



**IN THE NATIONAL COMPANY LAW  
TRIBUNAL MUMBAI BENCH - I**

**IA.No.1155 /2024**

**IN**

**CP(IB) No. 1807/MB/2018**

Under Section 60(5) of Insolvency &  
Bankruptcy Code, 2016

**In IA No. 1155/2024**

Topworth Urja & Metals Limited,  
Through its Resolution Professional  
Mr.Avil Menezes

**....Applicant/Resolution Professional**

***Versus***

Directorate of Enforcement & Ors.

**.....Respondent No.1**

Topworth Urja & Metals Limited

**.....Respondent No.2**

Central Bureau of Investigation

**..... Respondent No.3**

Committee of Creditors of Topworth Urja &  
Metals Limited

**..... Respondent No.4**

Evonith Holdings Pte Limited

**.....Respondents No. 5**

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IA No. 1155/2024  
In C.P.(IB) No. 1807(MB)/2018



**CP(IB) No. 1807/MB/2018**

Bank of Baroda

..... **Financial Creditor Creditor**

*Versus*

**Topworth Urja & Metals Limited**

.....**Corporate Debtor**

**Order delivered on: 26.05.2025**

***Coram:***

Prabhat Kumar

Justice V.G Bisht (Retd).

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

***Appearances:***

For the Applicant /

Resolution Professional

: Mr. Gaurav Jain, Adv.

For Respondent No.1

: Ms. Neha Bhide, Adv

For Respondent No.3

: Mrs. Tarannum Cheema Adv.

**ORDER**

1. This Application has been filed by the Resolution Professional ("**RP/Applicant**") Under Section 32A of the Insolvency and Bankruptcy Code, 2016 Read with Rule 11 of the National Company Law Tribunal Rules, 2016. The present Application is filed by the Resolution Professional of the Topworth Urja & Metals Limited ("**Corporate Debtor**") under Section 60(5) read with Section 32A of the Insolvency and Bankruptcy Code, 2016 ("Code") seeking a release



of attachment on the assets of the Corporate Debtor vide the POA read with Confirmation Order passed by the Respondent No. 1 and further setting aside the Conviction Order passed by the Respondent No.2.

2. The Applicant/Resolution Professional of the Corporate Debtor has sought following reliefs:

- a) *Allow the Application;*
- b) *the liability of the Applicant for an offence committed prior to the Insolvency Commencement Date shall cease against the Applicant, and the Applicant shall not be prosecuted for such an offence from the date the Resolution Plan has been approved by this Hon'ble Tribunal under Section 31 of the Code;*
- c) *the Resolution Plan submitted by the Respondent No. 4, after the approval of the Resolution Plan by this Hon 'ble Tribunal, shall be binding upon the Respondent No. 1, Respondent No. 2 and or such other person / authority / agencies (as the case may be) as per Section 31 of the Code;*
- d) *Upon approval of the Resolution Plan by this Hon 'ble Tribunal under Section 31 of the Code, the PAO and the Confirmation Order shall be set aside, and no action shall be taken against the Properties of the Applicant or the Applicant in relation to scheduled offence committed prior to the Insolvency Commencement Date and as more particularly set out in the PAO / Confirmation Order;*
- e) *Upon approval of the Resolution Plan by this Hon'ble Tribunal under Section 31 of the Code, the Conviction Order shall be set aside, and no action shall be taken against the Corporate Debtor or any of its properties in relation to offence committed prior to the Insolvency Commencement Date;*
- f) *Upon approval of the Resolution Plan by this Hon'ble Tribunal, the Respondent No. 1 and Respondent No. 2 shall*

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*not take any action against the RP in relation to any offence committed prior to the Insolvency Commencement Date and the RP shall be discharged from all such applications / complaints / suits pending before any court, tribunal, agencies etc. including but not limited to offences as set out in the Conviction Order, POA and the Confirmation Order;*

*g) Upon approval of the Resolution Plan by this Hon'ble Tribunal under Section 31 of the Code, no action shall be taken against the Corporate Deb or or any of its properties in relation to offence committed prior to the Insolvency Commencement Date in any cases that may be filed against the Corporate Debtor including but not limited to the following cases which are in the knowledge of the Applicant:*

<i>Sr.No.</i>	<i>Case No.</i>	<i>Parties</i>	<i>Court / Tribunal</i>
<i>1.</i>	<i>Police Cases PW 300880/2019</i>	<i>CBI -Anti Corruption Bureau v/s Akshata Mercantile Pvt. Ltd &amp; Ors</i>	<i>Chief Metropolitan Magistrate, Esplanade Court, Mumbai</i>
<i>2.</i>	<i>Police Cases PW 300229/ 2022</i>	<i>Central Bureau of Investigation (BS AND FC) v/s Executive Trading Co. Pvt. Ltd.</i>	<i>Chief Metropolitan Magistrate, Esplanade Court, Mumbai</i>
<i>3.</i>	<i>Cr No. 01/2022</i>	<i>Directorate of Enforcement v/s Topworth Urja and Metals Ltd &amp; Ors</i>	<i>Rouse Avenue Court, Delhi</i>

