

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (Court – II)
KOLKATA**

IA(IBC)/712(KB)2023

IA(IBC)/738(KB)2021

C.P. (IB)/176(KB)2018

***An application under Section 425 of the Companies Act, 2013
read with Section 60(5) of Insolvency and Bankruptcy Code,
2016 and Rule 11 of the National Company Law Tribunal Rules,
2016 & Regulation 43 of the Insolvency and Bankruptcy Board
of India (Liquidation Process) Regulations, 2016.***

In the matter of:

(1) IMPEX METAL & FERRO ALLOYS LIMITED – IN LIQUIDATION

... Corporate Debtor

-And-

**(2) Mr. Samir Kumar Bhattacharyya, the Liquidator for Impex Metal &
Ferro Alloys Limited**

... Applicant

-Versus-

(3) Tuf Metallurgical Private Limited

... Respondent

In the matter of:

**(1) Maithan Alloys Limited, a company incorporated under the
Companies Act, 2013 and having its registered office at 9, AJC Bose
Road, Kolkata – 700 020, West Bengal.**

... Applicant

-Versus-

**(2) Eastern Power Distribution Company of Andhra Pradesh Limited,
having its corporate office at C/o 50-27-5/1, TPT Colony,
Seethammadhara, Vishakhapatnam, Andhra Pradesh – 530013.**

**(3) Mr. K. Santosha Rao, Chairman & Managing Director, P & T, Colony,
Seethammadhara, Vishakhapatnam, Andhra Pradesh – 530013.**

- (4) **Mr. Shamsheer Singh Rawat**, IAS, Director, P & T, Colony, Seethammadhara, Vishakhapatnam, Andhra Pradesh – 530013.
- (5) **Mr. Dandagala Chandram**, IRAS, Director (Finance & HRD), P & T, Colony, Seethammadhara, Vishakhapatnam, Andhra Pradesh – 530013.
- (6) **Mr. B. Ramesh Prasad**, Director (Operations), P & T, Colony, Seethammadhara, Vishakhapatnam, Andhra Pradesh – 530013.
- (7) **Mr. A.V.V. Surya Pratap**, Director (Projects), P & T, Colony, Seethammadhara, Vishakhapatnam, Andhra Pradesh – 530013.
- (8) **Mr. B.A.V.P. Kumara Reddy**, Director, P & T, Colony, Seethammadhara, Vishakhapatnam, Andhra Pradesh – 530013.
- (9) **Ms. Radhika Anusuri**, Director, P & T, Colony, Seethammadhara, Vishakhapatnam, Andhra Pradesh – 530013.
- (10) **The Superintending Engineer**, Operation Circle, P & T, Colony, Seethammadhara, Vishakhapatnam, Andhra Pradesh – 530013.
And also at: Operation Circle, Vidyuth Bhavan, Dasannapeta, Vizianagaram 535002.

... Contemnors/Respondents

- (11) **Mr. Samir Bhattacharya**, Liquidator of Impex Metal & Ferro Alloys Ltd. (in liquidation) Sagar Trade Cube, 104, S.P. Mukherjee Road, 2nd Floor, Kolkata – 700026.

... Proforma Respondent

-And-

- (1) **Maithan Alloys Limited**, a company incorporated under the Companies Act, 2013 and having registered office at 9, A.J.C. Bose Road, Kolkata – 700017.

... Applicant

-Versus-

- (1) **Eastern Power Distribution Company of Andhra Pradesh Limited**, having its corporate office at C/o 50-27-5/1, TPT Colony, Seethammadhara, Vishakhapatnam, Andhra Pradesh – 530013.

... Respondent No. 1

(2) Mr. Samir Bhattacharya, Liquidator of Impex Metal & Ferro Alloys Ltd.
(in liquidation) Sagar Trade Cube, 104, S.P. Mukherjee Road, 2nd Floor,
Kolkata – 700026.

... Respondent No. 2

-And-

(1) State Bank of India, State Bank Bhabhan, Madam Cama Road,
Mumbai – 400021.

