



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

**I.A (IB) No. 1001/KB/2022
IN
C.P (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

... Operational Creditor

And

Makesworth Industries Limited

... Applicant

Versus

**Pankaj Kumar Tibrewal, Resolution Professional of Incab
Industries Limited**

... Respondent

Date of Pronouncement: January 08, 2025.

CORAM

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

APPEARANCE

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

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ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The court congregated through hybrid mode.
2. The Ld. Counsels of both the parties were heard.
3. The Applicant preferred the application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “Code”) to seek 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 Operational Creditors under the Resolution Plan.*
 - f. *Ad-interim orders in terms of the prayers above.*
 - g. *Such further and/or other order(s) be made as Tribunal may deem fit and proper.*

4. FACTS IN NUTSHELL

- 4.1** The Applicant is the trade operational creditor of the Corporate Debtor whose debt arose due to the non-payment

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of the goods supplied by it in the year of 1999. The Corporate Debtor was declared as a 'Sick Industry' in the year of 2000 and as such the Applicant could not proceed with its claim before any legal forum in respect of the Corporate Debtor. The Applicant being an Operational Creditor and having a stake in the Corporate Debtor had asked the respondent to know the parameters of payment made to the Operational Creditors.

5. Applicant's submission:

- 5.1** The Learned Counsel for the Applicant would submit that pursuant to an oral contract was entered into by and between the parties, the Corporate Debtor from time to time would place orders upon the applicant for supply of various MACOGEL-S on the terms and conditions and particularly given in the said purchase order and the payment would be made within thirty days from the date of receipt of the material and approval thereof.
- 5.2** It is contended that pursuant to the said purchase orders being placed, from 25.02.1999 to 23.05.1999 the applicant duly supplied the said goods to the Corporate Debtor such were duly accepted by the Corporate Debtor sans raising any demur and accordingly, the applicant raised invoices upon the Corporate Debtor which was duly received by it.
- 5.3** The Corporate Debtor even after receipt of various invoices choose to remain negligent in clearing off the outstanding dues of the applicant and having no other alternative, the

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applicant through his Advocate issued a notice on 27th August 1999 thereby demanding payment of his outstanding dues.

- 5.4** That the applicant filed an application before the Hon'ble High Court at Calcutta under Section 433, 434 and 439 of the Companies Act, 1956, praying of order of winding up of the Corporate Debtor under the provisions of Companies Act, 1956 and for appointment of Official Liquidator to take possession of the assets and properties of the Corporate Debtor.
- 5.5** The Corporate Debtor went in the Board for Industrial and Financial Reconstruction and was declared as 'sick industry' and therefore, the petition of the applicant before the Hon'ble High Court at Calcutta became infructuous as the same could not proceed within the eye of law.
- 5.6** That the applicant being an Operational Creditor was not part of the Committee of Creditors and as such, it does not have any idea with regard to the provision for the payment made for the Operational Creditor in the said resolution plan and under such circumstances, the applicant vide an email dated 21st August 2022 enquired before the Resolution Professional thereby, seeking a copy of the resolution plan.

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- 5.7** That in the absence of providing the Resolution Plan the Respondent was asked to disclose the parameters for payments made by the Successful Resolution Applicant in respect of the claim of the Operational Creditors in the said resolution plan and the Respondent vide an email dated 22.08.2022 replied to queries of the Applicant inter-alia stating there being no provisions of law to share the resolution plan with the Applicant and as such the respondent was not in a position to share the same.
- 5.8** That the applicant being an Operational Creditor of the Corporate Debtor has a considerable stake in the Corporate Debtor and therefore, as per regulation 38 (1)(A) the resolution plan must include statements as to how interest of all stakeholders including the Operational Creditor of the Corporate debtor has been taken care of.
- 5.9** That as per Regulation 38(1) the amount due to Operational Creditors under a Resolution Plan shall be given priority in payment over financial creditors. If nothing is paid to the Operational Creditors, the minimum being the liquidation value, which in most cases would amount to nil then the same would certainly not balance the interest of all stakeholders or maximize the value of the assets or the Corporate Debtor.
- 5.10** That if the Adjudicating Authority finds that the aforesaid parameters have not been kept in mind then the resolution plan should be sent back to the Committee of

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Creditors for reconsideration and the Operational Creditors cannot be paid nil under a Resolution Plan.