*h) Upon Approval of the Resolution Plan by this Hon' ble Tribunal, the Corporate Debtor, the Respondent No. 4 and the*



*RP shall have the immunity from any prosecution or action pertaining to the period prior to the Insolvency Commencement Date and the Corporate Debtor, the Respondent No. 4 and the RP shall be discharged from all prosecution / action in relation to any offence committed prior to the Insolvency Commencement Date;*

- i) During the pendency of this Application, direct the Respondent No. 1 not to take any coercive steps against the Applicant and the Properties of the Applicant; and*
- j) Any other order which this Hon'ble Tribunal may deem fit.*

**Brief Facts submitted by the Applicant/Resolution Professional**

3. This Tribunal vide an order dated 12.08.2022 ("Corporate Insolvency Commencement Order") initiated CIRP against the Corporate Debtor.
4. The Hon'ble National Company Law Appellate Tribunal ("Hon'ble NCLAT") vide an order dated 18.08.2022 stayed the formation of the Committee of Creditors ("CoC") of the Corporate Debtor. Thereafter, the Hon'ble NCLAT vide order dated 20.12.2022 vacated the stay on the formation of the CoC of the Corporate Debtor and upheld the CIRP initiated against the Corporate Debtor.
5. The Respondent No. 1 is the Directorate of Enforcement, through its Deputy Director, who had issued Provisional Attachment Order No. 02/2020 dated 02.12.2020 ECIR/NGPSZO/01/2014) ("PAO") which was subsequently confirmed by the Hon'ble Adjudicating Authority under the Prevention of Money Laundering Act, 2002 ("PML Act") vide Confirmation Order dated 29.04.2021 in Original Complaint OC) No. 13 7 4 of 2020 in PAO No. 02/2020



("Confirmation Order").

6. The Respondent No. 2 is the Central Bureau of Investigation ("CBI"), a crime investigation agency who had framed charges against the Corporate Debtor and its erstwhile promoters and accordingly had filed a Criminal Complaint No. 98 of 2019] before the Special Judge, Rouse Avenue District Courts, New Delhi ("Hon'ble District Court"). In this regard vide order dated 5.01.2024 ("**Conviction Order**"), the Hon'ble District Court convicted the Corporate Debtor for offences under the Indian Penal Code, 1860 ("**IPC**")
7. The Respondent No. 3 is the committee of creditors ("CoC") of Topworth Urja & Metals Limited ("Corporate Debtor") as constituted under the provisions of the Insolvency and Bankruptcy Code, 2016 ("Code") through its lead bank viz. State Bank of India.
8. The Respondent No. 4 is the successful resolution applicant who had submitted its resolution plan dated 29.05.2023 amended up to 16th October 2023 ("Resolution Plan") which has been approved by the CoC of the Corporate Debtor, with requisite majority, in 14th meeting of the CoC held on 26.10.2023.
9. The Applicant submits that the Respondent No. 1 issued PAO on 2nd November 2020 under Section 5(1) of the PML Act in ECIR/NGPSZO/01/2014), inter alia, wherein the Respondent No. 1 provisionally attached the following properties/ assets which are assets of the Applicant:

Sr.No.	Details of Assets of the Corporate Debtor
1.	Non-Agricultural land admeasuring 40.31 Hectare acquired by the Applicant, Nagpur, Maharashtra as more particularly set in Annexure-A-1 of the PAO

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2.	Agricultural Land admeasuring 31.4 7 Hectare acquired by the Applicant situated in Nagpur as more particularly set in Annexure-A-2 of the PAO
3.	Plant & Machinery of 2x100 TPD Sponge Iron Division of the Applicant as more particularly set in Annexure-B-1 of the PAO
4.	Land & Building of 2x100 TPD Sponge Iron Division of the Applicant as more particularly set in Annexure-B-2 of the PAO.
5.	Plant & Machinery of 1x30 MW Captive Power Plant of the Applicant as more particularly set in Annexure-C-1 of the PAO.
6.	Land & Building of 1x30 MW Captive Power Plant of the Applicant as more particularly set m Annexure-C-2 of the PAO.
7.	Plant & Machinery of 1.5 Lakh TPA TMT Bars Rolling Mill Division of the Applicant as more particularly set in Annexure-D-1 of the PAO.
8.	Land & Building of 1.5 Lakh TPA TMT Bars Rolling Mill Division of the Applicant as more particularly set in Annexure-D-2 of the PAO
9.	Land & Building namely SMS Shed-1 & Shed-2 of Steel Melting Shop of the Applicant as more particularly set in Annexure-E of the PAO.
10.	Land & Building namely SMS Shed-3 of Steel Melting Shop of the Applicant as more particularly set in Annexure-E of the PAO.

