## NATIONAL COMPANY LAW TRIBUNAL HYDERABAD BENCH COURT HALL NO: II

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J) CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 19.09.2024 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/221/2023 in CP(IB) No.720/9/HDB/2019
NAME OF THE COMPANY	SSB Structural & Galvanising Pvt Ltd
NAME OF THE PETITIONER(S)	<b>Bharat Industrial Corporation</b>
NAME OF THE RESPONDENT(S)	SSB Structural & Galvanising Pvt Ltd
UNDER SECTION	9 of IBC

# **ORDER**

## IA (IBC)/221/2023

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed.

Sd/MEMBER (T)

Sd/-MEMBER (J)

# NATIONAL COMPANY LAW TRIBUNAL HYDERABAD BENCH, COURT - II

# IA No.221 of 2023 in CP(IB) No. 720/9/HDB/2019

[Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016]

# In the matter of M/s.SSB STRUCTURAL AND GALVANISING PRIVATE LIMITED

## **Between:**

Mr. Theegala Venkateswar Rao Interim Resolution Professional

In M/s.SSB Structural and Galvanising Private Limited

Registration No. IBBI/IPA-001/IP-P02268/2020-2021/13484

Address: Plot No.99, NCL Colony, Pet Basheerabad,

Hyderabad – 500 014

Email Id: <a href="mailto:teevpee@gmail.com">teevpee@gmail.com</a> Mobile No. +91-99490-36672

.... Applicant/Interim Resolution Professional

## In the matter of:

**Bharat Industrial Corporation** 

...Petitioner/Operational Creditor

And

SSB Structural and Galvanising Private Limited

...Corporate Debtor

Date:19.09.2024

# **CORAM**:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial) Sri Sanjay Puri, Hon'ble Member (Technical)

# **Counsel/Parties present**:

For the Applicant : Mr. Y. Suryanarayana, Counsel

Ms. Devangi, PCS

IA No.221/2023 in CP (IB) No.720/9/HDB/2019 Date of Order:19.09.2024

[PER: BENCH]

## **ORDER**

- 1. The instant Application is filed by the Resolution Professional under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the NCLT Rules, 2016 seeking initiation of Liquidation of M/s.SSB Structural and Galvanising Private Limited, Corporate Debtor (CD).
- 2. This Adjudicating Authority, vide Order dated 28.07.2021<sup>1</sup> admitted the Company Petition bearing CP (IB) No.720/9/HDB/2019 and appointed Applicant as Interim Resolution Professional. However, the said order was communicated to the Applicant on 19.08.2021. The Applicant had filed an application vide IA No.454 of 2021 seeking relief from this Tribunal to fix the insolvency commencement date and this Tribunal allowed the IA No.454 of 2021 on 27.08.2021<sup>2</sup> and fixed on 01.10.2021 as the date of insolvency commencement.
- 3. As per the said order, the Operational Creditor was directed to deposit a sum of Rs.2,00,000/- with the Applicant to meet the expenses and to perform the functions and duties assigned to the Applicant as the IRP.
- 4. The IRP in compliance with Regulation 6 made public announcement in Form-A<sup>3</sup> in Financial Express and Nava Telangana newspapers on

<sup>&</sup>lt;sup>1</sup> Annexure-1 (Page Nos.17-32)

<sup>&</sup>lt;sup>2</sup> Annexure-2 (Page No.33)

<sup>&</sup>lt;sup>3</sup> Annexure-3 (Page No.34)

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01.10.2021, inviting claims from creditors of the Corporate Debtor. The last date of receiving the claims from the creditors being 15.10.2021.

- 5. The Applicant had collated the claims received from the creditors of the Corporate Debtor and the Committee of Creditors was constituted with Mr. Basanthlal Shah being the sole member. On 30.10.2021, Applicant conducted the 1<sup>st</sup> COC meeting<sup>4</sup>.
- or appointment of another RP in place of the Applicant was placed before the sole COC member and he resolved to replace the IRP and appointed Mr. Pavan Kankani bearing Regd. No.IBBI/IPA-002/IP-N00368/2017-2018/11062 as the RP. The sole COC member had not filed any application before this Tribunal for replacement of the Applicant. The Applicant thereafter conducted 7 COC meetings to seek update from the sole COC member on the appointment of the RP and also to inform about the filing of required applications before this Tribunal. However, there was no update from the sole COC member in this regard and the sole COC member had directed the Applicant to seek the consent letter from Mr. Pavan Kankani and file application before this Tribunal for appointment of RP.

<sup>&</sup>lt;sup>4</sup> Annexure-4 (Page Nos.35-47)

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- 7. On 18.12.2021, 3<sup>rd</sup> COC meeting<sup>5</sup> was conducted by the Applicant about the agenda of appointment of Mr. Pavan Kankani as the RP before the COC once again and had also sought update on the status of receipt of the consent letter of the proposed RP and appointment of the RP. However, he informed the Applicant that sole COC member had appointed him as the RP without his knowledge and that Mr. Pavan Kankani had not given his consent. The COC thereafter informed the Applicant that the COC failed to obtain the consent of Mr. Pavan Kankani. However, no further resolutions were passed by the Respondent.
- 8. The Corporate Debtor had filed the Annual Report<sup>6</sup> with the ROC for the F.Y. 31.03.2018. The Applicant and his team noticed that the CD does not have any assets, though the balance sheet of the CD reflects the below stated list of assets.

