



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**I.A. (IB) No. 1149/KB/2022**

**In**

**Company Petition (IB) NO. 1684/KB/2018**

**An Application under Section 60(5) of the Insolvency and  
Bankruptcy Code, 2016.**

**IN THE MATTER OF:**

**Jayanta Banerjee**

**... Operational Creditor.**

***Versus***

**Incab Industries Limited**

**... Corporate Debtor.**

**IN THE MATTER OF:**

**Mr. Suresh Kumar Agarwal**

**... Applicant.**

***Versus***

**Pankaj Kumar Tibrewal, Resolution Professional**

**... Respondent.**

**Date of Pronouncement: January 08, 2025.**

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)**

**SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

**For the RP:**

**Mr. Abhinav Vashisht, Sr. Adv.**

**Mr. Shaunak Mitra, Adv.**

**Mr. Siddhanth Makkar, Adv.**

**Ms. Akshita Sachdev, Adv.**

**Mr. Pankaj Tibrewal, RP-in-Person**

**ORDER**

**Per: D. Arvind, Member (Technical)**

1. The Court congregated through hybrid mode.

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2. This application has been preferred by Mr. Suresh Kumar Agarwal, Applicant herein, against Mr. Pankaj Kumar Tibrewal Resolution Professional of Incab Industries Limited, Respondent herein seeking the following reliefs:

- a) *The Respondent be directed to furnish a copy of the resolution plan.*
- b) *The Respondent be directed to furnish a copy of the application for approval of the resolution plan being I.A. (IB) No. 646/KB/2022.*
- c) *Leave be granted to the applicant to intervene in the aforesaid application by filing his affidavit in opposition, if any.*
- d) *Set aside the resolution plan in case the resolution plan proposes to pay nil to the applicant operational creditor.*
- e) *Direct the resolution applicant to make payment to the operational creditors under the resolution plan.*
- f) *Ad-interim order.*

3. The factual conspectus of the present case is that the applicant herein is the trade operational creditor of the corporate debtor whose debt arose due to the non-payment of the goods supplied by him in 1999. The corporate debtor was declared as a 'sick industry' in 2000 and as such the applicant could not proceed with his claim before any legal forum in respect of the corporate debtor. The applicant came to know that upon filing an application under Section 9 of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code", the corporate debtor was admitted into corporate insolvency resolution process (CIRP) on 07.08.2019. Further, the Adjudicating Authority on 07.02.2020, passed an order for liquidation of the corporate debtor, which was set aside on 16.06.2021 by the Hon'ble NCLAT and the Respondent was appointed as a RP in place of Mr. Shashi Agarwal.

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4. Ld. Counsel for the applicant would submit that being aware of the said development in the present case, the applicant filed his claim with supporting documents before the RP on 02.08.2021 in Form B and the RP provisionally admitted the claim of the applicant to the tune of Rs.42,42,142.32/-.

5. Ld. Counsel for the applicant would further submit the applicant came to know that the CoC has approved a resolution plan submitted by Vedanta and the same has been placed before this Adjudicating Authority by way of an application being I.A. (IB) No. 646/KB/2022. The applicant wrote an email on 21.08.2022 to the RP and asked for a copy of the plan to disclose the parameters for payments made by the successful resolution applicant in respect of the claim of the operational creditor.

6. Ld. Counsel for the applicant would further submit that the applicant has come to learn during the course of hearing of I.A. (IB) No. 646/KB/2022 before this Adjudicating Authority that the resolution applicant has proposed a NIL amount to the trade operational creditor and thus, the applicant has claimed that the resolution plan is contrary to Section 30(2) of the Code.

7. *Per contra*, Ld. Counsel for the RP would submit that the applicant is not a part of the CoC and subject to the confidentiality of the information relating to the CIRP, copy of the plan should not be provided to the applicants.

8. Ld. Counsel for the RP would further submit that the plan submitted by the successful resolution applicant has been



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approved by the CoC with a majority of 99.38% voting shares and it is a settled position of law that once CoC approves a resolution plan with requisite majority, the RP is bound to place the same before the Adjudicating Authority.

9. We have considered the rival contentions.

10. We would refer the judgment rendered by the Hon'ble NCLAT in ***Association of Aggrieved Workmen of Jet Airways (India) Limited vs. Jet Airways (India) Ltd. and Ors.*** reported in **MANU/NL/0069/2022**, wherein it has been laid down that:

*“17. Since Section 24 of the IB Code read with Regulation 21 (3) (iii) of Process Regulation 2016, makes it clear that all Members, **who were to participate in the meeting of the Committee of Creditors had to be provided copies of all relevant documents.** Thus, the entitlement of copy of documents during the CIRP is for only those who are to participate in CIRP. As per Section 24 of the Code, Operational Creditors or their representatives, if the amount of their aggregate dues is not less than 10% of the debt, are also entitled for notice of meeting of Committee of Creditors. Thus, the category of creditors including the Members of the suspended Board of Directors or the partners of the corporate persons, who are entitled to participate in the meeting of the Committee of Creditors are entitled to receive copies of all documents.”*

**(Emphasis Added)**

11. Further, the Hon'ble Apex Court in ***Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.*** reported in **(2022) 1 SCC 401: MANU/SC/0206/2021** at Para 216, has laid down that:



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**“The Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 30(2) and 31 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by Committee of Creditors. ... .”**

**(Emphasis Added)**

12. Further, in ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta*** reported at **(2020) 8 SCC 531: MANU/SC/1577/2019**, the Hon’ble Apex Court has propounded that:

**“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants.”**

**(Emphasis Added)**

13. In view of the law settled in the judgments supra, we would infer that as the resolution plan approved by the CoC in majority, the same may not be intervened unless contravenes the provisions as enshrined under Section 30(2) of the Code. Further, as



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the applicants are not the members of CoC, they are not entitled to get a copy of the plan.

14. Further, it is evident from the Form H annexed to the application being I.A. (IB) No. 646/KB/2022 that in respect of the operational creditor, the total amount provided under the resolution plan is Rs. 16,29,32,721/- against the amount admitted by the RP is Rs. 2,41,50,99,340.75/-. Thus, we find no reason to allow the present application as the plan has allocated some amount to the operational creditor, as per the commercial wisdom of CoC.

15. In view of above, the application being **I.A. (IB) No. 1149/KB/2022** is **dismissed**.

16. Certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**This Order is signed on January 08, 2025.**

Bose, R. K. [LRA]