

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

Before **Shri Jinan K.R., Hon'ble Member (J)**

**C.A. No.83/KB/2018 connected with C. P. (IB) No.244/KB/2017**

**In the Matter of:**

An application under section 10 of the Insolvency & Bankruptcy Code, 2016 for appropriate order to protect the livelihood of the petitioner;

-And-

**In the Matter of:**

Burn Standard Company Ltd., a company incorporated under the provisions of Companies Act, 1956 and having its Registered & Head Office at 22B, Raja Santosh Road, Kolkata- 700 027;

.....**Petitioner**

-And-

**In the Matter of:**

An application under the Companies Act, 2013;

-And-

**In the Matter of:**

Burn Standard Ex-employees Welfare Association, having its Registered office at 40/2/1, Thakur Ramkrishna Lane, Santragachi, Howrah- 711104, through its Association's Representative and Treasures Arun Kumar Shee, working For gain at 40/2/1, Thakur Ramkrishna Lane, Santragachi, Howrah- 711 104;

... **Applicant**

**Counsels appeared**

1. Mr. Ajirit Chatterjee, Advocate ] For the Burn Sramik Union
2. Mr. Partha Kamal Sen ] Resolution Professional
3. Mr. A. K. Sen, Advocate ] For United Bank of India, Financial Creditor
4. Mr. S. Mukherjee ] For Burn Standard Co. Ltd. Staff Union  
Burn Labour Union

5. Mr. R.S.Tiwari ] For Burn Standard Employees Union (CITU)  
6. Mr. Abhishek Sikdar ]
7. Mr. Jayanta Samanta, Advocate ] For Burn Standard Ex-employees  
8. Mr. Saibal Sengupta, Advocate ] Welfare Association  
9. Mr. R. L. Mitra, Advocate ] For Shree Mangla International  
10. Mr. Niladri Khanra, Advocate ] For Jindal Stainless Ltd., Operational  
Creditor  
11. Mr. Amitava Mukherjee ] For Ex-Officers Welfare Association  
12. Ms. Arpita Saha ]
13. Mr. Anirudha Roy, Advocate ]  
14. Mr. Rahul Auddy, Advocate ] For Burn Standard (Corporate Debtor  
15. Ms. Sarmistha Ghosh, Advocate ]
16. Mr. Soumya Majumdar, Advocate] R. P.  
17. Mr. S. Bhattacharya, Advocate
18. Mr. Joydeep Acharya ] For Industrial Service  
19. Mr. P. Mukherjee, Advocate

Date of Pronouncing the Order: 06.03.2018

**ORDER**

This is an application filed by Ex-employees Welfare Association allegedly representing 4000+odd employees who were working for the Corporate Applicant and who have taken voluntary retirement from services and/or ex-employees claiming mainly that some of the claims of the ex-employees lodged with the Resolution Professional were rejected and their prayer for implementation of 1992 pay revision arrears, 1997 pay revision arrears and 2007 pay revision arrears and to consider the order passed by the Hon'ble High Court at Kolkata in W.P. No.372(W) of 2000. According to the Ld. Counsel appearing on the side of the Union, many of the workmen's claims which were lodged with the Resolution Professional were rejected and that repeated demands for inclusion of pay revision arrears were not at all considered by the Resolution Professional and therefore without considering

their claim the Resolution Plan cannot be approved argued by the Ld. Counsel.

Upon hearing the arguments advanced on the side of the Ld. Counsel appearing for the Applicant's Union and considering the reply affidavit filed by the Ld. Resolution Professional and upon hearing the submissions of the Resolution Professional, it appears to me that this application requires no consideration at all at the fag end of the consideration of approval of Resolution Plan. Moreover, none of the contentions put forward by the Applicant in the instant case seems to be sustainable. Whenever the Applicant Union approached before this Bench alleging non-inclusion of the claim, appropriate directions were given to the Resolution Professional for reconsideration of the claim which has been allegedly rejected and directions also were issued to the Resolution Professional to upload the reasons for rejection. The reply of Resolution Professional shows that all the directions issued to the Resolution Professional had been complied and that main reason for rejection of the claim of the workmen was due to non-furnishing of data which is to be provided in Form -E Regulation 9 framed under I.B.B.I. (Insolvency Resolution Process for Corporate Persons) Regulation, 2016. So, no fault can be imposed on the Resolution Professional who has rejected the claim, which is not in accordance with the Regulations.

The second contention that the Resolution Professional not included the pay revision arrears 1997 and 2007 and no benefit in this regard had been extended to the workmen is also found devoid of any merit. According to the Ld. Resolution Professional as per the Tripartite Settlement and as per the Government of India, Ministry of Railways order, implementation of pay revision 1997, will be effective prospectively from 01.10.2010 for Board Level, below Board Level including NUS. No arrears would be payable for the period prior to 01.10.2010. The above-said settlement is supported by Annexure-E

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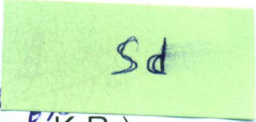
annexed with the reply affidavit filed by the Resolution Professional. Therefore, a workman, who is a Member of the Applicant Union cannot claim pay revision arrears of 1997. Moreover, regarding 2007 pay revision, no data furnished from the side of the Applicant that it has been implemented in the Corporate Applicant.

The Ld. Resolution Professional also submits that 2007 pay revision has not been implemented in the company by the Corporate Debtor at all. He further submits that 1992 pay revision has been implemented and the arrears of 1992 pay revision had been admitted as admissible claims of the Applicant. A reference to the Resolution Plan strengthen the said contention of the Ld. Resolution Professional. 1992 pay revision being implemented, it appears to me that there is no violation of direction in the order in Writ Petition No.372(W) of 2000 of the Hon'ble High Court at Calcutta.

In view of the above-said discussion, this application requires no consideration at all. Moreover, the relief sought for becomes *infructuous* because the Resolution Plan has been approved by this Bench.

In the result, this Application is dismissed. However, no order as to costs.

Certified copy of the order may be issued, if applied for, upon compliance with all requisite formalities.

  
(Jina K.R.)  
Member (J)

Signed on this, the 6<sup>th</sup> day of March, 2018

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

Before **Shri Jinan K.R., Hon'ble Member (J)**

**C.A. No.171/KB/2018 connected with**  
**C. P. (IB) No.244/KB/2017**

**In the Matter of:**

An application under section 10 of the Insolvency &  
Bankruptcy Code, 2016;

-And-

**In the Matter of:**

Burn Standard Company Ltd., having its Registered & Head Office  
at 22B, Raja Santosh Road, Kolkata- 700 027;

.....**Corporate Debtor**

-And-

**In the Matter of:**

Industrial Services, represented by its Proprietor Sudhamoy Roy,  
Registered Office at 15(7), Sahid Mangal Pandey Sarani,  
Barrackpur, Kolkata- 700 120;

...**Intervener/ Applicant**

-And-

**In the Matter of:**

1. Burn Standard Company Ltd., having its office at 22B, Raja  
Santosh Roy Road, Kolkata- 700 027;

2. Partha Kamal Sen Insolvency Resolution Professional residing  
At flat 8C1, Brook Tower, Hiland Park 1925 Chak Garia,  
Kolkata- 700 094;

**Counsels appeared:**

1. Mr. Ajirit Chatterjee, Advocate ] For the Burn Sramik Union
2. Mr. Partha Kamal Sen ] Resolution Professional
3. Mr. A. K. Sen, Advocate ] For United Bank of India, Financial Creditor

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4. Mr. S. Mukherjee ] For Burn Standard Co. Ltd. Staff Union  
Burn Labour Union
5. Mr. R.S.Tiwari ] For Burn Standard Employees Union (CITU)
6. Mr. Abhishek Sikdar ]
7. Mr. Jayanta Samanta, Advocate ] For Burn Standard Ex-employees  
8. Mr. Saibal Sengupta, Advocate ] Welfare Association
9. Mr. R. L. Mitra, Advocate ] For Shree Mangla International
10. Mr. Niladri Khanra, Advocate ] For Jindal Stainless Ltd., Operational  
Creditor
11. Mr. Amitava Mukherjee ] For Ex-Officers Welfare Association
12. Ms. Arpita Saha ]
13. Mr. Anirudha Roy, Advocate ]
14. Mr. Rahul Auddy, Advocate ] For Burn Standard (Corporate Debtor
15. Ms. Sarmistha Ghosh, Advocate]
16. Mr. Soumya Majumdar, Advocate] R. P.
17. Mr. S. Bhattacharya, Advocate
18. Mr. Joydeep Acharya ] For Industrial Service
19. Mr. P. Mukherjee, Advocate

Date of Pronouncing the Order: 06.03.2018

### ORDER

This is an application filed by an Operational Creditor, namely, Industrial Services under section 10 of the I. & B. Code as if it is an Intervenor. This application has been filed seeking relief that directions to be issued to the Resolution Professional so as to rectify or modify the list of creditors prepared by the Resolution Professional and for a declaration declaring the Civil Suit No.375 of 2017 filed by the Corporate Application in the instant case as against the applicant herein raising certain counter claims. The relief sought for not at all maintainable because under section 14 moratorium applicable for initiating any legal proceedings as against the Corporate

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Debtor and section 14 does not bar the Corporate Debtor filing legal proceedings against an Operational Creditor.

In these circumstances, pendency of a civil suit filed at the instance of the Corporate Debtor in the case in hand does not violate any of the provisions of the I&B Code or the Regulations. The effect of section 14 is that all suits or proceedings after the commencement of the Insolvency proceedings against the Corporate Debtor shall automatically remain stayed and there is no bar or any suit or proceedings instituted on the side of the Corporate Debtor. The contention in this regard that a money suit preferred by the Corporate Debtor is to be declared as not maintainable because of the application of moratorium is therefore found devoid of any merits.

The second contention that the petitioner's claim was not uploaded by the Resolution Professional without assigning valid reasons also has no legal force because the claim was lodged before the Resolution Professional after filing the suit by the Corporate Debtor against the applicant in the case in hand. From the data available in the written reply filed by the Ld. Resolution Professional, it is understood that money suit has been filed by the Corporate Debtor on 18.09.2017 and claim of the applicant/intervener has been preferred before the Resolution Professional by it on 03.11.2017 and therefore, non-entertaining a disputed claim of the applicant in the case in hand is found within the powers of the Resolution Professional. In view of the above-said reasons, this Intervening application does not require any consideration and it is liable to be dismissed. Moreover, the instant application becomes *infructuous* on account of approval of Resolution Plan.

In the result, this Application is dismissed. However, no order as to costs.

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Certified copy of the order may be issued, if applied for, upon compliance with all requisite formalities.

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(Jinan K.R.)  
Member (J)

Signed on this, the 6<sup>th</sup> day of March, 2018

IN THE NATIONAL COMPANY LAW TRIBUNAL  
 KOLKATA BENCH  
 KOLKATA

Before **Shri Jinan K.R., Hon'ble Member (J)**

**C. P. (IB) No.244/KB/2017 & C.A. No.170/KB/2018**

**In the Matter of:**

An application under section 30(6) and 31 of the Insolvency & Bankruptcy Code, 2016 read with Rule 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 arising out of application under sections 10 and 9 of the I.&B Code, 2016;

-And-

**In the Matter of:**

Burn Standard Co. Ltd., a company incorporated under the meaning of Companies Act, 2013 and having its Registered Office at 22B, Raja Santosh Road, Kolkata- 700 027;

**Corporate Debtor / Corporate Applicant**

-And-

Partha Kamal Sen, the Resolution Professional of Burn Standard Co. Limited;

... **Applicant**

**Counsels appeared:**

1. Mr. Ajirit Chatterjee, Advocate ] For the Burn Sramik Union
2. Mr. Partha Kamal Sen ] Resolution Professional
3. Mr. A. K. Sen, Advocate ] For United Bank of India, Financial Creditor
4. Mr. S. Mukherjee ] For Burn Standard Co. Ltd. Staff Union  
Burn Labour Union
5. Mr. R.S.Tiwari ] For Burn Standard Employees Union (CITU)
6. Mr. Abhishek Sikdar ]
7. Mr. Jayanta Samanta, Advocate ] For Burn Standard Ex-employees
8. Mr. Saibal Sengupta, Advocate ] Welfare Association
9. Mr. R. L. Mitra, Advocate ] For Shree Mangla International

10. Mr. Niladri Khanra, Advocate ] For Jindal Stainless Ltd., Operational  
Creditor  
11. Mr. Amitava Mukherjee ] For Ex-Officers Welfare Association  
12. Ms. Arpita Saha ]  
13. Mr. Anirudha Roy, Advocate ]  
14. Mr. Rahul Auddy, Advocate ] For Burn Standard (Corporate Debtor  
15. Ms. Sarmistha Ghosh, Advocate ]  
16. Mr. Soumya Majumdar, Advocate] R. P.  
17. Mr. S. Bhattacharya, Advocate  
18. Mr. Joydeep Acharya ] For Industrial Service  
19. Mr. P. Mukherjee, Advocate

Date of Pronouncing the Order: 06.03.2018

### ORDER

This C.A. has been filed under section 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016 for the approval of resolution plan.

2. This is a case in which a public limited company wholly owned by Government of India under the Ministry of Railways by name Burn Standard Co. Ltd. (Corporate Applicant) has filed the C.P for initiating corporate insolvency resolution process.

3. The Corporate Applicant in the instant case has firstly approached before the Board of Industrial and Financial Reconstruction (BIFR) in the year 1994 by filing a reference under section 3(1)(0) of the Sick Industrial Companies (Special Provisions) Act, 1985 and got an order declaring the applicant company as a Sick company vide BIFR order dated 20.01.1995. While so, upon the announcement of Insolvency & Bankruptcy Code, 2016 w.e.f. 01.12.2016, the Corporate Applicant filed this application i.e. C.P.(IB)

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No.244 of 2017 under section 10 of the I.B. Code for initiating corporate insolvency resolution process.

4. Vide order dated 31.05.2017, the application filed by the Corporate Applicant was admitted and one Mr. Partha Kamal Sen was appointed as the Resolution Professional. Upon confirmation of his appointment by the committee of creditors (CoC), he was subsequently appointed as Resolution Professional (RP). The period of 180 days for submission of Resolution Plan has been extended for a further period of 90 days from 27.11.2017 and the extended period was expired on 26.02.2018. Before the expiry of 270 days the resolution professional succeeds to get approval of a resolution plan from CoC and it is that resolution plan came up for consideration for the approval of this bunch.

5. Heard the Resolution Professional, Ld. Counsel appearing on behalf of the Resolution Professional as well as Ld. Counsel for financial creditor and the Ld. Counsel appearing on behalf of the Workers' Union and Staff Union and perused the records and the Resolution Plan.

6. Burn and Co. Ltd. & India Standard Wagons Co. Ltd were the leading companies in manufacturing rolling stock in West Bengal. These companies were nationalised in the year 1976 and incorporated the name Burn Standard Co. Ltd. Originally both the companies were engaged in producing rolling stock for Indian Railways and were having manufacturing facilities and the unit located at Howrah has integrated facility for wagon manufacturing with class A foundry attached to it. However, the company failed to compete with the market coupled with the increasing cost of raw material and manpower made the company sick and were referred to the BIFR for declaration as a sick unit. In the above said background let me see whether the resolution plan meets the requirements as referred to sub-section (2) of section 30 of I&B, Code.

