

BENCH-I

NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P(IB) No. 361/KB/2017
CA(IB) No. 32/KB/2018
CA(IB) No. 33/KB/2018

Present: 1. Hon'ble Member (J) Shri Vijai Pratap Singh
2. Hon'ble Member (J) Shri Jinan K.R

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 11th January 2018, 10.30 A.M

Name of the Company	State Bank of India-Vs-Electrosteel Steels Ltd.		
Under Section	7 IBC		
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

1. MR. JOY SAHA, Sr. Counsel, Adv.
2. MR. AMEYA GOKHALE, ADV.
3. MR. VIVEK MISHRA, ADV.
4. MS. PRAPA GANGULY, ADV.

- RESOLUTION
PROFESSIONAL

Prapa
11/1/18

1. Mr. Anif Ali, Advocate
2. Mr. Souvik Mazumdar, Adv.
3. Mrs. Nairita Datta Chowdhury, Adv.

Petitioner

Chowdhury
Adv.
11/1/2018

1- ARUN KUMAR MISHRA

Respondent No 2, 3 to 7
11/01/2018

1. SNEHATOSH MAJUMDER, ADVOCATE
2. SATTWIK MAJUMDER, ADVOCATE

Intervenor
CFMCC India & CFMCC, China
in application no: CA (IB) No. 32/KB/2018

Smajumder
11.01.2018

ORDER

Ld. Counsel for the Resolution Professional (RP), financial creditor, the R2, R3 & R4 and intervener in CA (IB) No. 33/KB/2018 is present.

CA (IB) No. 33/KB/2018 has been moved by the RP wherein following reliefs were sought for:

- “(a) direct the Respondent no. 1 not to withhold the permission to the Company to procure, store and transport coking coal and iron ore from their jurisdiction to the Bokaro Plant during the CIR Process on the basis that the Company as a Deemed CTO in terms of the provisions of the Air Act and Water Act;*
- (b) direct Respondent Nos. 2 to 7 not to withhold permission for providing railway wagons (rakes) to the Company for transportation of coking coal and iron ore; and make all arrangements for the transportation of the said coking coal and iron ore to the Bokaro Plant during the period of the CIR Process, as the Company has a Deemed CTO in terms of the provisions of the Air Act and the Water Act;*
- (c) pending hearing and final disposal of the present Application, direct Respondent No. 1 to continue to allow the Company to procure, store and transport iron ore and coking coal;”*

It appears from the record that the application has been moved by the Vice President (Commercial) of the corporate debtor to the Director of Mines, Department of Steel and

Sd

Sd

Mines to continue the procurement of raw material from the Odisha in an uninterrupted manner during the period of Corporate Insolvency Resolution Process which has been initiated by the Adjudicating Authority/NCLT, Kolkata Bench under the Insolvency and Bankruptcy Code, 2016.

It is pertinent to mention here that Corporate Insolvency Resolution Process has been admitted by the Order dated 21/07/2017 of the NCLT, Kolkata Bench and time period for submissions of resolution plan expires on 17/04/2018.

Ld. Sr. Counsel appearing on behalf of the Resolution Professional has made the arguments that during the period of CIRP if procurement of iron ore is stopped by the respondent no. 1 then the production shall be stopped and the company cannot be an on-going concern. Ld. Sr. Counsel for the RP has further mentioned that u/s. 20 of the Insolvency and Bankruptcy Code, 2016 whereby it is the duty of the RP to keep the company as going concern during CIRP period. It was RP to move before the appropriate authority to keep the concerned company as a going concern during the CIRP period and RP has not given any sanction to Vice President - Commercial to move in this regard.

Ld. RP is directed to move before the appropriate authority in this regard so that the company may run as a on-going concern. It is made clear that during CIRP, moratorium is applicable u/s. 14 of the Insolvency and Bankruptcy Code, 2016 and it is also the duty of the RP to give every effort to keep the corporate debtor as a going concern.

Therefore, Resolution Professional is to apply before the appropriate authority with the copy of this order. It is further directed that appropriate authority should take decision on

Sd

Sd

the application submitted by the Resolution Professional within a week of the submissions of the application by the Resolution Professional keeping in view of the provisions of Sections 20 and 25 of the Insolvency and Bankruptcy Code, 2016.

CA (IB) No. 33/KB/2018 is disposed of accordingly.

CA(IB) No.32/KB/2018 has been moved by the Resolution Professional wherein following reliefs were sought for.

- "a) *clarify and declare that resolution professional's estimation in terms of Regulation 14 is only for the purpose of CIR process i.e. Ascribing voting share of financial creditors and for arriving at liquidation value for the purposes of a resolution plan and does not require adjudication of disputed claims;*
- (b) *clarify and declare that in instances where it is not possible to estimate the claim on account of technical or legal complexity, the resolution professional be permitted to maintain a list of disputed claims which are kept out of CIR Process and resolution plan unless mutually settled between a successful resolution applicant and the respective creditors;*

It appears from the record that it is the Resolution Professional who has to first decide which claims are liable to be admitted in accordance with the rules and regulations of the Insolvency and Bankruptcy Code and after taking decision by the Resolution Professional anybody can challenge it

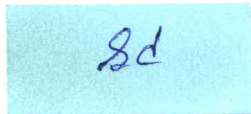
Sd

Sd

before this Adjudicating Authority. It is premature at this stage to entertain the application. So it is directed to the Resolution Professional to take appropriate decision keeping in view of the provisions of the Insolvency and Bankruptcy Code, 2016 within 7 days on the claims submitted by the claimant after providing opportunity of hearing to the claimants.

CA (IB) No. 32/KB/2018 is disposed of accordingly.

Urgent certified copy of the order be issued to RP, if applied for, upon compliance of all requisite formalities.



(Jinan K.R.)
Member (J)



(V.P.Singh)
Member (J)