the Applicant are in relation to acceptance of claim when the Corporate Debtor goes into liquidation and not when a Resolution Plan has been approved by the CoC. Therefore, they are not applicable to the present set of facts.



4. None has appeared for the Applicant. Heard Mr. A Murali, Adv. along with Ms. Jyoti Anumolu, learned Counsel for the Resolution Professional. We have carefully perused the pleadings of the Parties and also extant provisions of the Code, and Rules made thereunder. Though none has appeared for the Applicant, we cannot keep this IA pending as the Resolution Plan has already been submitted for our approval and cannot be allowed to get further delayed. Hence this IA is decided on the merits of the facts before us.
5. As per Regulation 12 of the IBBI (IRP for Corporate Persons), Regulations, 2016, a Financial creditor shall submit his claim with proof on or before the last date mentioned in the public announcement, failing which it may submit the claim with proof on or before the ninetieth day of the insolvency commencement date.
6. In this case the Applicant initiated proceedings for recovery on 05.09.2014 against the Corporate Debtor before the DRT, and its claim was allowed on 02.02.2016 and RC was issued on 11.07.2017 for Rs.78,22,369.22/- with cost and interest etc. In the meantime CIRP was ordered against the Corporate Debtor on 08.04.2019.
7. As per the provisions of Section 15 of the IBC, 2016 the RP made a publication announcement on 16.04.2019 inviting claims from the creditors of the Corporate Debtor. As per Regulation 12 of the IBBI(IRP for Corporate Persons) Regulations 2016, the claim shall be submitted with proof on or before the last date mentioned in the public announcement or before the ninetieth day of the insolvency commencement date.
8. In the case of the Applicant, the last date of submission of claims as specified in the said publication was 29.04.2019. However it is stated by the RP that the Applicant has admittedly not filed its formal claim in Form-C till date. Hence there was rejection of the claim that requires adjudication. It is also seen that while the claim of the Applicant was adjudicated by the DRT in 2016 and RC



was issued in 2017, even up to two years after that the Applicant has failed to obtain the requisite proof and make an application before the RP with proof as required by the Code and the Regulations.

9. Ordinarily, the time lines mentioned in the above provisions are held to be directory in nature and not mandatory. Using our inherent powers, we could permit delayed claims to be admitted in the interest of justice to the creditor who has rendered financial assistance. However, in this case it is seen that there is a delay of more than two years in obtaining the evidence from the DRT which was required to be filed along with the claim. This has not been filed in spite of the RP's insistence, even till the finalisation of the Resolution Plan by the CoC. If the Applicant fails to discharge its basic obligation of filing an application in time and with proof, the same cannot be held against the RP. It is also not a case where the Applicant was prevented by circumstances beyond its control. More so the Resolution Plan has already been approved and placed before this Tribunal for its approval. The entire process cannot be allowed to be derailed and brought to square one due to sheer laxity on the part of the Applicant which is a big financial institution with sufficient resources. The facts and circumstances narrated above, prevent us from taking a lenient view at the cost of all other creditors and stakeholders. We do not find any infirmity in the action of the RP. The Application therefore merits dismissal.
10. In view of the above, I.A.No.341/2020 in C.P. (IB)No.228/BB/2018 is hereby dismissed.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

Amar

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL