

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

I.A. No. 477 of 2019

IN

C.P.(I.B)No.-1071/KB/2019

In the matter of:

Techno Electric and Engineering Company Limited

...Financial Creditor

-And-

Mcleod Russel India Limited

..... Corporate Debtor

-And-

In the matter of:

Assam Chah Mazdoor Sangha

...Applicant

Versus

1. Techno Electric & Engineering Company Limited

2. Mcleod Russel India Limited

...Respondents



Coram:

MR. P.S.N. PRASAD
Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

For Applicant: Ms. Manju Bhuteria, Mr. Nirmalya Das Gupta, Mr. Anujit Biswas, Advocates for M/s Assam Chah Mazdoor Sangha, .

For Financial Creditor: Mr. Suresh Mongia, Mr. Kumar Anurag Singh, Mr. Masoom Shah, Mr. Udit Gupta, Advocates.

For Corporate Debtor: Ms. Eshna Kumar, Advocate.

Order Delivered on: 19.03.2021



ORDER

PER DR. V.K.SUBBURAJ, MEMBER (T)

1. This is an application made by M/s Assam Chah Mazdoor Sangha seeking to intervene in the proceedings under Section 7 of IBC 2016 filed by M/s Techno Electric and Engineering Company Limited against the corporate debtor M/s Mcleod Russel India Limited which is under adjudication by this Tribunal. The applicant has contended as follows:-

- i. The respondent no.2 is the largest tea exporter in the world. The total export for the financial year ended 31.03.2019 was 144 lakh kgs, valued at Rs. 326.20 crores.
- ii. Till the recent past the respondent no.2 has been a healthy profit making concern. The respondent no.2 had not even defaulted in respect of any payment obligations to the members of the applicant no.1. In fact, the respondent no.2 is known to be one of the best tea houses in the world.
- iii. The respondent no.2 has approx.. 65,000 number of workers and employees. Therefore, over approx.. 65,000 number of persons are directly dependent on the respondent no. 2.. all these workers and employees live in the impoverished tea growing area of Assam. If not for the respondent no.1, the said number of approx.. 65,000 persons including many children will be rendered destitute. It is only



for reason of the respondent no. 2 that a large majority of members of the applicant have survived till the present. In accordance with the practice followed in tea gardens, the respondent no.2 is also responsible for providing ration and health support to the members of the applicant. In fact, every week, daily rations are made over to the members of the applicant by the respondent no. 2. Not only the above, there are hospitals and schools which have been established by the respondent no.2. In the event of admission of the respondent no.2 in the Corporate Insolvency Resolution Process (“CIRP”), the ration, schools, house rent, medical expenses, firewood compensation, hospitals and essentials or necessities of the members of the applicant no.1 would not be provided. This would have catastrophic socio-economic consequences on them and may lead to law and order problem.

- iv. There have been 09 (nine) number of meetings of the committee of bankers of the respondent no.2, where the aforesaid banks of the respondent no.2, has supported the respondent no. 2 in view of the excellent track record of the respondent no. 2 and in view of the excellent potential that it has.
- v. In view of the Reserve Bank of India’s Notification dated 7th June 2019, it is now necessary for all financial creditors to consider a Resolution Plan outside IBC. A Resolution Plan has even been



prepared and currently under consideration by the banks and respondent no.2 is in the process of obtaining in principle approval of the financial creditors, who are considering viability of the plan. A copy of the Resolution plan is also annexed hereto and marked with the letter "D".

vi. In the said circumstances, it is humbly submitted that the applicant be permitted to intervene in the present proceeding and be heard the necessary directions be made for postponement of hearing of the present proceedings to enable a settlement to be worked out.

2. Consequent to the issuing of notice by the Tribunal the respondent nos. 1 & 2 have filed their responses in which they have contended the following points. The respondent no.1 viz the financial creditor has contended as follows:

- i. That intervention applications are not maintainable under Section 7 proceedings as per the settled law, the instant application to delay and abuse the process of law. The application is filled in collusion with corporate debtor.
- ii. That the Hon'ble Supreme Court held in Innoventive's case that the Defaulters paradise is lost, the case on hand demonstrates how the defaulter in collusion with the intervener is trying to cling on to its paradise after more than 500 days of filing of the Section 7 petition against it and how supporting characters (interveners) are used to



delay, frustrate and defeat the object and purpose of the IB Code, 2016.

iii. In the case of Deb Kumar Majumder vs. State Bank of India, NCLAT, rejected intervention of workers and has held as under:-

“We agree with the observations made by the Adjudicating Authority at the stage of application filed under Section 7 that no person has right to claim for hearing except the ‘Corporate Debtor’. No other ‘Financial Creditor’ or ‘Operational Creditor’ or any other creditor is required to be heard except the ‘Financial Creditor’ who has filed an application under Section 9 of the I&B Code. The Adjudicating Authority is required to notice whether there is a ‘debt’ and ‘default’ committed by the ‘corporate debtor’ if the application under Section 9, the Adjudicating Authority is to notice whether there is a ‘debt’ and ‘default’ and whether there is a ‘pre-existing dispute’.”

iv. That it may be noted that no interventions are permissible and if Resolution Applicant comes the workers would benefit only. Workers cannot stop the admission. The same demonstrates the delay tactics and to the extent in which multiple parties are approaching the NCLT to stop the hearing of the instant matter.

v. That multiple applications/defenses/replies like the present one is not/permissible to be taken after filing of the reply as per the law laid down by the Hon’ble Supreme Court in Innoventive Industries Ltd.