Fixed Assets	Rs.274.71 Lacs
Non-current Investments	Rs.189.00 Lacs
Long-term Loans & Advances (Asset)	Rs. 39.88 Lacs
Current Asset (31.03.2018)	Rs.963.23 Lacs
Total	Rs.1,466.82 Lacs

<sup>6</sup> Annexure-6 (Page Nos.53-66)

<sup>&</sup>lt;sup>5</sup> Annexure-5 (Page Nos.48-52)

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- 9. There is absolutely no co-operation from the sole COC member to the Applicant. Despite there being no resolution for appointment of the Applicant as the RP, the Applicant conducted 5<sup>th</sup> COC meeting<sup>7</sup> on 28.02.2022 with the objective of completion of the CIRP within the prescribed timelines.
- 10. The Applicant had conducted the 6<sup>th</sup> COC meeting<sup>8</sup> on 28.03.2022, wherein the agenda conducted on 5<sup>th</sup> COC meeting were also placed before the sole COC member along with the resolution seeking exclusion of 90 days from the calculation of 180 days of CIRP. The sole COC member approved the resolution seeking exclusion of 90 days but did not approve any other resolution as placed before the COC member.
- 11. The Applicant submitted the Information Memorandum in the electronic form to the COC in the 5<sup>th</sup> COC meeting. In the 7<sup>th</sup> COC meeting<sup>9</sup>, the applicant informed to the sole COC member that he could not update the Information Memorandum due to no further developments/ submissions of financial statements/ state of asset details by the CD from the 5<sup>th</sup> COC meeting though the suspended directors assured that they will share all the details within 2 days without fail. However, till the date of filing the instant Application no information is provided by the suspended board of directors of the CD.

<sup>&</sup>lt;sup>7</sup> Annexure-7 (Page Nos.67-74)

<sup>8</sup> Annexure-8 (Page Nos.75-82)

<sup>9</sup> Annexure-9 (Page Nos.83-99)

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- 12. The Applicant had submitted Form G in 5<sup>th</sup> COC meeting and 6<sup>th</sup> COC meeting. However, the COC had not approved the publication expense and it was deferred to the next COC meeting for approval and publication.
- 13. The Applicant had submitted that no co-operation from the Promoters of the CD and also from the sole COC member, all the efforts went in vain and the CIRP of the CD could not be conducted within the prescribed timelines i.e., within 180 days from the initiation of the CIRP. The sole COC member did not even pass the resolution for Invitation of Expression of Interest in Form G. It is difficult for the Applicant to proceed with the CIRP. The Applicant had filed Application u/s. 60(5) of the Code seeking direction from this Tribunal to direct the sole COC member to co-operate with the Applicant for completion of the CIRP in a time bound manner.
- 14. In 6<sup>th</sup> COC meeting the sole COC member passed a resolution for excluding a period of 90 days from the period of 180 days in order to complete the CIRP. The Applicant had filed IA 324/2022 seeking exclusion of time. This Tribunal vide order dated 19.09.2022<sup>10</sup> allowed the application and granted exclusion of 90 days for completion of CIRP process.
- 15. There is absolutely no co-operation and assistance from the promoters of the CD, the sole COC member and the Petitioner in the Company Petition. The Applicant had also filed the applications (IA Nos.255/2022, 256/2022,

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<sup>&</sup>lt;sup>10</sup> Annexure-10 (Page Nos.100-101)

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325/2022)11 before this Tribunal for the said non- co-operation by the

Original Petitioner, promoters of the Corporate Debtor and the sole member

of the COC.

16. The Applicant vide email dated 05.01.2023 had informed the suspended

board members and the sole COC member about the order dated 13.12.2022

passed by this Tribunal. The Applicant had also sent letter dated 04.01.2023

to the promoters of the CD and the sole COC member which were

successfully delivered12. However, till the date of filing the instant

application, the Applicant had neither received any co-operation from the

promoters of the CD nor had received any amount from the sole COC

member.

17. The Applicant is still the IRP and neither had been appointed as the RP nor

had been replaced by any other IP as the RP. There is absolutely no co-

operation from the sole COC member. The Applicant had not received a

single penny from the original Petitioner and from the sole COC member

from the date of the initiation of the CIRP and appointment of the Applicant

herein as the IRP. Also, the expenses incurred by the Applicant in

conducting the CIRP had also not been reimbursed by the sole COC

member despite there being a specific order for the same.

