

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

CP (IB) No. 1684/KB/2018

In the matter of:
Jayanta Banerjee

...Operational Creditor

Versus

Incab Industries Limited

...Corporate Debtor

Date of hearing: 09.06.2021

Date of pronouncement: 16.06.2021

Coram:

Shri Rajasekhar V.K. : Member (Judicial)
Shri Harish Chander Suri : Member (Technical)

Appearances (through video conference):

Mr. Rishav Banerjee, Advocate : For Operational Creditor
Mr. Avishek Das, Advocate

Mr. Akhilesh Kumar Shrivastava : For the workers union
Mr. Akash Sharma

Mr. Joy Saha, Sr. Advocate
Mr. Kuldip Mallik, Advocate : For Liquidator
Mr. Ayush Lakhotia, Advocate
Mr. Shashi Agarwal, Liquidator

ORDER

Per Harish Chander Suri, Member (Technical)

1. This matter was listed on 09.06.2021 before this Adjudicating Authority upon direction in the order passed by the Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi (NCLAT) in Company Appeal (AT) (Insolvency) No. 348/2020.
2. Facts of the case in brief is that
 - a. The Corporate Debtor was admitted into the Corporate Insolvency Resolution Process (CIRP) on 07.08.2019 by this Adjudicating

Authority, and Mr. Shashi Agarwal was appointed as Interim Resolution Professional of the Corporate Debtor.

- b. On 05.12.2019, the Committee of Creditors (CoC) resolved to liquidate the Corporate Debtor. An application bearing CA (IB) No. 1748/KB/2019 was filed before this Adjudicating Authority. The Operational Creditor had objected to this and also filed an application bearing CA (IB) No. 57/KB/2020 praying for removal of Mr. Shashi Agarwal as Resolution Professional.
 - c. Through a common order dated 07.02.2020, this Adjudicating Authority initiated liquidation proceedings and appointed Mr. Sashi Agarwal as the liquidator.
3. The operational Creditor filed an appeal against the common order dated 07.02.2020 before the Hon'ble NCLAT bearing Company Appeal (AT) (Insolvency) No. 348/2020. On 04.06.2021 the Hon'ble NCLAT allowed the said appeal. The operative portion of the order reads as follows:
- a. *“The impugned order passed in C.A. (I.B.) No. 1748/K.B./2019 and C.A. (I.B.) 57/K.B./2020 in C.P. (I.B.) No 1684/K.B./2018 whereby the Adjudicating Authority directed initiation of liquidation proceedings against the Corporate Debtor- ‘INCAB Industries Limited’ is quashed and set aside. Actions taken pursuant to impugned order are also quashed and set aside and shall not be binding on the corporate debtor. The Original Application under Section 9 of IBC is restored to the file of the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Kolkata).*
 - b. *The Adjudicating Authority is directed to appoint another IRP/Resolution Professional in place of Respondent No.1- Shashi Agarwal, at the earliest, preferably within seven days (from the list, if any, maintained by the Adjudicating Authority or urgently getting names from IBBI).*

- c. The time spent from the date of earlier filing of the application under Section 33 of the IBC, i.e. 17th December 2019, till date is excluded from the period of CIRP.*
 - d. Respondent No.1- Shashi Agarwal will immediately hand over the complete charge of the Corporate Debtor to the new IRP/ Resolution Professional as the Adjudicating Authority may appoint.*
 - e. The new IRP/ Resolution Professional will collate all the claims submitted by Creditors before the earlier IRP/ Resolution Professional and, depending on the claims admitted from CoC excluding 'Kamla Mills Private Limited' and 'Fasqua Investment Private Limited' and proceed further with the CIRP.*
 - f. Parties to appear before Adjudicating Authority on 09th June 2021.*
 - g. Copy of the present order may be sent to IBBI for further action(s), which may be deemed fit, if any, against the earlier Resolution Professional.*
 - h. Appeals are disposed accordingly. No costs."*
4. Learned senior Counsel Mr. Joy Saha Appearing on behalf of the liquidator objected to any orders being passed in furtherance of the orders of the Hon'ble NCLAT on the ground that a civil appeal has been filed against the said order of Hon'ble NCLAT before the Hon'ble Supreme Court.
 5. However, in absence of a stay order by the Hon'ble Supreme Court on the order of the Hon'ble NCLAT this Adjudicating Authority is bound by the directions of the Hon'ble NCLAT, therefore, Mr. Saha's objection cannot be entertained by this Adjudicating Authority at this stage.
 6. In furtherance of the said order, we hereby appoint **Mr. Pankaj Kumar Tibrewal, having Reg. No. IBBI/IPA-001/IP-P01577/2018-2019/12410, email: tibrewalpankaj@yahoo.com, Mobile No. 9836929297** as Interim

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Resolution Professional of the Corporate Debtor to carry out the functions as per the order dated 04.06.2021 of the Hon'ble NCLAT, from the panel of insolvency professionals for Kolkata zone, for the months of January-June 2021 as provided by the Insolvency and Bankruptcy Board of India.

7. In terms of para 88 (i)(d) of the said order, Mr. Shashi Agarwal shall immediately hand over the complete charge of the Corporate Debtor to Mr. Pankaj Kumar Tibrewal who shall act in accordance with the said order and the Code.
8. Let the **CP (IB) No. 1684/KB/2018** be listed on **17.09.2021** for filing of periodical report.
9. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
10. A certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

16.06.2021

SR(LRA)