NATIONAL COMPANY LAW TRIBUNAL
राष्ट्रीय कंपनी विधि अधिकरण
CUTTACK BENCH
कटक खंडपीठ
ORDER SHEET OF THE HEARING ON 27th SEPTEMBER, 2022, 10:30 A.M.
Rst. A. No. 2/CB/2022, (CP (IB) No. 199/CB/2020)

Present: 1. Hon'ble Member (Judicial), Shri P. Mohan Raj
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad

Name of the Company	Indian Overseas Bank -Vs- Srabani Construction Pvt. Ltd.
Under Section	7 IBC

For Petitioner (s) Mr. S. Jena, CS

For Respondent (s) Mr. S. Das, Adv.

ORDER

RST. APP. (IBC) No. 2/CB/2022:

This is an application filed under Rule 11 of the NCLT Rules 2016, to restore the CP IB 199/CB/2020 filed under Section 7 of Insolvency & Bankruptcy Code, 2016 (IBC), read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, and the connected IA No. 32/CB/2022 filed under Rule 55 of NCLT Rules, 2016. They were dismissed on 26.03.2022.

Respondent side filed a counter. Opposing the application, heard both sides. The petition CP (IB) No. 199/CB/2020 and IA No. 32/CB/2022 were dismissed by this Authority on 06.05.2022 as infructuous, because of already the respondent herein was admitted in to CIRP. In CP (IB) No. 145/CB/2019 by order of this Tribunal dated 21.04.2022. The petitioner was directed by this Authority to submit its claim before the IRP Mr. Chaitanya Kumar Ray appointed in CP (IB) No. 145/CB/2019. Now it is brought to our notice after admitting the respondent in CIRP in CP (IB) No. 145/CB/2019, subsequently, the respondent herein and Operational Creditor/ Petitioner in CP IB No. 145/CB/2019 entered into a compromise and filed a withdrawal petition before this Tribunal under Section 12 (A) of IBC, 2020. The said withdrawal petition IA No. 126/CB/2022 was allowed by this Authority by

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order dated 17.06.2022, in the situation petitioner has come forward with this application to restore the CP (IB) No. 199/CB/2020 and IA No. 32/CB/2022.

On the respondent side opposed the application stating that this application is not maintainable because the main petition was not dismissed for default, only if the petition was dismissed for default, it can be restored, otherwise the petitioner has to file a fresh IBC Petition. The objection of the respondent is not acceptable because no fault on the part of the petitioner, the main petition CP (IB) No. 199/CB/2020 was dismissed by this Tribunal. Even though, there is no specific provision available in the interest of justice by invoking inherent power provided under Rule 11of the NCLT Rules, 2016, we inclined to allow the application. In a similar situation the Apex Court in

M/s. ESS Investments Pvt. Ltd. Vs. Lokhandwala Infrastructure Pvt. Ltd, Civil Appeal No. 324/2020 ordered to restore the petition. In the result this application is Allowed.

V CP No. 199/CB/2022 & IA 32/CB/2022:

In view of the order passed in restoration IA 02/CB/2022 the Main CP (IB) No. 199/CB/2020 and the IA No. 32/CB/2022 are restored. To file counter, if any, in IA 32/CB/2022, one week's time is granted. List the IA 32/CB/2022 and Main CP (IB) No. 199/CB/2020 by 31.10.2022.

Sd

Satya Ranjan Prasad
Member (Technical)

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P. Mohan Raj
Member (Judicial)