



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI, COURT – VI**

**Item No.1**  
**I.A/3780/2021 IN IB-937/PB/2018**

**IN THE MATTER OF:**

**Corporation Bank**

**... Financial Creditor**

**Versus**

**M/s Unitech Machines Limited**

**.... Corporate Debtor**

**Order under Section 60(5), IBC,2016**

**Order delivered on: 06.10.2023**

**CORAM:**

**SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Order pronounced in open Court vide separate sheets.

I.A/3780/2021 IN IB-937/PB/2018 stands dismissed.

**SD/-**

**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

**SD/-**

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT VI, NEW DELHI**

**I.A/3780/2021 IN IB-937/PB/2018**

*Application under Section 60(5) IBC,2016.*

**IN THE MATTER OF:**

**Corporation Bank**

**... Financial Creditor**

**Versus**

**M/s Unitech Machines Limited**

**.... Corporate Debtor**

**AND IN THE MATTER OF:**

**Unitech Machines Karmchari Sangh**

Through its secretary Sh. Anil Kumar

On behalf of 92 workmen

Resident of: 1/1 785C, 3 – Chander Nagar,

District Saharanpur, Uttar Pradesh-247001

**...APPLICANT**



## **VERSUS**

**Mr. Vivek Raheja**

Resolution Professional of M/s Unitech Machines Limited

Registered office at: 806, Devika Tower 6,

Nehru Place, New Delhi - 110019

**...RESPONDENT**

**Coram:**

**Shri. Bachu Venkat Balaram Das, Member (Judicial)**

**Shri. Rahul Bhatnagar, Member (Technical)**

**Counsel for the Applicant:** Mr. Anmol Gupta

**Counsel for the Respondent:** Mr. Abhishek Anand

**Order Pronounced on: 06.10.2023**

## **ORDER**

**PER- BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

**1.** The present Application has been filed by the Applicant under Section 60(5) of the IBC, 2016 praying for the following reliefs:

*(a) Admit and allow this Application;*

*(b) Issue a direction/order to declare the layoff notice dated 01.02.2020 as illegal and arbitrary as the same had been*



*passed by the Resolution Professional without complying the procedure given under Industrial Dispute Act, 1947;*

*(c) Quash/set aside the layoff notice dated 01.02.2020 issued by the Respondent as the Resolution Professional does not have any power to direct lay-off/closure/retrenchment without an application under Section 33(7) of the IBC, 2016;*

*(d) Pass such other or further order(s) as this Hon'ble tribunal may deem fit and proper in the facts and circumstances of the case.*

**2.** The brief facts as averred by the Applicant for filing the present Application are as follows:

- i. That vide order dated 01.03.2019, this Tribunal admitted the Application filed under Section 7, IBC, 2016 against the Corporate Debtor and thereafter the Corporate Insolvency Resolution Process commenced.
- ii. That on 21.07.2019, the Applicant Union had moved a separate Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking directions to the Resolution Professional for releasing salaries/wages/statutory dues and



deposit of Provident Fund and after the directions issued by this Tribunal, the Resolution Professional had released salaries and dues up to March, 2020.

- iii. The Resolution Professional on 01.02.2020 issued the impugned lay-off notice without clearing the legitimate dues as well as statutory dues. The Resolution Professional without following the due procedure as given in the Industrial Disputes Act proceeded to issue the impugned layoff Notice dated 01.02.2020, which is nothing less than a counterblast to his liability for releasing the salaries/wages (legitimate dues) of the workmen.
- iv. That the said layoff was completely illegal as the Resolution Professional had completely acted beyond his powers as laid down under Section 33 of IBC, 2016. Further, the said layoff is in complete derogation of Sections 25C and 25M of the Industrial Dispute Act, 1947 and under Section 2(n) of UP Industrial Disputes Act, 1947.
- v. That, not only this, the Resolution Professional after the said layoff did not release the salary of the workmen before and during the lay off period. As of now the said salaries have not



been disbursed and the workmen are hand to mouth; and running from pillar to post for the release of their salaries.

- vi. That, thereafter on 14.09.2020, the Resolution Professional after placing a reliance upon the notice dated 01.02.2020 had addressed an email to the workmen Union, wherein he advised the workmen to search for alternate jobs.

**3. The Respondent has filed its reply stating as follows:**

- i. That the employees of the Corporate Debtor had initially filed their respective individual claims in FORM-D, which were received by the RP on various dates and the same were verified by the RP and those claims which were not in accordance with the Rules laid under the Code were informed to the employees through e-mail on various dates.
- ii. That the RP also intimated the EPFO Department vide its letter dated 13.05.2019 and Income Tax Department vide its letter dated 20.05.2019 about the initiation of CIRP proceedings against the Corporate Debtor and declaration of moratorium u/s 14 of the Code and thereby requested them to submit their claims in the FORM-B as per the provisions of the Code.



- iii. That during the CIRP period, the RP had been making every possible effort to generate the funds and to keep the Corporate Debtor a going concern and time and again had proposed the agenda of raising interim finance in meetings of Committee of Creditors (hereinafter referred to as "CoC"), however, the same have not been approved by the CoC.
- iv. That even then, the Corporate Debtor through the RP has executed some contracts of NTPC, as a result of which some amount has been credited in the bank account of Corporate Debtor and thus, salaries of workers/employees for the month of September, 2019 was paid on 27.01.2020 & 12.02.2020 and 50% salary for the month of October, 2019 was paid on 19.02.2020, which can be seen from the bank statements and fund flow statement.
- v. That on 29.01.2020, since there was no work and the Corporate Debtor was being financially burdened, thereof, it was opined by this Tribunal that the workers and employees need not come to premises/factory and RP was directed to take actions to such effect, after this Tribunal duly took into consideration the submissions made by the representatives of workers that no



work is going on in the premises. As such, on the opinion of this Tribunal and for the interests of the workers and employees, the RP issued the lay-off notice dated 01.02.2020.

- vi. That the RP issued such notice acting as employer, in order to reduce the un-economic dead weight of surplus labour and further, because the members of Committee of Creditors had decided to move into liquidation and appropriate application had also been filed before this Tribunal. However, Liquidation proceedings were stayed by Hon'ble NCLAT and subsequently Resolution Plan was approved by the CoC.

**4.** We have heard the submissions made by all the parties. The present Application has been filed by the Applicants seeking to declare the layoff notice dated 01.02.2020 passed by the Resolution Professional as illegal and arbitrary.

**5.** The Respondent/RP is well within its powers to take appropriate steps to preserve and protect the assets of the Corporate Debtor including the continued business operations of the Corporate Debtor. The Code expressly provides for the same u/s 25 of the IBC, 2016. The Resolution Professional is therefore duty bound to



protect the interests of the Corporate Debtor and in furtherance thereof had issued the notice dated 01.02.2020 as the Corporate Debtor lacked funds to pay the salaries of the workers. The Applicants have further contended that the said layoff is in complete derogation of Sections 25C and 25M of the Industrial Dispute Act, 1947 and under Section 2(n) of UP Industrial Disputes Act, 1947. However, Section 238 of the IB Code, 2016 states that the provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Therefore, there appears to be no illegality in discontinuing the services of the workmen and the layoff notice dated 01.02.2020 to that effect.

6. IA/3780/2021 stands dismissed and accordingly disposed off in terms of the above order.

Let a copy of the order be served to parties.

**SD/-**

**SD/-**

**(RAHUL BHATNAGAR) (BACHU VENKAT BALARAM DAS)**  
**MEMBER (TECHNICAL) MEMBER(JUDICIAL)**