7. The Resolution Plan in the case in hand is a unique plan which provides no revival of the corporate debtor but to close it by discharging its debts to all stakeholders inclusive of its staff and workmen. It is styled as a repayment plan of its debt, on the basis of a budgetary allocation of fund to the tune of Rs.417.10 crores by the Ministry of Railways for the year 2018-1919 to Burn Standard Co. Ltd., the Corporate Applicant herein. The resolution plan therefore, was seen prepared on the basis of a fund allocated by the Ministry of Railways in the Railway Budget for the financial year 2018-19.

8. It is that Resolution Plan came up for consideration for the approval of this Bench. CoC after due deliberations with 100 percentage voting share approved the Resolution Plan in hand. The CoC approved the Resolution Plan that was prepared by the Corporate Debtor (Corporate Applicant) and presented by the Resolution Professional which confirms the conditions referred to in section 30(2) of the I.&B. Code, 2016 and Regulation 9 of the I.B.B.I. (Insolvency Resolution Process for Corporate Persons) Regulation, 2016. The resolution plan submitted by the resolution professional approved by the committee also contains the certification as required under Regulations 39(4).

9. The Ld. Counsel appearing for the Resolution Professional submitted that all the requirements stipulated under section 30(2) of the I. & B. Code, 2016 have been complied with by the Resolution Professional and it is that plan was placed before the CoC and at the meeting held on 20.02.2018, the CoC approved it by 100% majority of the members constituting the CoC. The Resolution Plan submitted to the Bench being confirms the requirements as provided under sub-section (2) of section 30 read with sub-section (4) of section 30 this bench having no other alternative other than to approve the Resolution Plan which shall be binding on the Corporate Debtor and its

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employees, members, creditors and other stakeholders, if any, involved in the Resolution Plan.

10. At this juncture, the Ld. Counsel, appearing on behalf of Burn Standard Ex-employees' Welfare Association submitted that some of the claims of the ex-employees lodged with the Resolution Professional were rejected and their prayer for implementation of 1992 pay revision arrears, 1997 pay revision arrears and 2007 pay revision arrears not at all considered by the Resolution Professional. So also he submitted that the directions in the order passed by the Hon'ble High Court, Calcutta in W.P. No.372(W) of 2000 was not considered by the resolution professional and therefore, the resolution plan cannot be approved.

11. The representation of ex-employees and workmen union has been dealt with by this Bench whenever there was a submission on their behalf that some of their claims have not been considered or rather rejected by the Resolution Professional. Directions were also issued to the Resolution Professional when the resolution professional was considering the claims of all stakeholders inclusive of workmen and staff of the corporate applicant.

12. The Ld. Counsel appearing on behalf of the Resolution Professional as well as the Resolution Professional submits that all the eligible claims of the workmen have been taken into consideration and the reason for rejection has been uploaded which according to him not fulfilled the requirements as per the statutory format. Admittedly a form is prescribed under regulation 9 of the IBBI (IRP for Corporate Persons) Regulations, 2016 for submission of claims by authorised representative of workmen and employees. It is FORM E.

13. In the absence of any supporting materials brought to the notice of this Bench that any legitimate claims of workmen were rejected unreasonably, this

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Bench could not find any fault with the Resolution Professional, who was unable to consider the claim which has been directed to file by the workmen in the prescribed format giving all the necessary data. Failure from the side of the workmen in submitting the required data in the prescribed format for the consideration of the claims cannot be a ground for rejection of the resolution plan in hand.

14. The next contention on the side of the workmen's Union is that resolution professional not cared to implement pay scale revision of 1992, 1997 and 2007, and therefore they are deprived of arrears of pay revision which is otherwise have been extended to staff union. According to the Ld. Counsel for the workmen union there is discrimination in not extending arrears of pay revision to workmen and ex-employees and hence directions are to be issued to the resolution professional for implementation of pay revision arrears allegedly extended to them as per the above referred pay revision.

15. The Ld. Resolution Professional submits that 1992 pay revision has been implemented and the arrears of 1992 pay revision had been admitted as admissible claims of the Applicant. A reference of Resolution Plan shows that it provides payment of arrears of 1992 pay revision inclusive of pending dues to the employees like gratuity and leave encashment and pending salary for one month.

