

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

(IB)-25(PB)/2018

IN THE MATTER OF:

ICICI Bank Limited	APPLICANT / PETITIONER
Vs		
Essar Power Jharkhand Ltd.	RESPONDENT

SECTION:

Under Section 7 of Insolvency & Bankruptcy Code

Order delivered on 16.01.2018

Coram:

CHIEF JUSTICE (RETD.) M. M. KUMAR
Hon'ble President

S. K. MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

PRESENTS:

For the PETITIONER

:- Mr. Arun Kathpalia, Senior Advocate
Ms. Misha, Mr. Madhav Kanoria &
Ms. Srishti Khare, i/b Shardul
Amarchand Mangaldas & Co.

For the RESPONDENT

:- Ms. Shally Bhasin, Ms. Sayaree Basu
Mallik, Ms. Surbhi Limaye, Advocates
Mr. Nirnay Gupta, Advocate

ORDER

Learned Counsel for the respondent states that they are not contesting the petition by raising any objection to its admission.

We find that IRP has signed Form-2 as prescribed by Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. In the form, the IRP is also required to certify that the facts averred by the applicant in the application are true, accurate and complete and a default has occurred in respect of the relevant Corporate Debtor. It further requires the IRP to certify that he/she has reached the conclusion based on the following facts and/or opinion.

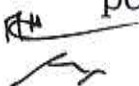
Then opinion has been expressed as under:



“ICICI Bank Limited (“ICICI Bank”) had advanced financial assistance of INR 3033,29,45,267.73 (Rupees Three Thousand Thirty Three Crores Twenty Nine Lakhs Forty Five thousand Two Hundred Sixty Seven and Seventy Three Paise) by way of Rupee facility, letter of credit facility, external commercial borrowing facility and bank guarantee facility to Essar Power Jharkhand Limited (“Corporate Debtor”) vide facility agreements executed in the year(s) 2010, 2011, 2012 and 2015. Due to the inability of the Corporate Debtor to service the aforesaid facilities, the account of the Corporate Debtor was classified as non-performing asset on September 30, 2016 in compliance with the RBI guidelines. Pursuant thereto, ICICI Bank issued a recall notice dated August 1, 2017 to the Corporate Debtor, thereby accelerating the facilities and directing the Corporate Debtor to make payment of the dues under the aforesaid facilities owed by it to ICICI Bank.

Further, as per banker’s book of evidence, CRILC report, and CIBIL report as annexed to this application, the account of the Corporate Debtor was declared as a non-performing asset in the books of ICICI Bank and in the records of relevant credit information companies”.

The aforesaid description of form would bring in the element of patent bias impinging upon the independent character of an IRP who has to be above board and has to act as an independent umpire. Moreover, there is no whisper in the Code or in the rules requiring an IRP to furnish such a certificate which is optional. Such a form is negation of principle of fair play. We cannot require IRP to follow such a performa. We further direct that since it is optional to fill up such a performa an IRP shall not fill up such a performa as it is wholly alien to



principles to act fairly. Therefore, the Rule making Authority is directed to have relook on this part of the performa and may consider appropriate to delete it.

At this stage, Ms. Misha, learned Counsel for the applicant states that she will name another IRP.

List the matter on 24th January, 2018. A copy of this order be sent to the Rule making Authority by the registry.

Sd/-

(M. M. KUMAR)
PRESIDENT

Sd/-

(S. K. MOHAPATRA)
MEMBER (TECHNICAL)