

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**IA No. 332/2021, 583/2021 & 378/2020  
in  
CP (IB) No.46/Chd/Pb/2018**

**Under Section 60(5) of IBC 2016**

**In the matter of:**

**Oriental Bank of Commerce**

....Financial Creditor

Vs.

**J.R. Agrotech Private Limited**

....Respondent-Corporate Debtor

**And in the matter of IA No. 332/2021**

**Compact Capital Limited,**  
having its registered office at  
103, Gateway Plaza, Hiranandani Garden, Powai,  
Mumbai, Maharashtra-400076

...Applicant

1. Mohit Chawla,  
Insolvency Professional  
on behalf of CoC of J.R. Agrotech Pvt. Ltd.
2. Committee of Creditors,  
J.R. Agrotech Pvt. Ltd.

...Respondents

**And in the matter of 583/2021**

**Mohit Chawla,**  
Resolution Professional of J R Agrotech Pvt. Ltd.  
SCO 2935-36, Sector 22C,  
160022, Chandigarh

Vs.

**Sunil Boriwal**  
Assistant Labour Commissioner  
District Administrative Complex,  
Third Floor, Room No. 413-415,

IA No. 332/2021, 583/2021 & 378/2020  
in  
CP (IB) No.46/Chd/Pb/2018

Gurdaspur, 143521

...Respondent

**And in the matter of 378/2020**

Gaurav Aggarwal, S/o Sh. Raman Aggarwal  
Adarsh Nagar, Backside Kaudu,  
Mal Rikhi Ram, Dharamshala,  
G.T. Road, Mandi Gurdaspur, Punjab-143531

...Applicant No. 1

Raghav Aggarwal, S/o Sh. Raman Aggarwal  
Adarsh Nagar, Backside Kaudu,  
Mal Rikhi Ram, Dharamshala,  
G.T. Road, Mandi Gurdaspur, Punjab-143531

...Applicant No. 2

Gauri Aggarwal, S/o Sh. Raman Aggarwal  
Adarsh Nagar, Backside Kaudu,  
Mal Rikhi Ram, Dharamshala,  
G.T. Road, Mandi Gurdaspur, Punjab-143531

...Applicant No. 3

Renu Aggarwal, S/o Sh. Raman Aggarwal  
Adarsh Nagar, Backside Kaudu,  
Mal Rikhi Ram, Dharamshala,  
G.T. Road, Mandi Gurdaspur, Punjab-143531

...Applicant No. 4

vs.

Sh. Mohit Chawla, Resolution Professional  
M/s. J.R. Agro Tech Pvt. Ltd.

...Respondent

**Judgment delivered on: 16.02.2023**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present:**

**For Applicant in IA No. 332/2021** : Ms. Salina Chalana, Advocate  
: Mr. Vaibhav Sharma, Advocate  
**For the Applicant in IA No. 378/2020** : Mr. Alok Jagga, Advocate  
: Mr. APS Madaan, Advocate  
**For the Applicant in IA No. 583/2021** : Ms. Komal Abrol, Advocate  
**For the Resolution Professional**

IA No. 332/2021, 583/2021 & 378/2020  
in  
CP (IB) No.46/Chd/Pb/2018

**in IA No. 332/2021  
For Committee of Creditors in  
CA No. 332/2021 & respondent  
in IA No. 378/2020, 583/2021**

: Mr. Krishan Vrind Jain, PCA

: Mr. Harsh Garg, Advocate

**PER: SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

### **JUDGMENT**

#### **IA No. 332/2021**

The present application has been filed by the Resolution Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, considering the revised Resolution plan dated 21.05.2021. Further, in the alternative, permit the Resolution Applicant to withdraw the Resolution Plan as approved by the Committee of Creditors.

2. It is submitted that the present case company petition bearing No. CP(IB) No. 46/Chd/PB/2018 under Section 7 of IBC was filed by Oriental Bank of Commerce and the same has been admitted by this Adjudicating Authority vide order dated 27.07.2018. In compliance with the order dated 01.11.2019, the 12th meeting was convened on 05.11.2019, and the revised Resolution Plan dated 20.04.2019, along with the addendum dated 05.11.2019, was resolved to be approved with 91.95% votes in favour of the plan.