10. Thereafter the Hon'ble Adjudicating Authority (under the PMLA Act), pursuant to the Original Complaint no. 1374 of 2020 filed by the Respondent No. 1, confirmed the attachment of the aforesaid properties vide order dated 29.04.2021.



11. Conviction Order by Special Judge, Rouse a Venue District Courts:  
New Delhi:

- i. The Applicant submits that the Corporate Debtor, originally incorporated in the name of Mis Shree Virangana Steels Ltd, vide its applications dated 15.01.2004 and 2.07.2004 had applied to the Ministry of Coal ("MoC") for allocation of captive coal mining blocks for its proposed 3 LTP A Sponge Iron Plant, Captive Power Plant ("CPP") and Steel Melt Shop and followed it up with subsequent letters.
- ii. The Applicant submits that pursuant to the aforementioned application, Marki Mangli II, III and IV coal blocks were allocated to the Corporate Debtor by MoC vide allocation letter dated 06.09.2005 for its 3 L TPA Sponge Iron Plant at Umred in Maharashtra.
- iii. The Applicant submits that following the allocation of coal blocks, allegations arose against the Corporate Debtor regarding misrepresentation of its financial tie-up with Power Finance Corporation ("PFC") and false claims about the Captive Power Plant (CPP) being under construction. Further concerns were raised about the manner in which the mining lease was obtained, coal was extracted, and profits were made. Consequently, Respondent No. 2 filed Criminal Case No. 98 of 2019 before the Hon'ble District Court, charging the Corporate Debtor under relevant provisions of the IPC.
- iv. The Applicant submits that upon hearing and adjudication of the said Criminal Case No. 98 of 2019, the Hon'ble District Court vide its order dated 05.01.2024, has held the Corporate Debtor guilty for offences under the IPC which were purportedly committed prior to the Insolvency





Commencement Order.

- v. Therefore, in light of Section 32A of the Code the Applicant submits that the Corporate Debtor is immune from any offence committed by the Corporate Debtor prior to the Insolvency Commencement Order. Accordingly, the said Conviction Order passed by the Hon'ble District Court ought to be set aside qua the Corporate Debtor on the grounds as mentioned below.
12. This Tribunal does not have jurisdiction to sit in appeal or review the administrative orders passed by the Respondent No. and 2. Further it has been held that the provision of the PMLA and IB Code, coexist and section 238 of the code doesn't override the provision under the PMLA Act. Nonetheless, the legislature considering the primacy of the Resolution of the Corporate Debtor in its new avatar, brought in section 32A under the IB Code, which protects the assets of the Corporate Debtor from prior offences after a Resolution Plan in the Corporate Insolvency Resolution Process is approved in relation to such assets or sale of an assets in the liquidation process takes place. Since the Legislature had intended to provide such protection at a specific time, this Tribunal is of the considered view that such protection would come into the force only at the time.
13. Section 32A of the Code prohibits any action against the property of the Corporate Debtor for an offence which was committed prior to the insolvency commencement date, where such property is either covered under the resolution plan approved under Section 31 of the Code or where the Corporate Debtor is being sold under liquidation in accordance with the provisions of the Code. The relevant extract of Section 32A of the Code is as follows:

*(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is*



*covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not –*

*(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or*

*(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.*

14. The Insolvency and Bankruptcy Code, 2016 provides for the resolution of the Financial Distress of a Corporate Debtor and such Resolution is in the interest of and under the control of its Creditors. Section 32A(2) of the Code also provides that no action against the property of the Corporate Debtor in relation to an offence committed prior to the commencement of CIRP where such property is covered under a Resolution Plan approved by the Adjudicating Authority under Section 31 and the Resolution Plan results in change in the control of the Corporate Debtor to a person other than Promoters or Management for related party or persons against whom the investigation authority have some material to proceed against.
15. It is pertinent to note that an application IA(IBC) (RESO. PLAN)/14/2024 seeking approval of the Resolution Plan in terms of section 31 of the code has been heard by this Tribunal and the orders therein to be passed.
16. In view of the provisions of 32A(2) of the Code, we consider it appropriate to clarify that the Attachment order in relation to the assets/properties of the Corporate Debtor shall stand lifted/vacated upon approval of the Resolution Plan in relation to the assets/properties of the Corporate Debtor dealt with a such Plan,



provided such approved Plan does not result into change in control of the Corporate Debtor to the person specified in Section 32A(2)(i/ii) of the Code.

17. In view of the forgoing, the Interlocutory Application bearing IA No. 1155 of 2024, is disposed of in terms of aforesaid clarification.

Sd/-

**Prabhat Kumar**

Member (Technical)

Sd/-

**Justice V.G. Bisht**

Member (Judicial)