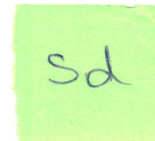


CP (IB) No. 373/KB/2017 renumbered as TP No. 44/CTB/2019
CP (IB) No. 372/KB/2017 renumbered as TA No. 29/CTB/2019

**State Bank of India Vs. Adhunik Metaliks Ltd. & Zion Steel Limited Vs.
Liberty House Group PTE LTD**

ORDER

Ld. Erstwhile RP appear, he stated that certain corrections are to be carried in the order dated 8th July, 2019. (In respect of State Bank of India Vs. Adhunik Metaliks Ltd.) Heard Ld. Counsel for the CA(IB) No. 403/KB/2018 correction to be carried in the order as per Rule 154 of NCLT Rules and amended order be uploaded.



M. B. Gosavi)
Member(J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

**CP (IB) No. 373/KB/2017 renumbered as TP No. 44/CTB/2019
CP (IB) No. 372/KB/2017 connected with TA No. 29/CTB/2019
CA (IB) No. 38/CTB/2019
CA (IB) No. 1072/KB/2018 renumbered as TA No. 22/CTB/2019
CA (IB) No. 02/KB/2019 renumbered as TA No. 23/CTB/2019
CA (IB) No. 13/KB/2019 renumbered as TA No. 25/CTB/2019
CA (IB) No. 1138/KB/2018 renumbered as TA No. 26/CTB/2019
CA (IB) No. 1069/KB/2018 renumbered as TA No. 27/CTB/2019
&
CA No. 25/CTB/2019**

CORAM: Shri M.B. Gosavi, Member (Judicial)

In the matter of:

An application under Section 7 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

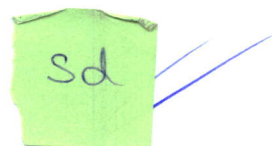
An application under Section 60 (5) read with other relevant Sections of the Insolvency and Bankruptcy Code, 2016;

-And-

In the Matter of:

State Bank of India, State Bank Bhawan, Madame Cama Road, Nariman Point, Mumbai – 400021, Maharashtra having Branch at Corporate Accounts Group Branch, Sribriddhi Bhawan, 2nd Floor, 34, Jawahar Lal Nehru Road, Kolkata – 700071;

... .. Financial Creditor

sd 

-Versus-

In the Matter of:

Adhunik Metaliks Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Chadri, Hariharpur, P.O. Kuarmunda, Sundargarh, Orissa – 770039;

... .. **Respondent/ Corporate Debtor**

-And-

In the Matter of:

Zion Steel Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Gobira, P.O. Kuarmunda, P.S. Birmitrapur, Sundargarh, Orissa, India – 770039.

-Versus-

In the Matter of:

Liberty House Group PTE LTD, a company incorporated under the laws of Singapore, Head Quartered at 8, Marina View, #40-06, Asia Square Tower 1, Singapore (018960);

... .. **Applicant/Petitioner**

Counsels appeared:

1. Sidhartha Sharma, Adv.] On behalf of erstwhile RP

1. Joy Saha, Sr. Adv.]
2. Pratap Mohapatra, Adv.]
3. Ms. Suhani Dwivedi, Adv.] For the CoC

Sd

1. Gurupada Chakraborty]
2. Om Prakash] SBI & PNB representatives

1. Arbind Kr. Gupta, Adv.]
2. Henna George, Adv.]
3. Saswat Acharya, Adv.]
4. Debasis Sathpathy, Adv.] For Resolution Applicant (Liberty Group House PTC Ltd.)

1. Patita Paban Bishwal, Adv.] For Suspended Board of Directors.

1. Ashim Amitabh Dash, Adv.]
2. Pratik Dash, Adv.] For Workers side

1. Ujjaini Chatterjee, Adv.] For Monitoring Committee.

Date of pronouncement of Order: 9th day of July, 2019.