3. It is further stated that the applicant-Resolution Applicant has filed an application bearing CA No. 1106/2019 seeking approval of the Resolution Plan, which is pending as of date. However, due to Covid-19, the financial position of

the Resolution applicant has been altered, due to which commercial decisions had to be revised. Therefore, the viability of the Resolution Plan submitted on 20.04.2019 became unworkable. In view of the changed circumstances and the Resolution Applicant, along with M/s R.L. Enterprises, submitted a revised Resolution Plan dated 30.07.2020.

4. It is submitted that due to the unforeseen impact of COVID-19 and the slump in the market, the Resolution Applicant is not in a position to implement even the revised plan dated 30.07.2020 as submitted vide CA No.400/2020 in CA No.1106/2019. In view of the changed circumstances, the applicant sought modification of the revised plan dated 30.07.2020 to the extent that the aforesaid plan be solely carried out by M/s R.L. Enterprises (proposed plan dated 21.05.2021) in substitution of the present applicant. The same has not been accepted by the Resolution Professional.

**Reply on behalf of respondent No. 1**

5. It is submitted that the applicant is misusing the present situation to its advantage since revised form H was placed on record by the Resolution Professional, and now they are aware of the liquidation cost, which is confidential value not to be disclosed to anyone other than the CoC members at the time of discussion on Resolution Plan as per Regulation 35 (2) (3). Further, the applicant inducted the SPV model into its revised plan, and the SPV model was never acceptable to the members of the CoC. The respondent herein has taken the same stance as by CoC.

**Reply on behalf of respondent No. 2.**

6. It is submitted on behalf of the CoC that there is no provision in the IBC, 2016, entitling the Successful Resolution Applicant to seek withdrawal after its Resolution Plan stands approved by the Committee of Creditors with a requisite majority. Moreover, the Resolution Applicant is seeking revision of its Resolution Plan through IA No. 400/2020. In this context, reliance has been placed on the decision of the Hon'ble NCLAT in the matter of ***Committee of Creditors of Educomp Solutions Ltd. vs EBIX Singapore Pvt. Ltd.***, Company Appeal (AT) (Insolvency) No. 203 of 2020 and the decision of the Hon'ble Apex Court in its order dated 23.02.2021 in the matter of ***Committee of Creditors of AMTEK Auto Limited through Corporation Bank vs. Dinkar T. Venkatasubramanian & Ors.***

7. The Resolution Applicant has filed its written submission vide Diary No.00744/4 dated 25.04.2022, wherein it is reiterated that the Resolution Applicant is not in the position to implement the plan anymore and the plan be taken over by M/s R.L. Enterprises to maximise the assets of the corporate debtor.

8. We have heard the learned counsels for the applicant and respondents and carefully perused the record available and written submissions.

9. In the present case, the Resolution Plan dated 20.04.2019 has been approved by CoC on 09.11.2019 by 91.95% votes in favour of the plan and subsequently, on 15.11.2019, CA No. 1106/2019 has been filed before this Adjudicating Authority for approval of the Resolution Plan. Even after that, a revised resolution plan dated 30.07.2020 was filed by Resolution Applicant before this Adjudicating Authority through IA No. 400/2020 filed vide diary No 00844 dated 21.08.2020, substituting a third party in place of it, with a prayer to direct

CoC to consider the revised Resolution Plan dated 30.07.2020, and in the alternative to permit the Resolution Applicant to withdraw the resolution plan as approved by CoC. The same was dismissed as infructuous by our order dated 15.12.2021. The Resolution Applicant has further changed its resolution plan now by filing the present application, i.e. IA No. 332/2021, with a prayer to substitute it by a third party.

10. As regards the mandate of this Adjudicating Authority under the Insolvency and Bankruptcy Code, a reference is made to the decision of the Hon'ble Supreme Court in the matter of **Committee of Creditors of AMTEK Auto Limited through Corporation Bank vs. Dinkar T. Venkatasubramanian & Ors.**, 2021 SCC 135, wherein it held that the role of Adjudicating Authority under section 31(1) comes into being upon the approval of Resolution Plan by the CoC under section 30(4). The function which is assigned by the statute to the adjudicating authority is to determine whether the resolution plan which was approved by the CoC meets the requirement of section 30(2). Upon being satisfied that the resolution plan meets those requirements, the adjudicating authority "shall by order approve the resolution plan". Before passing an order of approval, the adjudicating authority has to satisfy itself that the resolution plan has provisions for its effective implementation. Thus, to assert that there is scope for negotiations and discussions after the approval of the resolution plan by the CoC would be plainly contrary to the terms of IBC.