... Financial Creditor

-Versus-

(1) Impex Metal & Ferro Alloys Ltd., 35, C.R. Avenue, Kolkata – 700012.

... Corporate Debtor

Date of pronouncing of the order: 23/04/2024

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**
Shri D. Arvind : **Member (Technical)**

Appearances (via video conferencing/physically):

Mr. Zeeshan Haque, Adv.	] For the Applicant in
Ms. Tanvi Luhariwala, Adv.	] IA(I.B.C)/712(KB)2023,
Mr. Supriyo Gole, Adv.	] IA(I.B.C)/723(KB)2023 and
Ms. Madhuj Barman, Adv.	] IA(I.B.C)/2074(KB)2023
Mr. Devajyoti Berman, Adv.	] For the respondent in
Ms. Sanjukta Basu Mallick, Adv.	] IA(I.B.C)/604(KB)2022 and IA(I.B.C)/1618(KB)2023
Mr. Rishav Banerjee, Adv.	] For Liquidator
Mr. Rahul Auddy, Adv.]
Mr. Aditya Gooptu, Adv.]
Mr. Samir Kr. Bhattacharyya,	] Liq.-in-person
Mr. Sidhartha Sharma, Adv.	] For EPDCAPL in
Mr. Rishav Dutt, Adv.	] IA(I.B.C)/712(KB)2023
Ms. S. Basu, Adv.	] and IA(I.B.C)/723(KB)2023
Mr. Shounak Mukhopadhyay, Adv.	] For the applicant in IA(I.B.C)/604(KB)2022,
Mr. Supriyo Gole, Adv.	] IA(I.B.C)/1617(KB)2023 and

Ms. Madhujā Barman, Adv.	] IA(I.B.C)/1618(KB)2023
Ms. Tanvi Luhariwala, Adv. Mr. Supriyo Gole, Adv.	] For the applicant in] IA(I.B.C)/712(KB)2023
Ms. Madhujā Barman, Adv.	] and IA(I.B.C)/723(KB)2023
Mr. Rohit Kr. Keshri, Adv.	] For the respondent in IA(I.B.C)/1617(KB)2023
Mr. Nitish Kr. Singh, Adv.	] and in IA(I.B.C)/885(KB)2022
Ms. Manju Bhuteria, Adv. Ms. Srishti Agrawaal, Adv. Mr. Vaibhav Mahajan, Adv.	] For the erstwhile RP] For TUF METALLAURGICAL] in IA(I.B.C)/574(KB)2021
Ms. Srishti Agrawaal, Adv. Mr. Vaibhav Mahajan, Adv.	] For TUF METALLAURGICAL] in IA(I.B.C)/738(KB)2021
Ms. Deblina Lahiri, Adv. Mr. Mrinmoy Chatterjee, Adv.	] For SBI in IA(I.B.C)/845(KB)2021]

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The court convened through hybrid mode.
2. Ld. Counsels appearing for the parties were heard in extenso.

IA(IBC)/712(KB)2023

1. By way of this IA(IBC)/712(KB)2023, the applicant seeks the following reliefs: -

(a) *Direction(s) and/or order(s) be issued compelling the respondent nos./contemnors to comply with the letter and spirit of the said order dated 05.10.2021 passed by this Learned Tribunal in IA(IBC)/748(KB)2021;*

(b) *Rule nisi be issued calling upon the respondents/contemnors, and each of them, to show cause as to why they should not be*

fined Rs. 2000/- and/or be sentenced to imprisonment and/or detention in civil prison for having wilfully, deliberately, and contumaciously having violated and/or disobeyed the said order dated 05.10.2021 passed by this Learned Tribunal in IA(IBC)/748(KB)2021;

(c) *If the respondent nos./contemnors failed to show sufficient cause, the rule issued as per prayer (b) hereinabove be made absolute and fine be imposed on the respondent nos./contemnors of Rs. 2,000/- and/or imprisonment for 6 months be sentenced and/or detention in civil prison for 6 months be ordered;*

2. While disposing of IA(IBC)/723(KB)2023 we have already considered the Order dated 05.10.2021 in IA(IBC)/748(KB)2021, and passed the following Orders: -

