

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

I.A.No.423 of 2019 in
C.P.(IB)No.101/BB/2018
U/R 11 of the NCLT Rules, 2016

The General Secretary

*Of M/s.GCL Private Limited Employees Union
A Unit of Bengaluru North Industrial Workers Union
(Registered Trade Union, Regd. under the TU Act)
183/1, MaruthiNilaya,
4th Cross, Near St. Mary's Convent,
KalyanaNagara, T. Dasarahalli,
Bengaluru – 560 057.*

- Applicant

In the matter of:

Shri R. N. Manoharan

11/1, 4th Cross,
Ayyappa Nagar, Jalahalli West,
Bangalore– 560 015.

- Petitioner/Operational Creditor

Versus

M/s.GCL Private Limited

No.419/420, 10th Main Road,
2nd Stage, Peenya Industrial Estate,
Bangalore– 560 058.

- Respondent/Corporate Debtor

Date of Order: 23rd September, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Applicant : Shri L. Muralidhar Peshwa

Resolution Professional : Shri Srikantiah Shivaswamy

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.423 of 2019 in C.P.(IB)No.101/BB/2018 is filed by the General Secretary of M/s. GCL Private Limited Employees Union,(hereinafter referred to as 'Applicant') under Rule 11 of the NCLT Rules, 2016, by

inter alia seeking to allow the Applicant to be made a party to the Company Petition; to direct the parties of the Company Petition to furnish copies of the documents filed with the petition to them etc.

2. Brief facts of the case, as mentioned in the Application, are as follows:

(1) The main Company petition filed by Shri R. N. Manoharan, (Operational Creditor)), under Section 9 of the IBC, 2016 R/w Rule 6 of the I&B (AAA) Rules, 2016 was admitted by this Adjudicating Authority vide order dated May 1st, 2019 ('Admission Order') by initiating CIRP, appointing Shri Shivadut Bannanjehaving Registration No.IBBI/IPA-002/IP-N00266/2017-2018/10779 as appointed as the IRP, moratorium etc. Subsequently, the Adjudicating Authority vide its order dated July 22nd, 2019 allowed the I.A.No.345 of 2019 filed on behalf of the Committee of Creditors of the Corporate Debtor to change the Resolution Professional of the Corporate Debtor and thus appointed Shri Srikantiah Shivaswamy as the RP in place of Shri Shivadutt Bannanjee.

(2) It is stated that the Applicant is the Workman of the Corporate Debtor represented by the General Secretary of the M/s.GCL Private Limited employees Union, a unit of Bangalore North Industrial Workers Union, Registered Trade Union, Regd. Under the TU Act, bearing registration No. B-1 (TUA) 14- 1984/85 espousing the cause of the workers of the Corporate Debtor. The Workmen/Employees of the Corporate Debtor above named are the members of the union. More than 100 Workers/Employees are employed by the Corporate Debtor at the plant located at Plot No. 67A & B, Dobberspet, Sompura Industrial Area, Nelamangala Taluq, Bengaluru Rural District, Karnataka-562111, before the Corporate Debtor illegally caused lay off to the workers by a notice dated 08-03-2019. More than 1000 people, including the workers, are dependent on the continued operations of the Corporate Debtor.