5.11 That the Applicant has come to learn during hearing in court that Nil/Zero amount has been proposed to be given to the trade operational creditor and thus the Resolution Plan is contrary to law and contrary to Section 30(2) of Insolvency and Bankruptcy Code, 2016.

6. SUBMISSIONS OF THE LD. COUNSEL ON BEHALF OF THE RESPONDENT

6.1 The Ld. Counsel for the Respondent vehemently argued that the Applicant was not part of the Committee of Creditors and hence, is not entitled to get the copy of the resolution plan. Therefore, the Respondent is liable to maintain confidentiality of the CIRP of the Corporate Debtor and was unable to share the same with applicant.

6.2 That the Respondent being a Resolution Professional of the Corporate Debtor is bound to maintain confidentiality of information regarding the Corporate Insolvency Resolution Professional as per the Regulations of Insolvency and Bankruptcy Board of India 2016. The relevant regulation has been reproduced hereunder:

“Confidentiality

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21. *An insolvency professional must ensure that confidentiality of the information relating to the insolvency resolution bankruptcy process or is liquidation process the case may be, as maintained at all times. However, this shall not prevent him from disclosing any information with the consent of the relevant parties or required by law”.*

- 6.3** That the Resolution Plan is a confidential document including restrictive information about the Corporate Debtor and the Successful Resolution Applicant. Further, without the prior approval of the Resolution Applicant and Members of CoC, no such information pertaining to the Resolution Plan may be released, in whole or in part, to any person.
- 6.4** It is further submitted that though the Resolution Plan becomes a public document after the approval from the Adjudicating Authority, it cannot be made available to anyone.
- 6.5** That the Resolution Applicant in the plan did not just propose to pay Nil/Zero to the trade operational creditor but, the plan proposed to pay either Nil/Zero or as per Section 53 (1) which says the liquidation value of the Corporate Debtor, and in the instant case the value of the debt owed to trade operation creditor is Nil. Hence, the code itself clarifies and the same has been dealt in the Resolution Plan.

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- 6.5** That the Respondent has filed the Application under Section 31 of the Code beating IA No. 646/KB/2022 for Approval Resolution Plan only after the said Plan was approved by the members of the CoC with a voting share of **99.38%**. The Apex Court has held that once the CoC approves a resolution plan with the requisite majority, the Resolution Professional is bound to place the same before the Adjudicating Authority for its approval.
- 6.6** It is contended that the Applicant has filed the present Application without application of mind and with an intent to delay the Resolution Process of the Corporate Debtor.

ANALYSIS AND FINDINGS:

- 7** We rely on the judgment rendered by the Hon'ble National Company Law Appellate Tribunal in the matter of **Association of aggrieved workman of Jet Airways (India) Limited Versus Jet Airways (India) Ltd**, reported in **2022 SCC Online NCLAT 36** wherein it was held that:

"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 participating in in the meeting of Committee of Creditors."

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- 8** We find that the applicant is not a member of the CoC and thus, we are of the view that he will not be entitled to get a copy of the resolution plan.
- 9** Further, concerning the claim of the applicant we find the submission of the RP that the value of the debt owed to the trade operation creditor is NIL. We find that the copies of the invoices which the applicant has referred to for substantiating its claim is raised in 1999 and the applicant issued a notice for demanding payment of his outstanding dues on 27.08.1999, which is completely barred by the limitation. We find no merit in the application and hence **reject** the same.
- 10** In view of above, this application is **rejected** and **dismissed** accordingly.
- 11** 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]/ Oindrila, K. [LRA]