Vs. ICICI Bank, (2018) 1 SSC 407. Hence, to avoid and defeat the ratio of the Supreme Court, the Intervener is doing shadow boxing for the corporate debtor.

- vi. Further, the claim of the workers and their entitlements are of no relevance for the Section 7 petition, but it may be noted that whosoever is the resolution applicant will always take care of the company and its workers. The committee of creditors and the Resolution Applicant will look into the same as the idea is to see that the corporate debtor survives and the time is of essence. Further, it can be seen that every few months the credit rating of the company is dropping.
- vii. The Chartered Accountant certificate which was produced before the NCLAT, further shows:
 - a. The corporate debtor was rated "AA-" when the loan transaction took place and now currently is "D" Rating by ICRA.
 - b. The corporate debtor's CA has refused to confirm its eligibility to continue business (Corporate Debtor is listed company and as per SEBI norms requires quarterly CA certificate whether they can continue business).
- viii. During the year company has extended advances aggregating to Rs. 84,175 lacs to promoter companies (holding company) as capital



advances. The said promoter companies to whom such advances were given have substantially lent these onward to another promoter group company. Of the total advances, Rs. 77,575 lacs were converted to ICD as of 31.03.19. The same is prejudicial to interests of the company.

3. The respondent no.2 viz, the corporate debtor in the main petition has submitted the following points:-

- a) The business of the corporate debtor is labour intensive and as such it employs more than 65,000 workers and their family members and any order of admission would cause serious prejudice to the livelihood of the workers which will lead them to complete jeopardy causing social and economic unrest in the State of Assam.
- b) Non-Applicant 2 is solvent and has also posted quarterly profits to the tune of approximately Rs. 150 crores and its share prices have surged to Rs. 25. The lenders are optimistic that the Non-Applicant 2 shall generate more revenue in the upcoming quarters.
- c) It is in the aforesaid backdrop, Non-Applicant 1 (the alleged financial creditor) is continuously using vexatious tactics to coerce money out of Non-Applicant 2 for a sum which has not become fall due and payable. More shockingly, it transpires that the debt has been assigned/sold/transferred by the Non-Applicant 1 to some third party and therefore have lost its locus to continue with the present



proceedings. This fact has been deliberately suppressed. As a result, none of these proceedings are maintainable and no question arises for initiation of CIRP process against Non-Applicant 2.

4. In a way the corporate debtor has endorsed the views of the applicant (Intervener).
5. We have heard the arguments advanced by the counsels of all the three parties and perused the documents filed by them including the written submissions.
6. The issue to be decided in this issue is whether this IA at this stage is maintainable and the workers of the applicant (Assam Chah Mazdoor Sangha) have locus standi to intervene in the proceedings.
7. The learned counsel for the respondent no.1 has highlighted the judgments of the Hon'ble Supreme Court and the Hon'ble NCLAT in similar situations which have not supported such interventions. The following judgments deserve mention.


- a. *Anmol Tekriwal vs. M.N. Auxichem and Ors. (MANU/NL/0026/2019).*
- b. *L&T vs. Gwalior Bypass, passed in Company Appeal (AT) (Insolvency) No.676 of 2019 vide judgment dated 19.08.2019.*
- c. *Deb Kumar Majumder vs. State Bank of India, passed in Company Appeal (AT) (Insolvency) No.44 of 2019 vide order dated 14.01.2019.*

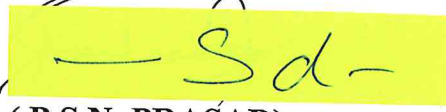


8. The observations made by the Hon'ble NCLAT in the case of Deb Kumar Majumder vs. State Bank of India will hold good in this case and the observation is as follows:-

“We agree with the observations made by the Adjudicating Authority at the stage of application filed under Section 7 that no person has right to claim for hearing except the ‘Corporate Debtor’. No other ‘Financial Creditor’ or ‘Operational Creditor’ or any other creditor is required to be heard except the ‘Financial Creditor’ who has filed an application under Section 9 of the I&B Code. The Adjudicating Authority is required to notice whether there is a ‘debt’ and ‘default’ committed by the ‘corporate debtor’ if the application under Section 9, the Adjudicating Authority is to notice whether there is a ‘debt’ and ‘default’ and whether there is a ‘pre-existing dispute’.”

9. We are of the considered opinion that the workers of the corporate debtor have no locus standi to intervene at this stage and this I.A is rejected.


(Dr. V.K. SUBBURAJ)
MEMBER (TECHNICAL)


(P.S.N. PRASAD)
MEMBER (JUDICIAL)