



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

**IA (IB) No. 216/CB/2022
In
TP No. 44/CTB/2019
Previously CP No. 373/KB/2017**

In the Matter of:

An Application filed U/s 53, 60 of the Insolvency and Bankruptcy Code, 2016 (IBC) r/w Rule 32 of NCLT Rules, 2016 on behalf of the Adhunik Metalik Karmchari Sangh through its President Padma Lochan Mishra and Adhunik Metaliks Officer & Staff Association through it's Working President Chitta Ranjan Patra on behalf of the workmen and employees of Respondent No. 1 (Adhunik Metaliks Ltd.), seeking certain directions and orders against the Resolution Professional and Respondents in respect of the arrears of salaries, wages and other dues including the increments of the Workmen and Employees, who are the members of Applicant No.1 and 2;

In the Matter of:

- 1. Adhunik Metalik Karmchari Sangh**, having its office address AT- QR. No-B/109, Nabakrushnanagar, Sonaparbat, 769,016, Sundargarh, Odisha;
- 2. Adhunik Metaliks Officer & Staff Association**, Having its office address At-Raipurchowk, Soro- 756 046, Balesore, Sundargarh, Odisha;

...Applicants

-Versus-

AdhunikMetaliks Limited, having its registered office at Chadri, Hariharpur, P.O. Kuarmunda, Sundargarh, Orissa – 770 039

...Respondent No.1- Corporate Debtor

Liberty House Group Pte Ltd., Head Quartered at 8, Marina View, # 40-06, Asia Square Tower 1, Singapore (018960);

...Respondent No.2

Sumit Binani (IBBI/IPA-001/IP-N00005/2016-17/10025) Resolution Professional,



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Adhunik Metaliks Limited. Registered Address of IP with IBBI: 4TH Floor, Room No. 6, Commerce House 2A, Ganesh Chandra Avenue, Kolkata- 700 013, W.B.

...Respondent No.3

State Bank of India, having its office at State Bank Bhawan, Madame Cama Road, Nariman Point, Mumbai- 400021, Maharashtra and Branch at Corporate Accounts Group Branch, Sribriiddhi Bhawan, 2nd Floor, 34, Jawaharlal Nehru Road, Kolkata- 700 071, W.B.

...Respondent No.4

-In-

In the Matter of:
State Bank of India

... Financial Creditor

-Versus-

Adhunik Metaliks Ltd.

... Corporate Debtor

Appearances: -

For Applicant:

Mr. Hintendra Nath Rath, Advocate.

For RP

Mr. Sumit Binani, RP

For Respondents.

Mr. S. K. Acharya, Adv.

Order reserved on: 18.04.2023

Order pronounced on: 02.05.2023

Coram:

Shri P. Mohan Raj

:

Member (Judicial)

Shri Satya Ranjan Prasad

:

Member (Technical)

ORDER

Per P. Mohan Raj, Member, (Judicial)

1. This application is filed by the two trade unions for direction directing the Respondents 1 to 3 to make payment of arrears of salaries, wages and other dues during the CIRP period to their 565 members. The application is filed by the Trade unions but not prayed for any common relief, but prayed for reliefs to 565 individuals.



2. The CIRP was ordered against the 1st respondent company Adhunik Metallica Limited on 03.08.2017, and third respondent Mr. Sumit Binani was appointed as resolution professional in a section 7 of IBC 2016 petition filed by the 4th respondent State Bank of India. The resolution plan submitted by the 2nd respondent Liberty House Group PTE Ltd was approved by the Adjudicating Authority on 17.08.2018.

3. From the above dates it appears that CIRP was initiated on 03.08.2017 and ends with approval of resolution plan on 17.08.2018. For this period this application has been filed claiming certain monetary dues.

4. The one another aspect needs to be considered in this case is after the approval of resolution plan since the Adjudicating Authority finds that the second respondent, the successful resolution applicant not implemented the plan and paid the amount in time, the Adjudicating Authority ordered liquidation of corporate debtor on 09.07.2019. The same Resolution professional Mr. Sumit Binani was appointed as liquidator. The liquidator is not party in this application.

5. The liquidation order dated 09.07.2019 passed by the Adjudicating Authority was stayed by NCLAT-Delhi by its order dated 17.07.2019, and on 17.02.2020 the liquidator was ordered to return the records and control of the companies to second respondent. The liquidation order was set aside by the NCLAT-Delhi by its order dated 03.03.2020.