ORDER

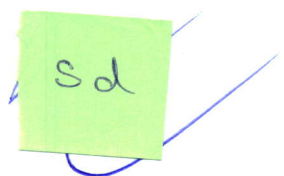
Per Shri M.B. Gosavi, Member (J):

1. All above applications are filed under Section 60 (5) of Insolvency and Bankruptcy Code, 2016 by State Bank of India one of the Financial Creditor, and State Bank of India as one of the Member of Committee of Creditors, by Resolution Professional, by Liberty House Group (For short

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LHG) the successful Resolution Applicant, by workmen of the Corporate Debtor, by MSTC one of the Operational Creditor of the Corporate Debtor etc. State Bank of India/Committee of Creditors and the Resolution Professional have filed application for direction to the Liberty House Group - the successful Resolution Applicant to act as per the approved Resolution Plan. Later on, State Bank of India/Committee of Creditors filed application to cancel the Resolution Plan of Liberty House Group stating that they committed breach in implementation of Resolution Plan. State Bank of India/Committee of Creditors stated that this authority may not pass order of Liquidation of the Corporate Debtor but to pass order of the revival of the Corporate Insolvency Resolution Process by excluding period wasted by the Successful Resolution Applicant by not implementing the Resolution Plan. They also requested this authority to allow them to consider the Resolution Plan which was submitted by earlier H2 bidder M/s Maharashtra Seamless Limited. They also requested this authority to allow them to forfeit sum of Rs. 50 Crore which the Successful Resolution Applicant has deposited by treating the same amount as a performance's security for implementation of the Resolution Plan which they failed to implement.

2. The Liberty House Group – the Successful Resolution Applicant filed application requesting this authority to give directions to the



Committee of Creditors/Monitoring Committee/Managing Committee to cooperate them in implementing the Resolution Plan in proper prospective as per the terms laid down in the Resolution Plan.

3. Workmen of the Corporate Debtor filed application stating that they are not paid wages for months together. Hence, issue directions to Liberty House Group to make provision to pay their salary. MSTC – one of the Operational Creditor of the Corporate Debtor filed application to direct Committee of Creditors to consider their claim as Operational Creditor.
4. One more application is filed by the Monitoring Committee to give direction to the Registrar of Companies, Odisha not to take any coercive action against the Corporate Debtor, for not holding Annual General Body Meeting in time.
5. I heard learned Senior Counsel Mr. Joy Saha for State Bank of India/Committee of Creditors, I heard learned Advocate Mr. Arbind Kumar Gupta for Liberty House Group, I Heard learned Senior Counsel Mr. Asim Amitabh Dash for the workmen, I heard learned Counsel Mr.

Sidhartha Sharma appearing for the Erstwhile Resolution Professional and all other learned Counsels appearing in this proceeding.

6. Before entering into main controversy, it will be proper to note some undisputed facts as they would help in deciding the controversy in proper manner.
7. State Bank of India – the Financial Creditor had filed application under Section 7 of Insolvency and Bankruptcy Code, 2016 against M/s Adhunik Metaliks Limited (the Corporate Debtor) and M/s Zion Steel Limited (the subsidiary company of the Corporate Debtor and the Corporate Debtor in CP (IB) No. 372/KB/2017) to start Corporate Insolvency Resolution Process of both the Companies as they committed default in paying financial debt of more than Rs. 7,477,200,000/- (Seven-Hundred Forty-Seven Crore Seventy-Two Lakh only) Learned Adjudicating Authority at Kolkata admitted both Adhunik Metaliks Limited and Zion Steel Limited in Corporate Insolvency Resolution Process vide order dated 03.08.2017. Mr. Sumit Binani was appointed as Interim Resolution Professional later on he was confirmed as Resolution Professional.

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8. During Corporate Insolvency Resolution Process, the Resolution Professional called for Resolution Plan from prospective Resolution Applicant. In pursuant thereto, Liberty House Group submitted the Resolution Plan. The Committee of Creditors by 99.94 % votes approved the Resolution Plan of Liberty House Group. The Adjudicating Authority at Kolkata by order dated 17.07.2018 approved that Plan and thereby Corporate Insolvency Resolution Process of the Corporate Debtor was successfully completed. However, while passing approval of the Resolution Plan of Liberty House Group, the Adjudicating Authority at Kolkata rejected M/s MSTC Limited's contention of settling their claim of Rs. 108.36 Crore. Feeling aggrieved of rejection of their claim MSTC Limited filed appeal bearing number 519 of 2018. That appeal was dismissed by Hon'ble NCLAT vide order dated 15.03.2019. Thereafter, MSTC Limited filed second appeal against the order of dismissal of first appeal by the Hon'ble NCLAT, Hon'ble Supreme Court rejected their second appeal also by. In view of this now MSTC's application bearing number TA No. 26/CTB/2019 (CA (IB) No. 1138/KB/2018) stands rejected as their claim is rejected by this Tribunal, Hon'ble NCLAT and in lastly by the Apex Court.

