

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

IA 135 of 2018 in C.P. (I.B) No. 48/7/NCLT/AHM/2017

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 11.06.2018**

Name of the Company: Alok Employees Benefits and Welfare Trust & Ors.

V/s.

State Bank of India & Ors.

Section of the Companies Act: Section 60 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Sahil Shah y Parth Shah I/B Cyril Amarchand Mangaldas	Advocates	State Bank of India	
2.	MR. MIHIR THAKORE, SR ADVOCATE MS. VEENA SIVARAMAKRISHNAN MS. GRISHMA AHUJA MS. MRIDA LAKHMANNI MR. SHALIN JANI	ADVOCATE	FOR RP	
3.	Mr. Kamal Trivedi, AG, Sr. Adv. Mr. Saurabh Soparkar, Sr. Adv. Keyur Gandhi Rahel Patel Arjun Joshi	Adv. for Naravati Associates	App.	

ORDER

Common order pronounced in the separate sheet.

List the matter on 25.06.2018


MANORAMA KUMARI
MEMBER JUDICIAL


HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL

Dated this the 11th day of June, 2018.

**BEFORE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

Interlocutory Application (I.B) No.135 of 2018

In

C.P (I.B) No.48/7/NCLT/AHM/2017

In the matter of:

- 1) Alok Employees Benefit and Welfare Trust
Acting through Mr. Sudip Rungta, Trustee
Having its office at
Gala No.244
2nd floor, Kewal Industrial Estate
Senapati Bapat Marg
Lower Parel
Mumbai-400 013
- 2) Mr. Reshabh Raizada
B-5, 1st floor, Safdarjung Enclave
New Delhi-110 029
- 3) Mr. Michael Mesmer Melren
B Wing, 302, Lakshachandi Heights
Gokuldharm, Krishna Vatika Marg
Goregaon (East)
Mumbai-400 063
- 4) Mr. Jayesh Chunilal Mehta
504/A, Ruby Apartment
Mahavir Nagar
Kandivali-West
Mumbai-400 067

... Applicants

Versus

- 1) State Bank of India
On behalf of Committee of Creditors
State Bank Bhavan, Madame Cama Road
Nariman Point
Mumbai, Maharashtra-400 021
And a Branch at
State Bank of India
Backbay Reclamation Branch
Tulsian Chambers
Nariman Point
Mumbai-400 021

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- 2) Mr. Ajay Joshi
Resolution Professional
Alok Industries Limited
Having its registered office at:
17/5/1, 521/1, Village Rakholi
Saily
Silvassa-396 230
Union Territory of Dadra and Nagar Haveli .. Respondents

AND

I.A No.136 of 2018

In

C.P (I.B) No.48/7/NCLT/AHM/2017

In the matter of:

State Bank of India

.... Petitioner /
Financial Creditor

Versus

Alok Industries Limited

....Respondent/
Corporate Creditor

Mr. Ajay Joshi
Resolution Professional
For the Corporate Debtor

.... Applicant

Order delivered on 11th June,2018

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Ms. Manorama Kumari, Member (J)

Appearance:

Advocates Mr. Sahil Shah & Mr. Parth Shah i/b Cyril Amarchand
Mangaldas for Financial Creditors.

Sr. Advocate Mr. Mihir Thakore, Advocate Ms. Grishma Ahuja,
Advocate Ms. Mrida Lakhani and Advocate Mr. Shalin Jani for
Resolution Professional.

Sr. Advocate Mr. Kamal Trivedi, Sr. Advocate Mr. Saurabh Soparkar,
Advocates Mr. Keyur Gandhi, Mr. Rahul Patel and Mr. Arjun Joshi on
behalf of M/s. Nanavati Associates for Applicants.