16. Ld. Counsel for the workmen at this juncture on the strength of an order in W.P.No.372(W) of 2000, passed by the Hon'ble High Court of Calcutta stressed an argument that non-implementation of 1992 pay revision violate the direction in it. It appears to me that since the 1992 pay revision has been implemented and even arrears of such pay revision have been admitted as admissible claims and considered in the resolution plan there is no violation

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of the direction in the order above referred. The said contention is also therefore, found devoid of any merit.

17. Ld. Resolution Professional also submits that 2007 pay revision has not been implemented in the corporate applicant so far. Nothing produced to prove that it has been implemented or that the workmen are entitled to have any benefit under the alleged pay revision of 2007. The reasons for rejection of claims, non inclusion of arrears of 1997 pay revisions and non-implementation of 2007 pay scale submitted by the resolution professional being supported with proof it appears to me that none of the objections raised on behalf of the workmen at the time of consideration of the approval of the resolution plan in hand are found devoid of any merit.

18. One another objection seen raised from the side of an intervener namely Industrial Services who is the applicant in CA (IB) No.171/KB/2018, is that a money suit filed by the corporate applicant as against the intervener before a civil court is to be declared not maintainable since moratorium order passed by this bench is in force and any legal proceedings as against the intervener is not maintainable according to the Ld. Counsel for the applicant in the said IA. The above said argument has no legal force at all. Upon commencement of the CIRP any legal proceedings if any initiated against the corporate debtor is to be stayed and there is no bar on any suit or proceedings instituted by the corporate debtor as against an operational creditor. That being so pendency of a civil suit filed by the corporate debtor as against the intervener in this case is not at all a bar to proceedings initiated in this case at the instances of the corporate debtor.

19. No other objections raised on any other sides regarding approval of the resolution plan. The Resolution Plan in hand fulfilled to meet the requirements as referred to in sub-section (2) of section 30 of the Code. However, it is

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pertinent to note that this is a unique Resolution Plan rather a plan for repayment of outstanding debts found due from the corporate debtor to various stake holders and to its workmen and staff. The corporate debtor/corporate applicant was an industry originally engaged in wagon manufacturing which is at present running at loss due to intense competition following the entry of new players. High level of debt and increased losses prompt the corporate applicant to file the application in hand.

20. The Resolution Plan has been prepared on the strength of a letter no.2018/M(W)/300/2 dated 12.02.2018 addressed to the Corporate Debtor/Corporate Applicant from the Ministry of Railways (Railway Board), Government of India, who recommended closure of Corporate Applicant company. Therefore, what is to be understood from the Resolution Plan is that on the basis of allocation of fund in the budget 2018-19, the Corporate Applicant would like to settle its liabilities and provides a repayment plan. So, the Resolution Plan in hand is a repayment plan for settlement of liabilities of the Corporate Applicant so that the closure of the Corporate Applicant can be effected, instead of liquidating the company.

21. On going through the letter above and the Resolution Plan, it is understood that the Resolution Applicant in the instant case has prepared the Resolution Plan and submitted to the CoC for its approval through the Resolution Professional and it is that Resolution Plan came up for consideration and on further examination, I am satisfied that the said plan meets the requirements as stipulated under section (2) of section 30 of Insolvency & Bankruptcy Code, 2016. Therefore, the Resolution Plan deserves approval. Accordingly, the Resolution Plan is approved upon the following directions.

Sd

## ORDER

The Resolution Plan, which is approved by the CoC with a voting share of hundred percentage is hereby approved under provisions of section 31(1) of the Insolvency & Bankruptcy Code, 2016, which will be binding on the Corporate Debtor/Corporate Applicant, its employees, members, creditors, coordinators and other stakeholders involved in the Resolution Plan.

2. The resolution plan of the company shall come into force with immediate effect.
3. The moratorium order passed under Section 14 shall cease to have effect.
4. The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.

Certified copy of the order may be issued, if applied for, upon compliance with all requisite formalities.

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(Jinan K.R.)  
Member (J)

Signed on this, the 6<sup>th</sup> day of March, 2018