9. Pending the appeal filed by MSTC, the Successful Resolution Applicant Liberty House Group did not take steps to implement the

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Resolution Plan by making upfront payment. Hence, Committee of Creditors filed CA (IB) No. 1069/KB/2018 (TA No. 27/CTB/2019) requesting this authority to direct Resolution Applicant Liberty House Group to implement the plan by making upfront payment or else passed the order of liquidation of the Corporate Debtor. The Adjudicating Authority at Kolkata issued notice to the Liberty House Group asking them as to why order of liquidation of the Corporate Debtor should not be passed. Liberty House Group also filed appeal against that order. Hon'ble NCLAT by order dated 15.03.2019 pleased to disposed off both the appeals and directed the Liberty House Group to make upfront payment within 30 days.

10. Liberty House Group filed TA No 22/CTB/2019 (CA (IB) No. 1072/KB/2018) for direction to the Committee of Creditors to cooperate them to implement the Plan as per the terms of the approved Plan. As against this the Committee of Creditors/State Bank of India filed application TA No. 23/CTB/2019 and CA (IB) 27/CTB/2019, one application for cancellation of the Plan and other application to allow them to forfeit sum Rs. 50 Crore deposited by Liberty House Group as a part of upfront payment treating the same as the performance's security for implementation of the Plan.

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11. In view of all the above applications, it is necessary to see first as to at whose instance the implementation of the Resolution Plan is considerably delayed? It is due to lackadaisical approach of Liberty House Group in implementing the Plan or it is because the Committee of Creditors/Monitoring Committee's non-cooperation to Liberty House Group in implementing the Plan?
12. It is the say of State Bank of India/Committee of Creditors that Liberty House Group was obliged to make upfront cash payment of Rs. 410 Crore within 57 days of approval of the Resolution Plan. They did not make the payment thereby they committed breach of the implementation of the Resolution Plan. As against the Liberty House Group contends that Committee of Creditors/Monitoring Committee did not issue in their favour offer letter of equity shares of the Corporate Debtor. Unless such offer letter is issued, it is difficult for them to invest the funds as per the Plan.
13. At the outset, it is made clear that Hon'ble NCLAT passed the order dated 15.03.2019 directing Liberty House Group to make upfront payment within 30 days. It is as follows!

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“Having rejected the prayer, as made by both the Appellants, to give one opportunity for the purpose of compliance of this order and implementation of the plan, we allow the Appellant – ‘Liberty House Group’ another 30 days to make upfront payment in terms of the ‘Resolution Plan’. On failure, it will be open to the Adjudicating Authority, Kolkata Bench to pass the appropriate order in accordance with law”.

14. All parties in the appeal before Hon’ble NCLAT are bound by this order unless it is set aside or varied by the Appellate Tribunal/Court. This Adjudicating Authority is also bound by this order. In view of the above order this Adjudicating Authority cannot again go in to the question whether Liberty House Group can be allowed to not to make upfront payment because Committee of Creditors/Monitoring Committee did not give them offer letter.

15. Learned Counsel Mr. Gupta for Liberty House Group took me through the contents of the Resolution Plan to impress upon this authority as to how they are not liable to make upfront payment as directed by

Hon'ble NCLAT. This authority cannot go into that aspect now. It was obligatory on part of the Liberty House Group to make upfront cash payment within 30 days from the date of the order of Hon'ble NCLAT. They did not make it. For this reason alone, their application at CA (IB) No. 22/CTB/2019 and CA (IB) No. 38/CTB/2019 required to be rejected. It is now held that the Liberty House Group the Successful Resolution Applicant committed the breach of the terms of approved Resolution Plan approved by the Committee of Creditors of the Corporate Debtor. It is nothing but contravention of terms of the Resolution Plan within meaning of Section 74 (3) of Insolvency and Bankruptcy Code, 2016.

16. Learned Senior Counsel Mr. Saha for the Committee of Creditors/State Bank of India submitted that Liberty House Group deposited in State Bank of India sum of Rs. 50 Crore. Liberty House Group could not implement the Plan successfully for last more than a year. The Corporate Debtor is a going concern as on today. As on today there are more than 1,500 employees and workers still working there. The Committee of Creditors/Monitoring Committee have to spend lot of money to manage the affairs of the Corporate Debtor. In such situation the amount of Rs. 50 Crore deposited by Liberty House Group, may be permitted to treat as a performance security towards implementation of the Plan and as Liberty House Group committed breach of the Plan, they

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may be allowed to forfeit the amount of Rs. 50 Crore as contemplated under Regulation 36B (4A) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulation, 2016.