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COMMON ORDER

[Perse: Hon'ble Ms. Manorama Kumari, Member (J)]

1. The Instant Application bearing IA No.135/2018 is filed by applicant Alok Employees Benefit and Welfare Trust & Ors. under Section-60(5) of the Insolvency and Bankruptcy Code, 2018 ["the Code"], with the following prayers:-

- a. *This Tribunal be pleased to direct the Resolution Professional to submit before this Tribunal the RIL-JM Plan for the revival of Alok which has been approved by over 70% votes in the CoC by value (but less than 75%) and be pleased to approve the said resolution plan;*
- b. *In the alternative to para(a) above, this Tribunal be pleased to direct the CoC to approve the RIL-JM Plan;*
- c. *Pending final hearing and disposal of the present Application, this Tribunal be pleased to exclude the time taken in hearing and disposal of this present Application from the calculation of the corporate insolvency resolution process time period of 270 days for Alok which would otherwise expire on 16 April, 2018.*
- d. *Pending final hearing and disposal of the present Application, this Tribunal be pleased to not pass any order for liquidation of Alok;*
- e. *That this Tribunal be pleased to grant an ex-parte relief in terms of paras (c) and (d) above;*
- f. *Such other orders or order be passed as the Hon'ble Tribunal may deem fit and proper.*

2. On the other hand, the Resolution Professional has preferred an Application under Section-33 (2) read with section-60(5) of the Insolvency and Bankruptcy Code, 2016, with the following prayers: -

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- a. *to pass an Order requiring the Corporate Debtor to be liquidated, in terms of the provisions of Section-33 (1) (a) of the Code;*
- b. *to issue a public commencement stating that the Corporate Debtor is in liquidation;*
- c. *to direct that a copy of the Order be sent to the Registrar of Companies, at Ahmedabad;*
- d. *to direct that pending hearing and final disposal of the present Application, till the pronouncement of the commencement of liquidation*
 - (i) *the moratorium in terms of section 14 of the Code to continue till the pronouncement of the order of liquidation for the Corporate Debtor by this Hon'ble Tribunal; and*
 - (ii) *the RP shall continue in its role as an RP of the Corporate Debtor, till the pronouncement of the order of liquidation for the Corporate Debtor by this Tribunal.*
- e. *to pass an appropriate direction with regards to protection of the actions taken in good faith by the RP in terms of Section 233 of the Code.*
- f. *to pass an appropriate direction with regards to liquidation fees of the liquidator.*
- g. *Any other order which the Tribunal may find fit in the facts and circumstances of the present case.*

3. On perusal of the record, it is found that Resolution Professional has made an Application, i.e. I.A No.136 of 2018, with above said prayers, as the Committee of Creditors of the Corporate Debtor having representation of over 70% by value (but less than 75%) voted in favour of the resolution plan presented by Reliance Industries Limited and JM Financial ARC jointly ("RIL-JM Plan") for the revival of Alok Industries Limited. Since the requisite percentage in favour of the Resolution Applicant is less than 75%, as such Resolution Professional has filed the instant

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application under Section-33 (2) read with section-60(5) of the Insolvency and Bankruptcy Code, 2016, with above said prayers.

4. We heard at length the submissions of the Ld. Counsel for both the parties appearing in both applications, i.e. I.A No.135 of 2018 and I.A No.136 of 2018, together, as both the applications are co-related. It is submitted before us that there is 70% vote in favour of the Resolution Plan, consequent upon which the CoC has rejected the plan for want of requisite voting.
5. Since there is marginal deficiency in obtaining vote in favour of Resolution Applicant, the Alok Employees Benefit and Welfare Trust and Ors. had preferred Interim Application (I.A. No.135/2018), bonafidely, to consider the Resolution Plan, so filed by the Reliance Industries Limited and JM Financial ARC jointly ("RIL-JM Plan") [The sole applicant] in the interest of the company as well as its employees keeping in view of main object of the IBC Code as also the very intent of Legislature is for the revival of the company and its welfare.
6. It is a matter of record that during the pendency of the above said applications, the Ministry of Law and Justice (Legislative Department) promulgated an ordinance on 06.06.2018 in respect of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, No.6 of 2018, wherein an amendment has been made in Section-30 of the Principal Act in Sub-section (4) which reads as follows: -

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(a) for the word "seventy-five", the word "sixty-six" shall be substituted;

Keeping in view of the above stated subsequent Amendment which took place in the statute now only sixty-six percent voting is required in favour of the Resolution Applicant as per the Law stood as of today. On further perusal of short title and commencement, it reflects that the Act "**shall come into force at once**". Thus, it is crystal clear that the application of the Act / Code will apply to all the cases which are pending for adjudication.

