
(2021) 12 NCLT CK 0045

In the National Company Law Tribunal

Case No : IA No. 1416/MB/C-II/2021 In C.P (IB) No. 543/MB/C-II/2018

?Ex Employees of KAIL

APPELLANT

Vs

Avil Jerome Menezes

RESPONDENT

Date of Decision : 16-12-2021

Acts Referred:

Insolvency & Bankruptcy Code, 2016 — Section 30(2)(e), 60(5)

Citation : (2021) 12 NCLT CK 0045

Hon'ble Judges : Ashok Kumar Borah, Member (J); Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Rahul Gaikwad, Sharan Jagtiani

Final Decision : Disposed Of

Judgement

Shyam Babu Gautam, Member (Technical)

1. The present application is moved by Ex-employees of KAIL Limited through authorized person Mr. Harishchandra Marathe (hereinafter called as "the Applicants") under Section 60(5) of Insolvency and Bankruptcy Code, 2016 against the Resolution Professional Mr. Avil Jerome Menezes (hereinafter referred to as "Resolution Professional") and Aryan Mining & Trading Corporation Private Limited (hereinafter referred to as "Resolution Applicant") (hereinafter collectively called as the "Respondents").

The Applicants has prayed for grant of following reliefs.

(a) Allow the present application.

(b) Direct the Resolution Professional to forthwith disburse the funds to the Applicants ex-employees of the Corporate Debtor cumulatively amounting to Rs.2,35,63,318/-(Rupees Two Crores Thirty-Five Lakhs Sixty-Three Thousand Three Hundred and Eighteen Only) as per the list annexed at Exhibit H;

(c) Direct the Resolution Professional to provide relevant portion of the copy of

the Resolution Plan;

(d) Alternatively, direct the Respondent No. 1 and Respondent No. 2 to ensure that the full fund is being released to the ex-employees under the resolution plan in priority to payment towards any other debt;

(e) To not to approve the Resolution Plan submitted for the Corporate Debtor pending disposal of the instant Application;

(f) Pass any other further Order(s) as deems fit and proper in the facts.

A. Background facts and circumstances

2. That this Tribunal vide order dated 08.08.2019 consolidated the proceeding of 13 Videocon Group entities while keeping the Corporate Debtor out from the consolidation and appointed the Respondent No. 1 as Resolution Professional and ever since the management of affairs of the Corporate Debtor.

3. That the IRP/RP published FORM A inviting the proof of claims from the creditors of the Corporate Debtor. The Applicants and ex-employees of the Corporate Debtor submitted their proof of claims in pursuant to the public announcement published in terms of Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as 'CIRP Regulations').

4. That the claims of the Applicant and of the said employees have been admitted by the Respondent No. 1 and have been published on the website of the Corporate Debtor. The List of Creditors last updated on 14.01.2021 and uploaded on the website of the Corporate Debtor is attached as Exhibit E to the Application.

5. It is further submitted that if the Resolution Plan does not provide for the full payment of the statutory dues to the ex-employees, then the same is in contravention of Section 30(2) (e) of the Code and by placing the said Resolution Plan for approval by the Committee of Creditors is a gross negligence by the respondent No. 1 in discharge his duties.

6. In view of the above, the Applicants, states and submits that the said employees deserve to receive outstanding salaries, provident fund, gratuity, pension, leave encashment and alike dues which are due and payable to them in terms of the admitted claims by Respondent No. 1 more particularly detailed in the list annexed as Exhibit H to the Application.

Submissions by Respondent/ Resolution Professional:

7. In the present Application the Applicants have confirmed that "the claims of the Applicant and of the said employees have been admitted by the Respondent No. 1 and have been published on the website of the Corporate Debtor". Therefore, it is an admitted fact that the claims have been admitted and forming part of the list of Operational Creditors.

8. Further it is submitted that as per paragraph (d)(B)(ii) of Section 2 of the Resolution Plan which has been approved by CoC by requisite majority, the Respondent No. 2 has proposed to pay in full and final towards dues of workmen & Employees based on the total amount of claims admitted being INR 12,03,66,793/- (Indian Rupees Twelve Crores Three Lakh Sixty-Six Thousand Seven Hundred and Ninety Three Only).

9. The Respondent further submits that the Applicants have ceased to be associated with the Corporate Debtor prior to initiation of CIRP, the Applicants have submitted their claims which have been duly admitted and forming part of the list of Operational Creditors. The claims submitted by the Applicants include their claims for the outstanding dues towards gratuity.

10. In the light of the same, out of total claims submitted by the workmen and employees to the extent of INR13,29,46,878/-, a sum of INR12,03,66,793/- (Indian Rupees Twelve Crores Three Lakh Sixty-Six Thousand Seven Hundred and Ninety-Three Only) has been admitted as the claims of workmen and employees which also forms part of the Information Memorandum.

11. Further Respondents submits that the Applicant and the other ex-employees, time and again vide various oral and written communications, have also been assured that their claims have duly been admitted to the tune of Rs.2,35,63,318/- against total claim of Rs.2,83,34,999/- and the same shall be paid in accordance with the provisions of the Code.

Findings:

12. Having considered the facts stated as aforesaid and in totality of the circumstances this Bench is the view that this application is devoid of any merits as the Applicant and Other ex-employees have been communicated that their claims are admitted and will be paid in accordance with Code read with paragraph (d)(B)(ii) of Section 2 of the Resolution Plan. This application deserves no merits hence dismissed.

13. With the aforesaid observation the present IA No. 1416 of 2021 In C.P (IB) No. 543/MB/C-II/2018 stands disposed of.