6. The period from the date after the approval of resolution plan 18.07.2018 to the date of order of liquidation 09.07.2019 does not comes under the CIRP period, this period from 18.07.2018 to 09.07.2019 is termed as “ the non-implementation period” This Adjudicating Authority in the application filed by the Liquidator C.A.No.118/CTB/2019 passed order on 10.01.2020, there it is held that claims received during the period from 18th July 2018 till 7th July 2019 cannot be treated as a part of CIRP cost.

7. This application is filed only pertaining to the CIRP period covers from 03.08.2017 to 17.07.2018 claiming certain amounts towards arrears of salaries



and wages. The applicants wholly rely upon annexure 'F' of application for their claims.

8. On the applicants' side blamed 3rd respondent and stated that he submitted misleading statement to COC and Adjudicating Authority that he has misused and abused his power and considered claim of only 257 employees and workmen instead of 1143 workmen and employees. It is argued that both annexure "B" and "F" are prepared by the 3rd respondent, in annexure "B" he considered the claim of 257 workmen and employees only but in annexure "F" he considered the claims of 1134 workers and employees, thus he submitted two contradictory reports. The annexure "F" is to be accepted and annexure "B" to be ignored. Further it is submitted that Resolution plan was approved only for claims of 257 members, on the basis of wrong report of the 3rd respondent, hence the applicants want to consider the claims of all 1134 workers and employees as found in annexure "F".

9. The 3rd respondent appeared and submitted befitted reply to the applicants and also filed his written submission. From the submission of 3rd respondent, it appears that the applicants without understanding the difference between annexure "B" and annexure "F" filed this claim petition. Of course, annexure "B" and "F" were prepared by same person, but in different time, in different capacity and in different situation and for different purpose.

10. The annexure 'B' was prepared by the Resolution professional, as on the date of 02.07.2018, when the CIRP order was passed against the corporate debtor on 03.08.2018. The Corporate was in operation at that time; all the workmen and employees who were on roll continued to be employed by Resolution professional. The persons who were in actual employment of corporate debtor were paid monthly salaries and other monetary benefits till the date of approval of resolution plan. The employees and workmen on roll were paid salaries, hence there was no claim for them to submit.

11. Prior to the commencement of CIRP, the corporate debtor owes certain amounts to the retired and resigned employees towards their retirement



benefits etc., Those 257 ex-employees submitted their claims, to the extent of Rs. 5,64,13,651/- the admitted claim was Rs. 3,42,60,555/- then the list annexure “B” was prepared by the 3rd respondent and submitted to the CoC, the same was considered in the Resolution plan approved by the Adjudicating Authority. The annexure “B” is pertaining to the previous employees and workmen of corporate debtor who was out of service as on the date of CIRP order.

12. In the resolution plan the total admitted workmen dues are Rs.3,51,49,171/- further as per the approved resolution plan, this amount should be paid within 30 days from the effective date i.e., from 17.07.2018 the date of approval of the plan. After the approval of resolution plan as going concern, the 3rd respondent, Resolution profession ceased the office.

13. The second respondent the successful resolution applicant not made the payment in time as per the approved plan. This leads to pass an order of liquidation of the corporate debtor on 09.07.20219, the same person Mr. Sumit Binani who acted as Resolution professional was appointed as Liquidator. Now as a liquidator he prepared the claims of all the employees both who were retired or resigned before the date of commencement of CIRP and also the employees and workmen who are currently working. This is because of deeming provision found in section 33(7) of IBC 2016.

14. As already stated, the liquidation order of the Adjudicating Authority was challenged before NCLAT-Delhi, there the NCLAT stayed the liquidation order and granted further time to implement the plan, and suggested to the successful resolution applicant to pay additional amount of Rs.10 crores, when the Successful Resolution Applicant accepted the suggestion and paid the additional amount of Rs.10 Corers, after satisfying with the compliance of successful Resolution applicant, the NCLAT recorded in its order dated 03.03.2020 that **“Both the Resolution plans be implemented in its letter and spirit. The claim of all the creditors stand settled.”** After recording the implementation of plan and settlement of all claims set aside the order of liquidation passed by this Adjudicating Authority. The above order was passed by the NCLAT in the presence of the



counsel for the workers union. Thus, the NCLAT-Delhi given quietus to the case. Once the liquidation order is set aside the claim statement prepared under the order liquidation annexure “F” became invalid. The workmen and employees who were on roll on the date of order of liquidation continues in the employment, the claims submitted by them based on the deeming discharge were no more valid. In the circumstances the claim of the applicants on the basis of invalid annexure “F” is unsustainable.