17. As against this learned Counsel Mr. Arvind Kr. Gupta for Liberty House Group submitted that amount of Rs. 50 Crore is deposited as the part of upfront cash payment. It was deposited to show readiness and willingness of Liberty House Group in implementation of the Resolution Plan. The facts on record would show that his client is not at all in fault for non-implementation but the CoC did not cooperate his client by giving offer letter of equity shares of the Corporate Debtor. The amount deposited as the part of upfront payment cannot be forfeited treating the same as the performance's security.

18. It is seen from the record that Liberty House Group did not make upfront cash payment within 57 days of approval of the Resolution Plan. Not only that, firstly this authority and thereafter Hon'ble NCLAT extended time to make upfront payment but they did not make. By filing various applications now, they raised the point that as per Resolution Plan it was for Committee of Creditors/Monitoring Committee to give them an offer letter about equity shares of the Corporate Debtor. I hold that this

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contention of Liberty House Group cannot be accepted mainly for two reasons;

- (i) It is raised deliberately at belated stage. They could have raised this issue of Offer Letter at earlier point of time and not after almost one year after the approval of their Resolution Plan and;
- (ii) The word “upfront payment” used in the Resolution Plan cannot be qualified by any condition as sought to be attached subsequently by them.

19. The word “upfront payment” has not been defined in the Insolvency and Bankruptcy Code. But its dictionary meaning is very plain and clear i.e. ***“the amount of money paid before particular piece of work or particular services is done or received” (Cambridge Dictionary)***. This meaning of word “upfront payment” has to be accepted as being used in common parlance and hence, there cannot not be any pre condition in making in-front payment as contended by the Liberty House Group. Liberty House Group did not make upfront payment. Real question is whether the amount of Rs. 50 Crore deposited by them can be treated as a performance security as per Regulation 36 B (4 A) of Insolvency Resolution Regulations, 2016 Regulation 36B (4A) states that;

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“The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of Section 30, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule.

Explanation I. – For the purposes of this sub-regulation, “performance security” shall mean security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the Corporate debtor.

Explanation II. – A performance security may be specified in absolute terms such as guarantee from a bank for Rs. X for Y years or in relation to one or more variable such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc.”

Sd _____

20. In this case, the Committee of Creditors while approving the Resolution Plan of Liberty House Group, did not ask them to give performance security for successful implementation of the Resolution Plan. Moreover, this provision is added in Regulation by Amendment dated 24.04.2019. If this provision is to be used against Liberty House Group by forfeiting their amount treating as performance's security, it would be nothing but penalising them at this stage. Such provision cannot be used retrospectively. Their Plan is approved almost year ago before the amendment. Hence, the prayer of Committee of Creditors to allow them to forfeit sum of Rs. 50 Crore deposited by Liberty House Group treating it as a performance's Security cannot be allowed. Since the Liberty House Group did not demand back that sum of amount, I am not passing any order thereto at this stage.

21. In this case, the situation that has arisen is that Successful Resolution Applicant Liberty House Group is not in position to implement the Resolution Plan. Corporate Insolvency Resolution Process period of 270 days has already been over along back. In such a situation this authority has no option but to pass order of liquidation of the Corporate Debtor as per Section 33 of Insolvency and Bankruptcy Code, 2016. However, learned Senior Counsel Mr. Saha submitted that this

authority can passed order of liquidation of the Corporate Debtor only in two contingencies as stated under Section 33 (1) (a) and (b) of Insolvency and Bankruptcy Code, 2016. He submitted that;

- (i) Contingencies are that the Adjudicating Authority does not receive any Resolution Plan during 180 or 270 days or
- (ii) The Adjudicating Authority rejects the Resolution Plan under Section 31 of Insolvency and Bankruptcy Code, 2016.

According to learned Senior Counsel there is no any other ground available under the law for this authority to pass order of liquidation of the Corporate Debtor. Learned Senior Counsel further submits that if the object of Insolvency and Bankruptcy Code is considered in letter and spirit then in any case Resolution of insolvency has to be the first object and liquidation later. According to learned Senior Counsel Committee of Creditors received afresh letter from M/s Maharashtra Seamless Limited who was H2 bidder in this case. The Committee of Creditors may be permitted to consider their Resolution Plan. This authority may pass order of exclusion of all these days from Corporate Insolvency Resolution Process period, which are being wasted by Liberty House Group by not implementing their Plan.