11. As to contentions raised by the resolution applicant that due to hardships caused by COVID-19, it is no more viable to implement the resolution plan as approved by the CoC, reliance is placed on the decision of Hon'ble Supreme Court in the matter of **Ebix Singapore Private Limited v. Committee of**

IA No. 332/2021, 583/2021 & 378/2020

in

CP (IB) No.46/Chd/Pb/2018

**Creditors of Educomp Solutions Limited & Anr**, ibclaw.in 153 SC wherein it held that the court is cognizant that the extraordinary circumstances of COVID-19 pandemic would have had a significant impact on the businesses of corporate debtors and upon Successful Resolution Applicants whose plans may not have been sanctioned by the Adjudicating Authority in time, for myriad reasons. It was further held that the legislative intent of the statute cannot be overridden by the Court to render outcomes that can have grave economic implications which will impact the viability of IBC.

12. Further reference is made to the decision of Hon'ble NCLAT in the matter of **Noble Marine Metals Co WLL vs. Kotak Mahindra Bank Ltd.** (2023) ibclaw.in 117, wherein it is held that the judgment of the Hon'ble Supreme Court in **Ebix Singapore Pvt. Ltd. (supra)** categorically lays down that Resolution Plan approved by CoC is binding on the Successful Resolution Applicant and CoC and relied on the following extract in para 112 from the decision of Hon'ble Supreme Court in **Ebix Singapore(supra)** :

*"112. While the above observations were made in the context of a scheme that has been sanctioned by the Court, the Resolution Plan even prior to the approval of the Adjudicating Authority is binding inter se the CoC and the successful Resolution Applicant. The Resolution Plan cannot be construed purely as a 'contract governed by the Contract Act, in the period intervening its acceptance by the CoC and the approval of the Adjudicating Authority. Even at that stage, its binding effects are produced by the IBC framework. The BLRC Report mentions that "when 75% of the creditors agree on a revival plan, this plan would be binding on all the remaining creditors". The BLRC Report also mentions that, "the RP submits a binding agreement to the Adjudicator before the default maximum date". We have further discussed the statutory scheme of the IBC in Sections I and J of this judgement to establish that a Resolution Plan is binding inter se the CoC and the successful Resolution Applicant. Thus, the ability of the Resolution Plan to bind those who have not consented to it, by way a statutory procedure, indicates that it is not a typical contract."*

***(emphasis supplied)***

13. In the present case, the Resolution Plan was approved by the CoC on 05.11.2019, and the Resolution Applicant has filed a revised Resolution Plan dated 21.05.2021 as submitted by one third party, namely M/s. R.L. Enterprises in substitution of the present Resolution Applicant. While considering that Covid did affect the economic condition of the industry in general, we rely on the decision of the Hon'ble Supreme Court in the matter of the ***Committee of Creditors of AMTEK Auto Limited through Corporation Bank (supra)*** and hold that there is no scope for negotiations and discussions after the approval of the resolution plan by the CoC under the IBC.

14. In the instant matter, the Resolution Plan has already been approved by the CoC, and now the Resolution Applicant is claiming that the Resolution Applicant is not in the position to implement the plan anymore and that the plan be taken over by M/s R.L. Enterprises. In this context, we hold that the Resolution Applicant does not possess adjudicatory powers and cannot dictate the terms in which the plan must be approved by the CoC.

15. In view of the above discussions, the present application, i.e., IA No. 332/2021, fails and is dismissed accordingly.

**IA No. 583/2021**

16. The present application has been filed by the Resolution Professional seeking a stay on the execution of the order dated 17.11.2020 passed by the respondent in view of the moratorium order dated 27.07.2018. Further, to stay the execution up till the appeal is decided by the Hon'ble High Court of Punjab & Haryana.

17. It is submitted that respondent No. 1 has passed an order dated 17.11.2020, allowing compensation to the tune of Rs. 6,77,760/- in the matter of Navpreet Kaur vs J.R. Agrotech Private Limited and proceeded with the execution of the said award. The Resolution Professional, upon receiving the above-said order, wrote to the respondent that no order or proceeding be initiated or passed once the moratorium is declared, i.e., on 27.07.2018. Moreover, the applicant has filed an appeal against the order dated 17.11.2020 before the Hon'ble Punjab & Haryana High Court. Also, as per Section 238 of IBC, 2016, the provisions of the Insolvency and Bankruptcy Code, 2016, shall have an overriding effect over the Employees Compensation Act, 1923.

