

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

**Before Shri Madan B. Gosavi, Hon'ble Member (J)**

**CP (IB) No. 1684/KB/2018 and CA(IB) 435/KB/2019**

**In the matter of:**

**An application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;**

-And-

**In the matter of:**

**Jayanta Banerjee**, having its address for correspondence Ambika Mukherjee Road, Natagarh, Ghola, North 24 Parganas, Pin- 700 113;  
... **Operational Creditor**

-Versus-

**In the matter of:**

**Incab Industries Limited**, having its registered office at 9, Hare Street, Kolkata- 700 001; CIN : U27108WB1920PLC003641;  
.... **Corporate Debtor**

**Counsel appeared:**

- |                                     |   |                      |
|-------------------------------------|---|----------------------|
| 1. Mr. Debashis Kundu, Sr. Advocate | ] |                      |
| 2. Ms. Swapna Choubey, Advocate     | ] | For Tata Steels Ltd. |
| 3. Mr. Jaydeb Ghorai, Advocate      | ] |                      |
|                                     |   |                      |
| 1. Mr. Ritzu Ghosal, Advocate       | ] | Corporate Debtor     |
| 2. Ms. Debleena Sanyal, Advocate    | ] |                      |
| 3. Mr. Diwakar R. Singh, Advocate   | ] |                      |

1. Mr. Rishav Banerjee, Advocate ]
2. Mr. Nayan Rakshit, Advocate ] For Operational Creditor
3. Mr. Avishek Das, Advocate ]

**Date of Pronouncement of Order: 07.08.2019**

**ORDER**

**Group of employees of M/s. Incab Industries Ltd.** – the Corporate Debtor through their attorney holder, **Mr. Jayanta Banerjee**- Operational Creditor filed this application under section 9 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) to start Corporate Insolvency Resolution Process (in short, "CIRP") of the Corporate Debtor as the Corporate Debtor committed default in paying the amount of arrears of their wages and salaries amounting to Rs.53,43,902/-.

2. The Operational Creditor stated that they are the workers/employees of the corporate debtor. The corporate debtor failed to pay the amount of arrears of their salaries and wages. The corporate debtor committed default in paying the operational debt. Hence, on 12.10.2018 they served the notice under section 8 of I & B Code on the corporate debtor demanding the payment of arrear of their wages. In spite of that, corporate debtor did not pay the operational debt. The corporate debtor did not point out any pre-existing dispute about the same. Hence, this proceeding is filed.

3. Operational Creditor filed on record the affidavit complying the provisions of section 9(3)(b) and 9(3)(c) of I.&B. Code. They did not suggest the name of Insolvency Professional for appointment as the IRP and the matter is left at the discretion of this authority.

4. Notice of this proceeding has been served on the corporate debtor. They appeared through one of their authorised representative Mr. M.B.Shah. He filed affidavit-in-reply and contested the claim.

5. Corporate Debtor contended that this proceeding is filed misusing the provisions of the I&B Code. The claim as filed by the operational creditor clearly falls in ambit of labour dispute. Such dispute has to be dealt with by the Labour Court/Tribunal and not by this adjudicating authority. The provisions of IB Code are not applicable herein. They further contended that there exists no debt or claim, therefore, prayed for rejection of the application.

6. Operational Creditor filed rejoinder and reiterated their claim.

7. In this proceeding, Tata Steels Ltd. filed application for Intervention bearing CA(IB) No.435/KB/2019. Tata Steels Ltd. contends that it is a collusive proceeding in between some of the workers of Incab and Incab Industries Ltd. only to thwart their proceeding pending before the Hon'ble High Court. In their application, Tata Steels stated the chequered history of the proceeding then pending against the corporate debtor before BIFR, AIFR, various Hon'ble High Courts and one before the Hon'ble Supreme Court under SICA Act. According to them, Hon'ble Calcutta High Court is now seized with the dispute of assignment of the debt of the corporate debtor. In such situation, this adjudicating authority does not have jurisdiction to proceed with the hearing of this application. They prayed for rejection of this application.

8. We heard Ld. Counsel, Mr. Rishav Banerjee for the operational Creditor, Ld. Counsel, Mr.Ritzu Ghosal for the Corporate Debtor and the Ld. Sr. Counsel for the Intervener, Tata Steels Ltd. at length.

