

27.

NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI

**MA 1075 of 2018** in C.P.(IB)-298(MB)/2018

CORAM : Present : SHRI M.K. SHRAWAT  
MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **16.10.2018**.

NAME OF THE PARTIES : Aircel Employees' Representatives (AER): Applicant  
V/s.  
Aircel Limited : Corporate Debtor.

SECTION OF THE COMPANIES ACT: 10 of Insolvency & Bankruptcy Code, 2016.

**INTERIM ORDER**

1. This Miscellaneous Application is submitted on 25.09.2018 by and on behalf of the Employees of the Corporate Debtor. In this Application it is stated that the Association of the Employees is seeking indulgence of this Bench to direct the Committee of Creditors and the Resolution Professional to maintain transparency in the Insolvency Proceedings as also the CIRP proceedings. One more Prayer is made that the Corporate Debtor be directed to remain as "going concern" so that the dues to the Employees/Workers be disbursed as per law.

2. Ld. Counsel presenting this Application has informed that the Corporate Debtor is a national operator of pan-India 2G License and 3G License holder in 13 Circles with a monthly revenue of approximately ₹850 Crores in July, 2017. The Company had 85 million (approximate) customers, more significantly in Tamilnadu, North-East and Jammu & Kashmir Circles. The Debtor Company through its own Network of Telecom infrastructure is providing direct services to the customers.

3. An allegation is raised in this Application that in spite of commanding huge market in this business of Telecom Service Provider, the Promoters have not taken appropriate steps to protect the interest of the Customers as also thousands of Telecom professionals employed by the Company. In February, 2018, the Debtor Company integrated with Airtel and BSNL by offering network services by way of Inter-Circle Roaming. To accomplish this task a Port-out Code was generated by IT team for about 85 Million customers. It was put on the website so that the customers could opt out and

join other Operators like Airtel, Idea, Vodafone and Jio. The customers were allowed to leave Aircel and through a "unique port-out Code" conveniently joined other service providers.

4. A serious allegation is that while the process of opting out was going on, on 28.02.2018, to utter surprise, the Debtor Company had moved an Application u/s.10 of The Code to declare itself Insolvent to commence CIRP. Vide an Order dated 12.03.2018 Section 10 Application was Admitted by appointing IRP. As a consequence, "Moratorium" u/s.14 of The Code has also been pronounced in the said Order.

5. The Employees' Association (Applicant) are in dark about the Insolvency Proceedings although a big stakeholder. It is pleaded that u/s.20 of The Code it is an imperative obligation on the Resolution Professional to maintain the operation as a "going-concern" of the Corporate Debtor. It has also come to the notice of this Applicant that CIRP proceedings were extended from the expiry date of 15.09.2018 by invoking the jurisdiction u/s.12 of The Code. However, as regards the dues of Employees, about 125 Crores stated to be outstanding, no communication or confirmation was received by these Employees from the Resolution Professional. It has created mis-trust among the Employees.

6. Hence the request is that Committee of Creditors must intimate the progress to the Association of Employees and maintain transparency in the ongoing CIRP proceedings. The Resolution Professional is also expected to retain the assets of the Debtor Company as well as the "spectrum" allotted so that the Company can run Telecom business.

7. This Miscellaneous Application has been communicated to the Ld. Senior Advocate of the Debtor Company who has assured that the interest of the Employees as an important stakeholder has always been considered by the Committee of Creditors and there shall be no deviation from the norms laid down under the Insolvency Code.

8. My attention was drawn on certain Minutes of meetings such as held on 13.04.2018 between IRP and Employee Representatives wherein it was communicated

that Wages and Salary shall continue to be accrued and to be treated under law as Insolvency Resolution Process cost. However, it was expressed that due to non-availability of Funds payments could not be made. Further, my attention was drawn on a meeting held on 17.04.2018 wherein employees of Aircel have participated and it was communicated that Salary up to February 2018 was paid by deducting TDS and PF which was deposited within time with the respective Authorities. There was an anxiety and fear expressed about the Gratuity amount of the Employees working with the Company for number of years. In a meeting held on 24.04.2018 it was communicated that the Resolution Professional is conscious about the claim of the Employees and the Employees shall continue to be Employees of the Company and their Salary shall accrue in the accounts to be paid individually on the basis of the terms of Contract of Employment. On a later meeting held on 14<sup>th</sup> and 17<sup>th</sup> May, 2018 the issue of Gratuity has also been discussed.

9. In the light of the above sequence of events and the discussion held with the Representatives of the Employees' Union on several meetings held with Resolution Professional it is clear that the interest of the Employees of the Corporate Debtor Company has been looked after in CIRP process by making payment of Salary up to February 2018. In this regard, Ld. Resolution Professional has expressed the difficulty in arrangement of Funds so as to make the payment of Salary to the Employees. This Bench is of the view that the Ld. Resolution Professional shall take all necessary steps to arrange the Funds and intimate this Bench the latest position of the availability of the Funds so that a plan can be chalked out for the allocation of Funds. The Ld. Resolution Professional shall place on record the list of the Employees with their Designation, monthly Salary and the date up to which the Salary has already been disbursed. On the basis of these details, future plan of action shall be laid down.

10. With these directions this Application is disposed of.

Sd/-  
(M.K. SHRAWAT)  
Member (Judicial)

Date : 16.10.2018

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