

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

Mention

CA (IB) NO 237/KB/2017
CP (IB) NO 251/KB/2017

**Present: Hon'ble Member (J) Shri Vijai Pratap Singh
Hon'ble Member (T) Shri S.Vijayaraghavan**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 31st May, 2017, 10.30 A.M

Name of the Company		Rural Electrification Corpn. Ltd. -Vs- Ferro Alloys Corporation Ltd.	
Under Section		7	IBC
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

1. Dr. Abhishek Mann Singhvi,

Snr. Advocate

Ferro Alloys
Corporation
Ltd.

Ran. Adv.
31/5/17.

2. Navpreet Singh Ahluwalia Adv.

3. Rajarshi Dutta Adv.

4. Rahul Anand, Adv.

1. Ms. Manjiv Bhutaria Adv.

2. Mr. Arvind Jhunjhunmala Adv.

3. Mr. Debargha Basu Adv.

RECL
Financial
Creditor

Adv.
31/5/17

31/05/2017 – CA (IB) No. 237/2017 CP(IB) 251/2017 – Ferro Alloys Corporation Ltd.

ORDER

Ld. Counsels for the petitioner and the respondent are present.

This C.A. (I.B.) No. 237/KB/2017 has been moved by the Corporate Debtor in connection with C.P. (I.B.) No. 251/KB/2017 for affording an opportunity of hearing in the petition of Financial Creditor moved u/s. 7 of the IBC, 2016.

Applicant has mentioned that he received the copy of the petition at 4.54 P.M. on 26/05/2017 and before that the petition filed by Financial Creditor was heard before this Tribunal and has been reserved for order. The applicant has stated that he was not aware of the date fixed in the matter so he could not appear in the Court,. He further submitted that Financial Creditor has tactfully and for *mala fide* reasons taken steps to move the petition even when the petition has not been served upon the Corporate Debtor. Such action is against the principle of natural justice and highly prejudicial to the Corporate Debtor. The Corporate Debtor has attached a copy of the postal track report, which shows that the copy of the petition, which was sent to the Corporate Debtor was received by him at 4.54 P.M. on 26/05/2017. It also appears from the record that the petitioner after filing the petition despatched the copy of the petition to the Corporate Debtor through Speed Post on 22/05/2017. Thereafter the case was listed on 26/05/2017 and upto that time it appears that Corporate Debtor has no information about the case.

Ld. Senior Counsel for the Corporate Debtor, Dr. Abhishek Manu Singhvi has relied on case laws of the Hon'ble National Company Law Appellate Tribunal (NCLAT) in **Innoventive Industries Ltd. –versus- ICICI Bank and others [Company Appeal (AT) (Insolvency) Nos. 1 and 2 of 2017]**, wherein it has been held that, "Adjudicating Authority is bound to issue a limited notice to the corporate debtor before admitting a case for ascertainment of existence of default based on material submitted by the corporate debtor and to find out whether the application is complete and/or there is any other defect required to be removed. Adherence to Principles of natural justice would not mean that in every situation the adjudicating authority is required to afford reasonable opportunity of hearing to the Corporate debtor before passing its order.",

In the above mentioned case Hon'ble NCLAT further observed that "Initiation of Insolvency Resolution Process may have adverse consequences on the welfare of the Company. Therefore, it will be imperative for the "adjudicating authority" to adopt a cautious approach in admitting Insolvency Application by ensuring adherence to the principle of natural justice.",

In this case application for initiating Corporate Insolvency Process was heard ex-parte and it has been reserved for order. It is pertinent to mention that Corporate Debtor received the copy of the petition only after the case was "reserved for order". Principle of natural justice requires an opportunity of hearing before admission. In this particular case Corporate Creditor has also filed a petition against the borrower in DRT and insolvency proceeding has been initiated by the Corporate Creditor against the guarantor for the same debt.

In the circumstances mentioned above, it is necessary to provide an opportunity of hearing to the Corporate Debtor. In view of the above, we hereby direct that the Corporate Debtor may file reply within two weeks from today with a copy in advance to the petitioner and thereafter rejoinder, if any, may be filed within two weeks with a copy in advance to the Corporate Debtor.

List the matter on 03/07/2017, i.e., after the summer vacation, for hearing.


(S. Vijayaraghavan)
Member (T)


(Vijai Pratap Singh)
Member (J)