9. At the outset, we record that in a matter of enquiry of the proceedings under section 7, 9 or 10 of the I&B Code, necessary and proper parties are only financial creditors/ operational creditors, corporate debtor or the corporate person and no one else. We get support of this finding from numerous orders passed by the Hon'ble NCLAT. Some of them are IDBI Bank Ltd. –vs- Odisha Slurry Pipeline Infrastructure Ltd. in Company Appeal (AT) (Insolvency) No.51 of 2019, Axis Bank Ltd. –vs- Lotus Three Developments Ltd. & Ors. in Company Appeal (AT) (Insolvency) No.246 of 2018 and Mr. Suresh Narayan Singh-vs- Tayo Rolls Ltd. in Company Appeal (AT) (Insolvency) 112 of 2018.

10. Apart from the above, we considered the submissions of Ld. Sr. Counsel appearing for Tata Steels Ltd. He submitted that dispute of assignment of debt of the corporate debtor is pending in between them and some of the other creditors of the corporate debtor before the Hon'ble Calcutta High Court. In such situation, this authority may not have jurisdiction to proceed with this proceeding. We fail to understand how the proceeding pending before the Hon'ble High Court will come in our way while deciding this application. Any party who succeeds in that proceeding can be treated as the creditor of the corporate debtor during CIRP. In short, pendency of some proceedings in between some of the creditors of the corporate debtor *inter se* has no relevance at all, while considering this application under section 9 IBC in between the operational creditor and corporate debtor.

11. Besides above, the Hon'ble Supreme Court, while disposing of SLP No.12104 to 12106/2019 and all other pending interim applications therein, has clearly held the following:

***“In view of the enactment of Insolvency and Bankruptcy Code, 2016 and having regard to the Eighth Schedule thereof, we do not think***

***that there is any live issue for consideration in the present special leave petitions.***

***Any aggrieved party would be at liberty to avail all such remedies as has been provided in the Code read with Eighth Schedule, to agitate all issues including the issue of the assignment of the debt.***

***Special leave petitions and all pending applications are accordingly disposed of.”***

12. In our considered opinion, the above pronouncement of the Hon'ble Apex Court clearly rests the controversy as sought to be brought before us by the Intervener, Tata Steels Ltd. We hold that Tata Steels Limited has no locus to take part in this proceeding at this state. We reject their application.

13. Now we consider the dispute between the operational creditor and the corporate debtor herein. It is not in dispute that operational creditors are the workers/employees of the corporate debtor. They claim amount of arrears of their unpaid wages and salaries. In view of definition of operational debt as stated in section 5(21) of I&B Code “their claim” of the wages and salaries falls in ambit of operational debt and they are the operational creditors within the meaning of section 5(20) of the I&B Code.

14. Corporate Debtor raised only one defence that the dispute about the unpaid wages and salaries has to be dealt with only by the Labour Courts or the Tribunals. This authority may not have jurisdiction to entertain the same. We have considered this defence. We hold that since the claim of workers and employees against the corporate debtor is the operational debt, only this authority has

jurisdiction to adjudicate the same and not by any other court/tribunal/authority, in view of section 63 of the I&B Code.

15. It is not in dispute that before filing this proceeding against the corporate debtor, the operational creditor has served notice under section 8 IBC on the corporate debtor. The Operational Creditor filed on record affidavit to show the compliance of provisions of section 9(3)(b) and 9(3)(c) of the I&B Code. The facts are not otherwise in dispute. It is also noted that the operational creditor did not suggest name of any insolvency professional for appointment of IRP. This authority can appoint the same on its own as it is proceeding of section 9 of IB Code. The application is defect free. Hence, we admit the same by following order:

### ORDER

- (i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Resolution Process in respect of **Incab Industries Ltd.** Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.
- (ii) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

- (iii) Moratorium under Sec.104 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
  - d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- iv) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.

- vii) Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Sec.31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.
- (ix) As the Operational Creditor has not proposed any name for the appointment of Interim Resolution Professional (IRP), Mr. Shashi Agarwal (Mobile No.9831094270) having Email id: shsshiagg@rediffmail.com Registration no. IBBI/IPA-001/IP-P00470/2017-18/10813 is appointed as the Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan. IRP is directed to submit his consent along with written Communication in Form-2 within two weeks of the order.
- x) The Operational Creditor to pay to IRP a sum of Rs.50,000/- as advance fees, which amount shall be adjusted at the time of final payment.
- xi) As per the amended provision of the I&B Code, he has to finalise the Resolution Plan on or before 105 days from the date of admission of CIRP.
- xii) CA(IB) No.435/KB/2019 is disposed off.



xiii) Registry is hereby directed to communicate the order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post and also by email.

Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on **20.09.2019** for filing progress report.

Sd/-  
(Virendra Kumar Gupta)  
Member (T)

Sd/-  
(Madan B. Gosavi)  
Member (J)

*Signed on this, the 7<sup>th</sup> day of August, 2019.*