

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (Court – II)
SPECIAL BENCH
KOLKATA**

C.P. (IB) No. 1694/KB/2018

IA (IBC) No. 762/KB/2022

*An application under Section 60(5) of the Insolvency and Bankruptcy Code,
2016 and Rule 11 of the National Company Law Tribunal Rules, 2016.*

In the matter of:

- (1) **SENDOZ COMMERCIALS PRIVATE LIMITED**, a private non-government company limited by shares registered under the Companies Act, 1956 having its registered office at 644 Marshall House, 25, Strand Road, Kolkata, West Bengal – 700001.

... Operational Creditor

-Versus-

- (2) **KOHINOOR PAPER AND NEWSPRINT PRIVATE LIMITED**, a private non-government company limited by shares registered under the Companies Act, 1956 and having its registered office at 11, Allenby Road, Kolkata, West Bengal – 700020.

... Corporate Debtor

-And-

In the matter of:

- (3) **TARA PADA HALDER**, Authorized Representative of seventy-three (73) employees and workmen of Kohinoor Paper and Newsprint Private Limited, Residing at Village – Neoda, Post Office – Sahararhat, Police Station – Falta, District – 24 Parganas South, West Bengal – 743504.

... Applicant

-Versus-

- (4) **Mr. UDAY NARAYAN MITRA**, Registration Number: **IBBI/IPA-001/IP-P00793/2017-2018/11360**, being the Liquidator appointed for Kohinoor Paper and Newsprint Private Limited, having office at 72/1 Dewanagazi Road, Bally, Kolkata, West Bengal – 711201 and E-mail: udaynarayanmitra@yahoo.co.uk.

... Respondent



Date of hearing: 10/04/2023

Date of pronouncing the order: 13/09/2023

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

Appearances (via video conferencing/physically):

Mr. Swatarup Banerjee, Adv.] For Liquidator in IA/762/2022
Mr. S.K. Tiwari, Adv.]
Mr. Joyesh Kr. Choradia, Adv.]
Mr. Uday Narayan Mitra] Liq. in person

Mr. S.K. Tiwari, Adv.] For Liquidator in IA 1644/2022
Mr. Joyesh Kr. Choradia, Adv.] & IA/654/2023

Mr. Shaunak Mitra, Adv.] For Liquidator in IA/201/2020,
Ms. Shreya Choudhary, Adv.] IA/946/2020 & IA/695/2022

Mr. Rishav Banerjee, Adv.] For applicant in IA/762/2022
Mr. Rajarshi Banerjee, Adv.]

Mr. Kaushik Dey, Adv.] For Kolkata South GST Authorities
Mr. Abhradip Maity, Adv.]

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. Heard Ld. counsels for the parties.
2. This application has been preferred by the Authorised Representative of 73 employees and workman of Kohinoor Paper and Newsprint Private Limited to seek the following reliefs, inter alia: -

(a) An appropriate order(s) directing the Respondent/Liquidator to immediately pay the said seventy-three (73) employees/workers of the Corporate Debtor, represented by the Applicant, their currently

outstanding salaries/wages described in Annexures A – 6 hereinabove as well as their respective wages/salaries that may fall due in future, as and when they arise;

(b) An appropriate order(s) directing the Respondent to include payment of such wages/salaries for the CIRP and liquidation periods of the Corporate Debtor as insolvency resolution process and liquidation costs as per the IBC.

(c) An appropriate ad-interim order(s) staying the sale of assets of the Corporate Debtor and/or the distribution of the proceeds thereof by the Respondent till the instant application is adjudicated;

3. At hearing it transpired that the Company (the debtor company) being Kohinoor Paper and Newsprint Private Limited was sent into liquidation vide order dated 12.07.2021. Mr. Shekhar Soni being the worker's representative has filed a claim on behalf of the workers *vide* IA 1624 of 2019, IA 1428 of 2020 and IA 947 of 2021. IA 749 of 2022 is filed by one Mr. Ajay Agarwal also alleging to be the representative of the workers/employees. The said IA 749 stands dismissed as infructuous.

3.1 In IA 749 of 2022 which already stands dismissed, a claim filed *vide* Form – F by Mr. Shankar Soni, discloses that the total number of employees/workers was 139 as on 14th December, 2019. As per the Order dated 06.01.2020 passed in IA 1624 of 2019 the total number of employees was reported as 163 and in the present petition the total number of employee/workers are 73 in numbers. Therefore, the actual number of workers is not ascertained.