(a) *We have considered the rival contentions and perused records.*

(b) *In as much as the Respondent was bound to levy true up charges as mandated by APERC vide tariff order of 2022-23 (post sale) and the Applicant had failed to pay the amounts raised, we find no infirmity in deduction of Rs. 3,16,08,439.56/- as per break up supra. However, we would note that out of Rs. 25.05 crores paid in term of Order dated 05.10.2021, a refund of Rs. 16,83,91,560/- has been made to the Applicant adjusting to Rs. 03,16,08,440/-towards true up charges.*

(c) *Hence, if the Applicant has paid Rs. 24.50 crores to Respondent No. 1, the said Respondent shall retain the following amounts:*

(i) *Security deposit of Rs. 13,14,73,000/-*

(ii) *True up charges of Rs. 03,16,08,440/-*

And refund the balance to the Applicant within two weeks from the date of receipt of a copy of this order.

3. Since, it seems that the relief has been granted already in regard to the claim of Eastern Power Distribution Company of Andhra Pradesh Limited (in short “EPDCAPL”) for true up charges, nothing survives for adjudication as of now.
4. **IA(IBC)/712(KB)2023** is thus **disposed of** with liberty to come up afresh, if further aggrieved.

IA(IBC)/738(KB)2021

1. This application has been preferred by the Liquidator of Impex Metal & Ferro Alloys Limited to seek the following relief(s): -

(a) Direction upon the Respondent to refund the amount of Rs. 24,98,455.33 received by them as excess CIRP costs within a period of 7 days from the date of the order.

2. The liquidator states the due to wrong calculations on his part, an excess amount of Rs. 24,98,455.53 has been paid as CIRP costs to the respondent, which the respondent is not entitled to this amount is to be correctly distributed amongst the other creditors in accordance with the Code. Hence, the excess amount of Rs. 24,98,455.53 should be refunded back by the Respondent to the Corporate Debtor in the designated account stated by the Liquidator.
3. Reference is made to the regulation 43 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, which provides that a stakeholder shall forthwith return any

monies received by him in distribution, which he was not entitled to at the time of distribution, or subsequently became not entitled to and a signed indemnity from the respondent that he will refund the money when asked for if it is found that respondent have been paid in excess annexed as Annexure E.

4. Hence this application is being filed seeking necessary direction upon the Respondent to refund the amount of Rs. 24,98,455.33 received by them as excess CIRP costs due to wrong calculations by the Liquidator.
5. Per contra, the Respondent, namely, Tuf Metallurgical Private Limited would submit that “the amount in question Rs. 26,19,118/- is the dues that were to be paid by the Corporate Debtor to the Respondent for the supply of raw material being Manganese Ore during CIRP period. That the said dues could not be paid by the Corporate Debtor to the Respondent. That in view of the same, the RP suggested that instead of paying the Respondent its dues monies in respect to the supply of raw material, if the Respondent would be willing to take manufactured goods being Silicon Manganese from the Corporate Debtor. That the Respondent considering the dire financial state of the Corporate Debtor and the long relation of the Corporate Debtor with the Respondent, in good faith agreed to accept Silicon Manganese from the Corporate Debtor for an equal amount. That the RP in view of the arrangement between the Corporate Debtor and the Respondent made certain adjustments in the ledger of the Corporate Debtor to give effect to this understanding”.
6. We have failed to decipher any documents that establishes supply of materials to the Corporate Debtor by Tuf Metallurgical Private Limited or any arrangement between the Corporate Debtor and Tuf

Metallurgical Private Limited about any such adjustment. On the contrary, the identification *vide* indemnity bond is palpable.

7. Hence, Tuf Metallurgical Private Limited is directed to refund the amount in four weeks. **IA(IBC)/738(KB)2021** is thus **allowed**.
8. The Registry is directed to send e-mail copies of the order forthwith to the Board and all the parties and their Ld. Counsel for information and for taking necessary steps.
9. 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)

Order signed on: 23rd of April, 2024.

Ar.