18. Respondent has filed a reply vide diary No. 01182/01 dated 19.07.2022, wherein it is stated that the compensation claim was pending since 11.09.2013 and unless a specific stay is granted by the Hon'ble High Court after the filing of the appeal by Resolution Professional, the Commissioner is bound by the provisions of the Employees Compensation Act, 1923 under Section 31 to effect recovery of the amount payable by the corporate debtor as arrears of land revenue under Section 31 of the Act. Further, it is stated that the judgment of the Hon'ble High Court be considered before deciding on this case, i.e. Company Appeal No. 26 of 2004; (O&M) of decision dated 05.10.2021 in the matter of **Raj Kumar and Others vs M/s Ravindra Pharmaceuticals Pvt. Ltd. and others.**

19. We have heard the learned counsels for the applicant and respondent and carefully perused the records available.

20. In this context, A reference is made to *Section 53 (3) explanation (ii)*, which is extracted herein below:

*Explanation.—For the purpose of this section—*

*(ii) the term “workmen’s dues” shall have the same meaning as assigned to it in [section 326](#) of the Companies Act, 2013.*

21. Further, Section 326 (2) (b) (iii) of the Companies Act, 2013 read as under:-

*(b) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:--*

*(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (19 of 1923), rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;*

***(emphasis supplied)***

22. It is also noted that the provisions of IBC extracted below have an overriding effect over the provisions of the Employees Compensation Act, 1923, section 238 of IBC :

*“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.”*

23. In this context, it is relevant to note the provisions of Section 14A of the Employee's Compensation Act, 1923, which is extracted below:

***“14A. Compensation to be first charge on assets transferred by employer. - Where an employer transfers his assets before any amount due in respect of any compensation, the liability where for accrued before the date of the transfer, has been paid, such amount shall, notwithstanding anything contained in any other law for the time being in force, be a first charge on that part of the assets so transferred as consists of immovable property.”***

***(Emphasis Supplied)***

24. The issue at hand is whether to stay the execution of the order dated 17.11.2020 of the Assistant Labour Commissioner passed in view of the moratorium declared by this Adjudicating Authority vide order date 27.07.2018.

25. Section 14 of the Code prohibits ‘the institution of suits or continuation of pending suits or proceedings against the corporate debtor, including the execution of any judgment, decree or order in any court of law, Tribunal, arbitration panel or other authority by order of the Adjudicating Authority declaring moratorium.’ Further, Section 14 (4) of the Code provides that ‘the order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process subject to the proviso under the sub-Section (4).’

26. In the light of the foregoing detailed deliberations, especially the fact that ‘Moratorium’ was declared by this Adjudicating Authority by its order dated 27.07.2018, the execution proceedings initiated by the respondent against the corporate debtor cannot proceed until the completion of ‘Corporate Insolvency Resolution Process. We also note the fact that there is an appeal pending before the Hon’ble High Court of Punjab & Haryana filed by the Resolution Professional against the order dated 17.11.2020 of the Assistant Labour Commissioner, and the issue of compensation has not reached finality.

27. In view of the above discussion, the execution of the above-said order dated 17.11.2020 is stayed till the appeal is decided by the Hon'ble High Court of Punjab & Haryana.

28. As a result, the present application, i.e. IA No. 583/2021 is allowed and disposed of accordingly.

**IA No. 378/2020**

29. In the present application, the applicant is seeking direction against the Resolution Professional to release Rs. 22,61,661.60/-, representing unpaid salary, including interest to the applicant Sh. Raman Kumar Aggarwal, appointed as General Manager vide appointment letter dated 10.07.2018, has continued to work till date, and the terms of appointment have not been modified in terms of Section 20 (2) (b) of the Code, 2016 and have been illegally rejected by the Resolution Professional vide reply dated 15.06.2020.

30. It is stated by the applicant that he resigned on 13.06.2018. Subsequently, the applicant was appointed to the position of General Manager of the company vide appointment letter dated 10.07.2018 and had been working continuously even after passing the admission order dated 27.07.2018. The reliance has been placed on the affidavits of the employees of the corporate debtor attached annexure A-10 of the application, wherein it is stated by the employees of the corporate debtor that the applicant Sh. Raman Aggarwal was regularly and actively working in the capacity of General Manager in the company. Further, it is stated by the applicant that the salary for the period from 01.08.2018 till 31.08.2019 comes to Rs. 11.70 Lakhs, and the same has not been paid by the Resolution Professional. The primary plea taken by the Resolution Professional is

that the applicant did not work, which is stated to be factually incorrect. It is alleged that the Resolution Professional has rejected the claim of the applicant by passing a non-speaking order dated 15.06.2020.