<sup>11</sup> Annexure-11 (Page Nos.102-103) & (Page Nos.9-10)

<sup>12</sup> Annexure-12 (Page Nos.104-115)

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18. Applicant requested to the sole COC member to attend the meeting and pass

the required resolutions, the COC member had shown his unwillingness to

attend the meetings and further argued with the Applicant that since there

are no assets in the Corporate Debtor and no recovery of his debt is

expected, he is not interested to consume time and incur additional costs in

conducting the CIRP of the Corporate Debtor. He further held that "It's the

waste of time and money in attending the meetings". The Applicant had filed

IA/325/2022 against the sole COC member. The sole COC member neither

attended a single hearing nor appointed any legal practitioner to attend the

hearing on his behalf.

19. The CIRP is a time bound process as contemplated under Section 12 of the

Code and the inaction/unwillingness to act in accordance with the code and

the passive attitude of the sole COC member towards the CIRP of the CD

had caused immense difficulty to the Applicant to conduct further process

for the resolution of the corporate insolvency of the CD and the Applicant

is unable to perform his duties as the IRP of the CD.

20. The last date for completion of the CIRP of the CD after considering the

exclusion of time allowed by this Tribunal was 18.12.2022. The Applicant

was having complete heart blockage and had to undergo surgery<sup>13</sup> which

was conducted on 05.12.2022. Due to the ill health of the Applicant, the

<sup>13</sup> Annexure-13(Page Nos.116-118)

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Applicant could not file the instant application before the expiry of the

CIRP period.

21. Due to the health conditions and also the fact that the Applicant had not

received a single Rupee for the entire CIRP of the CD, the Applicant is

unwilling to be appointed as the Liquidator of the CD.

22. The Applicant is left with no other option but to file the instant application

u/s. 60(5) of the Code read with rule 11 of the NCLT rules seeking direction

from this Tribunal to liquidate the Corporate Debtor as there is absolutely

no co-operation from the sole COC member who is also the original

petitioner to the main company petition and that such

conduct/inaction/unwillingness of the sole COC member towards the

resolution of the Corporate Debtor and duly complete the CIRP of the

Corporate Debtor had created deadlock situation and has brought the CIRP

to dead-end. The reliefs sought by the Applicant are granted by this

Tribunal. No prejudice will be caused to any stakeholder if the reliefs sought

by the Applicant are granted.

23. We have heard the Learned Resolution Professional and perused the

records.

24. From the above, it appears that despite all possible steps as required under

the Code were taken during the CIRP, the CoC did not receive any viable

proposal for revival of the Company. Hence, this Adjudicating Authority

deems it proper to allow this Application. Accordingly, in exercise of

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powers conferred under Sub-Clause (i), (ii) and (iii) of Clause (b) of Sub-

Section (1) of Section 33 of the IBC 2016, we proceed to pass the Order as

follows:

<u>ORDER</u>

a. Liquidation of M/s.SSB Structural and Galvanising Private

Limited, shall be conducted in the manner as laid down in Chapter

III of Part II of the IBC, 2016.

b. Mr. Ravuru Hariprasad<sup>14</sup> is appointed as Liquidator. As per the

IBBI website, his AFA is valid upto 30.06.2025. He has to file his

consent in Form-2 before this Tribunal. He shall issue a public

announcement stating therein that the Corporate Applicant is in

Liquidation.

c. The Moratorium declared under Section 14 of the IBC, 2016 shall

cease to operate hereafter.

d. Subject to Section 52 of the IBC 2016, no suit or other legal

proceedings shall be instituted by or against the Corporate Debtor.

This shall however not apply to legal proceedings in relation to such

transactions as may be notified by the Central Government in

consultation with any financial sector regulator.

<sup>14</sup> Registration number IBBI/IPA-001/IP-P-02690/2022-2023/14126, email id: <a href="mailto:hariprasadr17@gmail.com">hariprasadr17@gmail.com</a>, phone no.9867140700.

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e. All powers of the Board of Directors, Key Managerial Personnel and

partners of the Corporate Debtor shall cease to have effect and shall

be vested in the Liquidator.

f. The Liquidator shall exercise the powers and perform duties as

envisaged under Sections 35 to 50 and 52 to 54 of the Code, read

with Insolvency and Bankruptcy Board of India (Liquidation

Process) Regulations 2016.

g. Personnel connected with the Corporate Debtor shall extend all

assistance and cooperation to the Liquidator as will be required for

managing its affairs.

h. The Liquidator shall be entitled to such fees as may be specified by

the Board in terms of Section 34 (8) of the Code.

i. This Order shall be deemed to be a notice of discharge to the

officers, employees and workmen of the Corporate Debtor, except

when the business of the Corporate Debtor is continued during the

Liquidation process by the Liquidator.

j. Copy of the Order shall be furnished to the IBBI, to the Regional

Director (South Eastern Region), Ministry of Corporate Affairs;

Registrar of Companies & Official Liquidator, Telangana, the

Registered Office of the Corporate Debtor; and the Liquidator.

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k. With the above directions, this Application is allowed and stands disposed of.

Sd/-

Sd/-

(SANJAY PURI) MEMBER (TECHNICAL) (RAJEEV BHARDWAJ) MEMBER (JUDICIAL

**Apoorva**