15. Before filed this application, the 343 members of the applicants Trade Union previously filed a petition for the same prayers as made in this application. The said application was rejected on 08.07.2022 for want of sufficient court fee. The previous application was rejected for want of court fee; the subject matter was not dealt. In the circumstances the principal of Resjudicata does not applies.

16. The applicants stated in this application that some of the workmen and employees filed an application and this Authority by order dated 08.07.2022 directed them to file pay court fee or amend the petition. Further in this petition it is mentioned that the liberty was granted to amend the petition.

17. The present two persons who representing the Trade unions, previously filed the Applications with others totaling 343 workmen and employees in Diary No.2113133/00287/2022 for the same relief in this application sought, the said application was heard in detail and rejected by order dated 08.07.2022 for want of sufficient court fee. There the liberty was granted to amend the petition by striking off the petitioners other than the first petitioner in case they are not inclined to pay court fee for each petitioner. The said petition was filed by the 343 persons, now the same 343 person added some more persons totaling 565 and filed this application, under the banner of Trade Unions by abusing the process of law under the garb of Trade Unions.

18. As stated in the beginning this application is filed in the name of Trade Union but no relief is sought for Applicant and its member in general but made prayer for 565 individuals. The reasons stated for the rejection of previous application in our earlier order dated 08.07.2022 passed in Diary No.



2113133/00287/2022 holds good for rejection of this application also. The applicants without complying the direction given in earlier petition filed this application abusing the process of law. Hence it is held that this application filed evading the court fee is liable to be rejected.

19. On the applicant side in the rejoinder raised the plea of fraud. It is stated that the respondents 1 to 3 by playing fraud and mis-representation obtained approval order of the resolution plan. The applicants made this allegation in random but not in specific, further the applicants not opposed the approval of Resolution plan before the Adjudicating Authority, or Challenged before the appellate Authority. The appellant kept silence when NCLAT-Delhi by order dated 03.03.2020 recorded that Resolution plan was implemented in letter and spirit. The Hon'ble NCLAT-Delhi by order dated 03.03.2022 given final quietus to the dispute.

20. It is understood from the records filed by the applicants that there prevails certain unrest between the management and employees, and the workmen and employees indulged in gherao the managerial staffs, vandalism and violence. In continuation of that this application has been filed, rekindling the matter that was settled by the Hon'ble NCLAT-Delhi by order dated 03/03/2020.

21. On the applicants' side referred the Apex court citation **Ghanashyam Mishra & sons Pvt Ltd vs Edelweiss Asset Reconstruction Company Ltd & Ors**, in fact in this citation in para 102.3 it is held as follows:

“102.3 Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under [Section 31](#) could be continued.

In this case also Adjudicating Authority approved the plan on 17,07.2018, now the applicants filed this application claiming alleged dues prior to the date of approval



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of plan. The other citations relied on the applicants' side are also not relevant to issue involves in this application.

22. In these circumstances this application is liable to be dismissed with exemplary cost. However, the applicants are labourers, they have been misguided by some elites for their benefits, hence we decline to impose any cost in the midst of "May Day" celebrations. This application is devoid of merits both on facts and law.

In fine this application is **DISMISSED**.

23. IA 314/CB/2022 was filed during the pendency of this IA No. 216/CB/2022 application for direction directing the respondents not to take any coercive action such as termination and transfer of workmen and employees till the disposal of IA No. 216/CB/2022. Since, IA No. 216/CB/2022 is dismissed, today, this petition also stands dismissed.

24. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps,

25. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.05.02 14:17:43 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN Digitally signed by PANDIAN
MOHAN RAJ MOHAN RAJ
Date: 2023.05.02 14:41:16
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P. Mohan Raj
Member (Judicial)

Signed on this 2nd of May, 2023.

Kaushal P.S