31. The Resolution Professional has filed a reply vide diary No. 00732/2 dated 18.12.2020, wherein it is stated that the applicant had submitted his claim without any claim form attached and the respondent has never availed services of the applicant as General Manager of the corporate debtor. The only interaction is in the capacity of the ex-director of the corporate debtor under Section 19 of the Code.

32. It is further submitted by the respondent that the appointment of the applicant has never been confirmed either by the IRP or the RP. Further, the appointment of the applicant is illegal as the applicant ought to have filed a Board Resolution of cessation as a Director, and a Board Resolution of appointment as General Manager with the ROC, both the Resolutions are missing in the ROC records. Also, as per the balance sheet for the years 2018-19 and 2019-20, no salary has been shown as payable as purported by the applicant. Further, there is no contract between the applicant and respondent which governs the appointment of the applicant as a General Manager. Since the applicant has attended CoC meetings in the capacity of ex-director, the provisions of the IBC do not allow any other person to attend the CoC meetings apart from ex-promoters/directors to attend the meeting unless they provide authority from the Director.

33. We have heard the learned counsel for the applicant and the respondent and perused the record available. For proper adjudication of the issue at hand, the relevant terms of the letter of appointment dated 10.07.2018 as General Manager is extracted herein below:

IA No. 332/2021, 583/2021 & 378/2020  
in  
CP (IB) No.46/Chd/Pb/2018

*We are pleased to give you this letter of appointment, setting out the details of your employment with our company. You are being appointed to the position of General Manager. This appointment takes effect from 10.07.2018. Your monthly compensation is Rs. 90,000.00/-*

*The rules and regulations and general information of the terms of appointment are as follows: Your monthly carry home salary will be directly credited to your bank account. The Payroll Administrator will provide the details to you. The allowances, benefits and other terms and conditions of your employment will be as per Company policies as applicable from time to time. Your compensation will be reviewed every year in the month of April as per Company policy. You will be placed at Dinanagar. You will abide by the rules and regulations of the Company as may be in force from time to time. Your appointment is subject to satisfactory reference checks and clearance from any secrecy/service agreements that you may have executed, which could have a bearing on your working with us. You are required to sign and submit a copy of this letter of appointment and Employee agreement as a token of your acceptance of our terms and conditions. Your appointment is subject to your being found medically fit for employment. Any extension of the same will require a formal approval from your reporting authority, which in case should happen before disbursement of your first monthly salary.*

34. In the present case, the applicant was appointed as General Manager vide appointment letter dated 10.07.2018, and the CIRP was initiated vide order dated 27.07.2018 of this Adjudicating Authority. The resolution professional has not pleaded that the services of the applicant had been terminated by him. Section 25(2)(d) of the Code, extracted below, casts full responsibility on the Resolution Professional in the matter of appointment:

*(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:—*

*(d) appoint accountants, legal or other professionals in the manner as specified by Board;*

35. The records placed before us in the present proceedings indicate that the applicant has been rendering continuous service to the corporate debtor in the capacity of General Manager. It is also seen that no compliance with the conditions laid down in the appointment letter with regard to formal approval of extension etc., has been made by the Resolution Professional who was in charge of the management of the corporate debtor. It was the duty of the Resolution Professional to comply with the conditions like the renewal of service laid down in the appointment letter or to cancel the same. As the appointment letter has not been cancelled by the management, and the applicant is allowed to discharge his duties, as evidenced by the affidavits of other employees placed before us, there is no justification for denying the emoluments as per the aforementioned appointment letter. The applicant is, therefore, directed to submit his claim before the Resolution Professional within 15 days, who will consider it in light of the above discussion and as per law within the next 15 days of receiving this claim.

36. In a result, the present application, i.e. IA No. 378/2020, is allowed and disposed of accordingly.

Sd/-

**(Subrata Kumar Dash)**  
**Member (Technical)**

February 16, 2023

PB/ASH

Sd/-

**(Harnam Singh Thakur)**  
**Member (Judicial)**