22. In my considered opinion, the submissions of learned Senior Counsel though appears to be attractive, but cannot be accepted. Committee of Creditors had an opportunity to consider the Plan submitted by M/s Maharashtra Seamless Limited at earlier point of time. Their Plan was rejected by Committee of Creditors because in the Plan they had offered the investment in the Corporate Debtor below the liquidation value. In such a situation, the authority cannot reset the clock back to day one. I cannot allow the Committee of Creditors to restart the Corporate Insolvency Resolution Period afresh over and again. I reject submissions of learned Senior Counsel for the Committee of Creditors/State Bank of India. Moreover, if at all the Maharashtra Seamless Limited are really interested to take on affairs of the Corporate Debtor, they have still an opportunity to do so by filing application under Section 230-232 of the Companies Act, 2013 (For Merger and Amalgamation).

23. Considering facts of the case and evidence on record I hold that since the Liberty House Group, the Successful Resolution Applicant failed to implement Resolution Plan as submitted by them, I cancelled their Resolution Plan and proceed to pass order of liquidation of Corporate Debtor as contemplated under Section 33 of Insolvency and Bankruptcy Code, 2016. It is brought to my notice that Corporate Debtor

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is going concern having more than 1,500 workers and employees. Hence, I direct the Liquidator to liquidate the Corporate Debtor as a going concern as per Regulation 32 (f) of Insolvency and Bankruptcy Board of India (Liquidation Process Regulation, 2016). I hereby appoint Mr. Sumit Binani Resolution Professional as the Liquidator. With this all application stand disposed off and I proceed to pass the following order –

ORDER

- (i) Corporate Debtor **Adhunik Metaliks Limited**, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Chadri, Hariharpur, P.O. Kuarmunda, Sundargarh, Orissa – 770039 & **Zion Steel Limited**, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Gobira, P.O. Kuarmunda, P.S. Birmitrapur, Sundargarh, Orissa, India – 770039 is admitted in process of liquidation.
- (ii) Mr. Sumit Binani, Resolution Professional having Registration No. IBBI/IPA-001/IP-N00005/2016-17/10025 of 2A, Ganesh Chandra Avenue, Commerce House, Room No. 6, 4th Floor, Kolkata – 700013 and Email-id sumit_binani@hotmail.com is appointed as the

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Liquidator in **CP (IB) No. 373/KB/2017** renumbered as **TP No. 44/CTB/2019** & **CP (IB) No. 372/KB/2017** renumbered as **TP No. 29/CTB/2019**.

- (iii) Mr. Sumit Binani is directed to issue public announcement stating that the Corporate Debtor is in liquidation, in one of the leading English newspaper as well as in one Oriya newspaper having wide circulation where the registered office of the Corporate Debtor is situated as per Section 33(1) (b) (ii) of the Code read with Reg. 12 (1) of IBBI (Liquidation Process) Regulations, 2016.
- (iv) The Registry is directed to communicate the order to the Registrar of Companies, Odisha and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi.
- (v) This order of Moratorium passed under Section 14 of the I&B Code, shall cease to have effects and a fresh moratorium under Section 33 (5) shall commence.
- (vi) The Liquidator is directed to liquidate/sale the Corporate Debtor as it is going concern as per Regulation 32 (f) of Insolvency and Bankruptcy Board of India (Liquidation Process Regulation, 2016).

Sd

- (vii) The Liquidator is directed to proceed with the process of Liquidation in a manner laid down in Chapter III of the Insolvency and Bankruptcy Code, 2016.
- (viii) Upon proceeding with the Liquidation the Liquidator shall file a preliminary report as per regulation 5 read with Reg. 13 of the IBBI (Liquidation) Regulations, 2016 at the registry within 75 days from the liquidation commencement date and continue to file progress reports as per Reg.15(1) within 15 days after the end of the quarter in which he appointed.
- (ix) The fee payable to the Liquidator shall form part of the liquidation cost as provide under Reg.4(1) of the IBBI (Liquidation Process) Regulations, 2016.
- (x) Pending the process of liquidation RD/ROC, Orissa not to proceed against the Corporate Debtor for not holding the Annual General Body Meeting.
- (xi) The **CP (IB) No. 373/KB/2017 renumbered as TP No. 44/CTB/2019 & CP (IB) No. 372/KB/2017 renumbered as TA No.**

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29/CTB/2019 and **all other pending applications** are **disposed off** accordingly.

- (xii) The copy of this order is to be sent to the Liquidator, RP, Financial Creditor and the Corporate Debtor by Speed Post as well as by email for information and for taking necessary steps.
- (xiii) Urgent photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

Sd/-
9/7/2019

**Adjudicating Authority
National Company Law Tribunal
Cuttack Bench
Cuttack**

Signed on this, the 8th day of July, 2019.

Santosh_P.S.