

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

Coram: Shri Vijai Pratap Singh, Hon'ble Member (Judicial)

&

Shri Jinan K.R. Hon'ble Member (Judicial)

C.P.(I.B.) No. 446/KB/2017

In the matter of :

THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

AND

In the matter of

Section 9 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016.

AND

In the matter of :

**Shreeshyam Metaliks Private Limited
Shyam Kutirmaswari Pada,
Jharsuguda, Odisha
PIN 768 201**

...

APPLICANT

AND

In the matter of :

**Concast Steel & Power Limited
21, Hemant Basu Sarani
Centre Point
Kolkata 700 001**

...

RESPONDENT

Counsels on Record :

Shri Akhilesh Kumar Srivastava, Advocate }
Shri Kanishk Khetan, Advocate }

For the Petitioner

Date of pronouncement of the Order : 11.10.2017

ORDER

The petition is filed under Section 9 of the Insolvency and Bankruptcy Code 2016 but it appears from the records that the application has been filed by Shri Shyam Metaliks Private Limited, as a private non-government company, limited by shares, registered under the provisions of the Companies Act. Petition has been filed on the basis of authorization letter which is in the form of affidavit which shows that Shri Anil Kumar Kedia son of Shri Shyam Sundar Kedia has filed affidavit as director of Shree Shyam Metaliks Private Limited and has stated in the affidavit that he is duly authorized by the aforementioned Operational Creditor to submit an application to the National Company Law Tribunal, Kolkata Bench at Kolkata to initiate corporate insolvency resolution process against Concast Steel & Power Limited under Section 9 of the Insolvency and Bankruptcy Code 2016.

It appears that the petitioner has not filed any Board Resolution of Shree Shyam Metaliks Private Limited. An affidavit given by a Director of the company cannot be construed as a Board Resolution. In terms of our

order passed by ICICI Bank Vs. Palogix Infrastructure Pvt. Ltd., for initiation of corporate insolvency process, there should be proper and specific authorisation. Therefore, petitioner is directed to file proper authorization.

In this case Shri Anil Kumar Jain, Director has certified that he has been authorized by the Company to initiate Corporate Insolvency Process but no Board Resolution of the Company has been filed by the Company to show that he has been authorized by the Company for initiation of Corporate Insolvency Process. Petitioner has filed a copy of the Board Resolution dated 1st September 2017 which shows that Board has authorized Shri Sumit Kumar Mullick, Official of the Company for signing of documents including the petition and affidavit to be filed before NCLT and/or NCLAT but this authorization is not in relation with initiation of Corporate Insolvency Process. There should be specific authorization for initiation of corporate insolvency proceeding as without that proceeding petition under Section 9 cannot be entertained. Therefore, petitioner is directed to file Board Resolution of the applicant company Shreeshyam Metaliks Private Limited whereby he has been authorized by the Company for initiation of Corporate Insolvency Resolution process. Petitioner is directed to file proper authorization within 7 days from today from the

Board of Directors whereby he has been authorized for initiating corporate insolvency process against Corporate Debtor.

Listed on 25th October for hearing.

(Jināh K.K.)
Member (J)

(Vijai Pratap Singh)
Member (J)

Signed this Eleventh day of October, 2017.