

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**C.P. (IB) No. 236/KB/2022**

***An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.***

**IN THE MATTER OF:**

**UCO BANK, having its registered office at Flagship Corporate Branch, A – 2, India Exchange Place, Kolkata – 700 001.**

**... Financial Creditor**

***-Versus-***

**IN THE MATTER OF:**

**M/s. ANKIT METAL & POWER LIMITED, having its registered office at SKP House, 132 – A, Shyama Prasad Mukherjee Road, Kolkata – 700 026.**

**... Corporate Debtor**

**Date of Pronouncement: 14.05.2024**

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)**

**SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

**Appearances:**

<b>Mr. Santosh Kr. Ray, Adv.</b>	<b>] For the Financial Creditor</b>
<b>Ms. Rituparna Sanyal, Adv.</b>	<b>]</b>
<b>Ms. Zeba Khan, Adv.</b>	<b>]</b>
<b>Ms. Muskan Saha, Adv.</b>	<b>]</b>

<b>Mr. Avishek Guha, Adv.</b>	<b>] For the Corporate Debtor</b>
<b>Mr. Ishaan Saha, Adv.</b>	<b>]</b>
<b>Ms. Arunika Dutta, Adv.</b>	<b>]</b>
<b>Mr. Kaustov De Sarkar, Adv.</b>	<b>]</b>

**ORDER**

***Per: D. Arvind, Member (Technical)***

1. The Court is congregated through a blended mode.
2. The Learned Counsels were heard at length.
3. This Company Petition has been preferred by UCO Bank (Financial Creditor/Applicant) seeking commencement of Corporate Insolvency Resolution Process (hereinafter referred to as CIRP) against M/s. Ankit Metal & Power Limited (Corporate Debtor/Respondent) under Section 7 of Insolvency and Bankruptcy Code, 2016.
4. At the time of hearing, on 6<sup>th</sup> May, 2024 after protracted litigation, we find that the Corporate Debtor has already been admitted under CIRP in Court – I of Kolkata Bench in **C.P. (IB)/91(KB)2023** *vide* its Order dated **03<sup>rd</sup> May, 2024**. Therefore, this petition has become **infructuous**. However, before parting we note that this application by UCO Bank (Financial Creditor/Applicant) has been filed in September, 2022.
5. When this matter was first taken on 16<sup>th</sup> September, 2022 the Corporate Debtor was not present and the matter was posted on 10<sup>th</sup> November, 2022. On 10<sup>th</sup> November, 2022 the Counsel representing Corporate Debtor was present and was directed to file reply affidavit within a period of two weeks and serve advance copy to the Ld. Counsel for the Financial Creditor.
6. Meanwhile from November, 2022 to June, 2023 both the parties were considering an OTS proposal. However, the OTS proposal failed resulting in full hearing and upon hearing both the parties the matter was reserved for Orders on 11<sup>th</sup> October, 2023. Since, the Financial Creditor relied on un-signed copies of balance-sheets of the Corporate Debtor, for the

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purpose of proving acknowledgement of debt, on 22<sup>nd</sup> November, 2023, this Adjudicating Authority issued Clarification Order directing the Statutory Auditor, namely, Mr. Gouranga Paul, of J.B.S. & Company, Chartered Accountant of the Corporate Debtor to be personally be present and confirm whether he has signed the balance-sheet or not. The clarification Order directed the Corporate Debtor to issue Notice to Statutory Auditor, to this effect.

7. When the matter again came up for hearing on 24<sup>th</sup> November, 2023, we find that no Notice has been received by the Statutory Auditor though the Corporate Debtor claimed that Notice has been delivered to the Statutory Auditor. Ultimately, the Statutory Auditor of the Corporate Debtor made appearance and confirmed signing the disputed financials and submitted signed copies of financials.
8. Thereafter, on 4<sup>th</sup> December, 2023 both the parties were present when the matter was taken up and both the parties asked for liberty to examine the Statutory Auditor's report and, therefore, the matter was listed for hearing on 11<sup>th</sup> December, 2023. And on 11<sup>th</sup> December, 2023, the matter was heard and reserved for Orders.
9. Subsequently, on consideration of the signed balance-sheets by the Chartered Accountant of the Corporate Debtor this Adjudicating Authority passed an Order dated 20<sup>th</sup> December, 2023 admit the Corporate Debtor into CIRP.
10. The Corporate Debtor filed an appeal before Hon'ble NCLAT on the ground that no opportunities were given to defend the audited financials submitted by the Statutory Auditor of the Corporate Debtor.
11. The Hon'ble NCLAT remanded the case back with direction to give appropriate and adequate opportunities to represent itself in respect to

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the financial statements which were placed by the Chartered Accountant before this Adjudicating Authority.

12. Accordingly, this Adjudicating Authority passed an Order on 22<sup>nd</sup> March, 2024 directing that the copy of the report and balance-sheet prepared by the Chartered Accountant of the Corporate Debtor to be furnished to all the parties including Resolution Professional and the Corporate Debtor.
13. When the matter was again posted for hearing on 18<sup>th</sup> April, 2024 reply affidavit was directed to be filed and extension for filing reply affidavit was given to Corporate Debtor even without the presence of his Counsel. The Corporate Debtor filed an appeal against this Order before NCLAT and Hon'ble NCLAT dismissed the appeal holding that appeal is not maintainable *vide* its Order dated 12.03.2024 in Company Appeal (AT) (Insolvency) No. 6 – 7 of 2024.
14. From the sequence of events, we find that the Corporate Debtor has made all possible attempts to drag and delay the commencement of CIRP process under Section 7 of IBC petition filed in September, 2022 which met its end in May, 2024.
15. As per Rule 11 of NCLT Rules, 2016: -

This Tribunal has inherent powers to pass Order in a case where process of Tribunal has been abused to circumvent the commencement of CIRP of the Corporate Debtor.

Therefore, in terms of Rule 149 of NCLT Rules, 2016: -

***“We impose a cost of Rs. 1 lakh payable to National Defence Fund, payable by Corporate Debtor, the respondent herein.”***

16. Accordingly, the Company Petition, i.e., **C.P. (IB) No. 236/KB/2022** stands **dismissed** as **infructuous**, but with costs.

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- 17.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
  
- 18.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**D. Arvind  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**This Order is signed on 14<sup>th</sup> of May, 2024.**

*Ar. [steno]*