

BENCH-I

NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P.(IB) No. 175/KB/2017

Present: Hon'ble Member (J) Shri Vijai Pratap Singh
Hon'ble Member (J) Shri Jinan K.R

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 28th November 2017, 10.30 A.M

Name of the Company		Sreerampur Ispat Pvt.Ltd.-Vs- Bajoria Steel & Re-rolling Mills Pvt.Ltd.	
Under Section		9 (1) IBC	
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

VINOD KUMAR KOTHARI

Self

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28/11/2017

Seperate order attached herewith.

101 C.P. No. 175/2017 - Sreerampur Ispat Pvt. Ltd.
Versus Bajoria Steel & Re-rolling Mills Pvt.Ltd.

ORDER

Interim Resolution Professional, Shri Vinod Kumar Kothari in response to our notice dated 22/11/2017 has appeared and submitted that he was not informed regarding the Order dated 18/05/2017.

IRP has further submitted that he has no information regarding his appointment as Interim Resolution Professional (IRP), as the Corporate Applicant has not communicated to him the Order passed on 18/05/2017, so he could not take steps in the matter.

On perusal of the order it appears that the company petition was admitted on 18/05/2017 and Shri Vinod Kumar Kothari was appointed as IRP and the matter was fixed for hearing on 29/05/2017. It further reveals from the Order that Corporate Applicant was further directed to serve the copy of the Order on the Corporate Debtor and also on the IRP and file affidavit of service within 3 days.

It appears that on 29/05/2017 one of the Director of the operational creditor, Shri Pawan Kumar Tibrewalla, filed an application for correction of the order wherein it is stated that CS Shri Kailash Chandra Dhanuka's name has been proposed in the petition as IRP and his consent in Form 2 has been submitted along with petition (pages 26 to 28 of the petition) but learned bench by mistake mentioned the name Shri Vinod Kumar Kothari as IRP. Therefore, on this ground the operational creditor moved an application for correction of our order dated 18/05/2017.

This application was rejected by our order dated 05/07/2017 which is as follows :

"One of the Director of the petitioner company is present. He has made a request that he has filed the petition u/s. 9 of IBC 2016 wherein he has recommended the name of CS Shri Kailash Chandra Dhanuka along with his consent in Form No. 2 for appointment as IRP. But by mistake this Tribunal has appoined CS Shri Vinod Kr. Kothari as IRP and on this basis he has made a request for necessary correction in the order."

It appears from the records that petition under IBC was filed by M/s. K.C.Dhanuka & Co and Shri K.C.Dhanuka himself proposed his name as IRP which is apparent from the letter dated 13/03/2017 which he has endorsed to the Dy. Registrar, NCLT. IRP should be an independent person. Shri K.C.Dhanuka & Co. Has presented the petition so Sri K. C. Dhanuka cannot be appoingted as an IRP. Therefore, petitioner's application, moved by one of its director of the company, is rejected and petitioner is directed to comply with the order passed on 18/05/2017."

In our order dated 18/05/2017 there was a specific direction on the operational creditor to serve the copy of the order on the corporate debtor and also on the IRP and file affidavit of service of the same within 3 days from the date of the order and the next date of hearing was fixed on 29/05/2017.

From our records it is apparent that Sri Pawan Kumar Tibrewalla, one of the Director of operational creditor was present in Court on 29/05/2017 and passed order fixing the case on 05/07/2017.

On 05/07/2017 the application of the operational creditor was rejected by this Court and was further directed to comply with the order dated 18/05/2017.

It is also a matter of concern that inspite of the admission of the petition u/s. 9 of IBC and after appointment of IRP direction was issued to communicate the order to IRP and the corporate debtor. The order was not communicated to IRP and the corporate debtor, which is a serious violation on the part of the operational creditor who has intentionally avoided to comply with the order dated 18/05/2017.

It also appears that operational creditor was very much interested in getting CS Shri Kailash Chandra Dhanuka appointed as an IRP and when his application was rejected by our order dated 05/07/2017, then intentionally he avoided to communicate the order to IRP. Prima facie Sri Pawan Kumar Tibrewalla, one of the Director of operational creditor, intentionally misused the process of the Court and did not communicate the order to IRP, Shri Vinod Kumar Kothari. This file has been surfaced only at the time of physical verification of the records, which was being made vide our order dated 17/11/2017.

However, it is a matter of serious concern that after receiving the application for withdrawal of the petition, why this case was not listed for disposal for the said application dated 28/07/2017. Explanation be called from the concerned officials as to why the case was not listed after getting the application for withdrawing the petition was received.

In this case the operational creditor has intentionally avoided to communicate the order to IRP, Shri Vinod Kumar Kothari. Therefore, IRP could not initiate the Insolvency

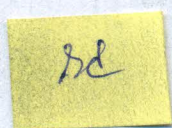
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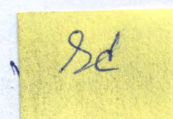
Resolution Process, which is to be completed within 180 days from the admission of the case.

Let notice be issued to the operational creditor through Director as to why action should not be initiated against him. Notice against the operational creditor may be issued through Speed Post and E-mail. Reply may be filed within 7 days.

List on 11/12/2017 for hearing.



(Jinan K.R.)
Member (J)



(V.P.Singh)
Member (J)