3.2 Further it transpires that on 14th December, 2019, the factory was closed in terms of order for closure dated on 14th December 2019 passed by West Bengal Pollution Control Board and lockout declared by the then RP. It was reported to the CoC, in its third meeting to be held on 30th December, 2019.

A profitability analysis was done. The RP even proposed to make payment of all the expenses for raw materials, salaries and wages to the existing permanent labourers, contract labourers and other staff of the CD and other expenses to run the CD as a going concern.

3.3 At its 12th meeting, the CoC resolved to revive the Corporate Debtor by way of compromise or arrangement under Section 230 of the Companies Act, failing which to take steps for sale of whole of the assets of the Corporate Debtor as a going concern, including modes of sale under Clauses A to D of Regulation 32 of IBBI (Liquidation Process) Regulations, 2016. Thus, presumably the then RP (the present liquidator) made every endeavour to sale the assets of the CD as a going concern.

3.4 The order dated 12th July 2021 was uploaded on 03rd August, 2021 and as such the public announcement was made on 03rd August, 2021. The sale in terms of the rules had to be completed within 90 days from the date of the order. In the first meeting of the Stakeholders Consultative Committee (in short “SCC”), it was decided that an application for extension of time for making sale as a going concern shall be filed. An application was filed and this Tribunal extended the period by 90 days and further *vide* order dated 10th June, 2022 for another period of 90 days. An e-auction sale notice was published on 25th June, 2022 *vide* order dated 10th June 2022. This Tribunal directed the liquidator to decide the liquidation value. The reserve price was fixed at Rs. 48,58,28,350/-. The representative, Mr. Shekhar Soni was present at the meeting of the Stakeholders Consultative Committee (“SCC”).

3.5 It has been alleged that since its closure, the Company has not been functioning. There has been no production whatsoever.

4. At hearing learned counsel Mr. Swatarup Banerjee appearing for the liquidator would submit that the November and December dues have been added to the CIRP costs and in terms of the decision in Sundaresh Bhatt, reported in (2022)



7 SCC 540, wages and salaries during CIRP had to be paid that too if the workers have rendered service.

5. Ld. counsel Mr. Rishav Banerjee appearing for the workers would submit that no notice of discharge was ever served upon the workers and since the Company was directed be sold as a going concern, it was the workers who have toiled hard to run it as a going concern.
6. A relevant extract of the decision in ***Sunil Kumar Jain vs. Sundaresh Bhatt (2022) 7 SCC 540*** would be the following: -

“Para 19: Therefore, while considering the claims of the workmen/employees concerned towards the wages/salaries payable during CIRP, first of all it has to be established and proved that during CIRP, the corporate debtor was a going concern and that the workmen/employees concerned actually worked while the corporate debtor was a going concern during the CIRP. The wages and salaries of all other workmen/employees of the corporate debtor during the CIRP who actually have not worked and/or performed their duties when the corporate debtor was a going concern, shall not be included automatically in the CIRP costs. Only with respect to those workmen/employees who actually worked during CIRP when the corporate debtor was a going concern, their wages/salaries are to be included in the CIRP costs and they shall have the first priority over all other dues as per Section 53(1)(a) IBC. Any other dues towards wages and salaries of the employees/workmen of the corporate debtor shall have to be governed by Section 53(1)(b) and Section 53(1)(c) IBC. Any other interpretation would lead to absurd consequences and violate the scheme of Section 53 read with Section 5(13) IBC. If any other interpretation, more particularly, the interpretation canvassed on behalf of the appellants is accepted, in that case, the wages/salaries of those workmen/employees who had not worked at all during CIRP shall have to be treated and/or included in the CIRP costs, which cannot be the intention of the legislature”.

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7. We have considered the rival contentions and perused records.
8. In view of the fact that the number of workers who have rendered service while the company was being run as a going concern is not clear, the liquidator is directed to verify the claim of each of the workers and examine whether their due claims have been considered in accordance with law and have taken care of and whether payments have been released out of the sale proceeds, if not, to make provision for payment to the workers who have worked during the CIRP and even beyond from the sale of assets of the Corporate Debtor. The liquidator after verification shall convey its decision to the Authorised Representative of workers within a period of 8 weeks. With the above directions, this **IA 762 of 2022** is **disposed of**.
9. Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.
10. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Order signed on this, the 13th day of September, 2023.

AR.