7. Meanwhile, the State Bank of India (SBI), being the member of CoC, filed an affidavit with averment that SBI has no objection, if, Resolution Plan is not submitted for re-voting by the CoC again, in view of the recent amendment in the code as said above.
8. In the light of above stated facts of the case and considering the new amendment took place in the IBC Code, 2016, we are of the considered opinion that Resolution Professional is legally expected to present the Resolution Plan of the sole Resolution Applicant before the CoC for a re-look and for proper consideration, in view of the subsequent change/amendment made in the statute, in the same parameter, as it was/were earlier considered, without involving or considering and/or incorporating any new issues, which are/were not taken into

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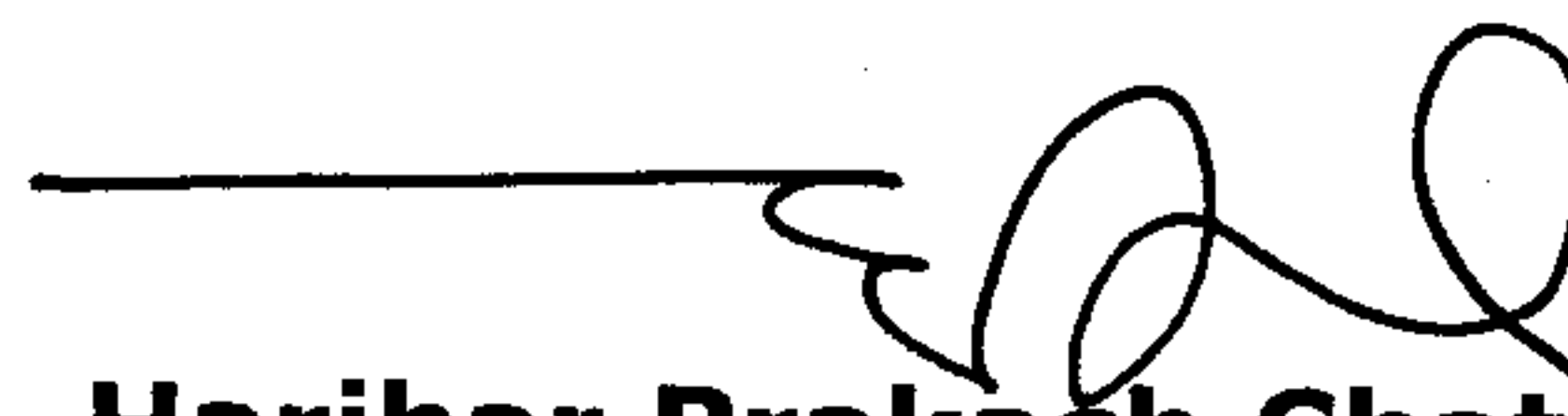
account while considering the Resolution Plan submitted by sole applicant in the CoC meeting dated 13.04.2018. Further to make it clear, the Resolution Professional is directed to consider only the voting process as per the amended provisions made in the Code and to submit its report along with recommendation / Resolution of the CoC for consideration before this adjudicating authority. The Resolution Professional is further directed to convene the meeting within a week and to submit report by 25.06.2018.

9. It is pertinent to mention here that the period which is consumed for adjudication of both the petitions, i.e. I.A No. 135 of 2018 and I.A. No.136 of 2018, be exempted till submitting the report by the Resolution Professional for computing the period of CIRP as held by this bench in a case Numetal vs. ESSAR.

List the matter on 25.06.2018



**Ms. Manorama Kumari,
Member (Judicial)**



**Harihar Prakash Chaturvedi,
Member (Judicial)**

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