- (3) It is stated that the Corporate Debtor was not paying the workers/employees' wages since the month of October, 2018, and the Corporate Debtor was also not remitting the contributions to the EPF and ESIC authorities of the contributions of the workers/employees and the Employer of the Corporate Debtor since the month of January, 2018. Since the month of October, 2018, the workers have worked for the Corporate Debtor at the plant without wages. The Corporate Debtor had caused an illegal lay off by a notice dated 08-03-2019 and the workers were put in streets without work and wages.
- (4) It is also stated that the Applicant Union is a recognized union of the Corporate Debtor. That after the Memorandum of Settlement was signed between the Applicant Union on 07-02-2017 and the Management of the Corporate Debtor, was not complying the terms of the settlement, and the Applicant Union made a representation in this regard with the Corporate Debtor. The Operational creditor in this Company Petition, Shri. R. N. Manoharan, had signed the Memorandum of Settlement on behalf of the Corporate Debtor. The Corporate Debtor was not paying the workers the earned wages within the stipulate time. The workers through the Applicant Union, after exhausting the bilateral remedies, made representation to the concerned authorities under the Industrial Disputes Act, 1947 and the Authority under the Factory's Act, 1948. When the workers had made representation to the concerned authorities the Corporate Debtor caused an illegal Lay with effective from 09-10-2018. The Applicant union immediately brought this illegal action of the Corporate Debtor to the Concerned Labour Authority by a representation dated 11.10.2018. The illegal lay off was lifted on 26.11.2018. All these matters are now pending before the Appropriate Authorities as referred above. Since the number of workers of the Corporate Debtor is more than 100 the Corporate Debtor was bound to obtain permission from the Appropriate Authority under the Industrial



Disputes Act, 1947, which the Corporate Debtor failed to do so. The matters on the illegal lay off is also pending as an Industrial Disputes in Ref. No.1/IDA/SR/03-2019.

- (5) It is further stated that when these matters were pending as an Industrial Dispute, the Corporate Debtor caused another illegal lay off to the workers/employees with effective from 08.03.2019. The Applicant Union immediately brought this illegality to the knowledge of the Concerned Authorities under the Industrial Disputes Act, 1947, by a representation dated 08.03.2019. When the matter stood like this Applicant came to know that this Adjudicating Authority has admitted the Company petition filed by the Operational Creditor, Shri. R. N. Manoharan. It is learnt from these details that the Operational Creditor, Shri R.N. Manoharan, has claimed a sum of Rs.20,70,807/- (Rupees Twenty Lakhs Seventy Thousand Eight Hundred and Seven only) from the Corporate Debtor as default amount. The Applicant has also come to know that the Canara Bank is the sole Financial Creditor and as per the Notice issued by the Canara Bank, the liability of Canara Bank, the Financial Creditor is Rs.24,39,54,962/- (Rupees Twenty Four Crores Thirty Nine Lakhs Fifty Four Thousand Nine Hundred and Sixty Two Only).
- (6) It is further stated that the total amount due to the claimant workers/employees by the corporate debtor is Rs.3,79,77,526/- (Rupees Three Crores Seventy Nine Lakhs Seventy Seven Thousands Five Hundred and Twenty Six Only). This excludes the Applicable Statutory Dues, like EPF & ESI, to the Applicant (Workers/Employees). The Applicant (Workers/Employees) could not submit the claims to the Interim Resolution Professional since the Interim Resolution Professional is changed and this Adjudicating Authority has appointed a new Resolution Professional. There are no management personnel, who are available either the corporate office of the Corporate Debtor or at the plant of the Corporate Debtor to receive any grievance of the

Applicant (Workers/Employees). The Corporate Debtor are also not attending the conciliation meeting before the Concerned Labour Authority under the Industrial Dispute Act, 1947. Even for any queries by the affected workers/employee the HR Personnel are not responding.

- (7) The Claimant workers/employees are Operational Creditors as per the provisions of IBC, 2016. Since the total aggregate claim amount is more than 10% of the dues claimed against the Corporate Debtor, the Applicant (workmen/employees) are entitled to get represented in the meeting of the CoC as per Section 24(2) (c) of the IBC, 2016. The Operational Creditor in the Application before this Adjudicating Authority, Shri. R. N. Manoharan, was an Employee of the Corporate Debtor with a designation of Director Technical Operations. The Managing Director of the Company, Shri. Harish B. Kamath expired in the month of December, 2018 and the wife of Shri. Harish B. Kamath has taken over as the new managing Director of the Company.
- (8) It is further stated that the Corporate Debtor was making huge profits and was also having very good image and presence in the manufacture of circular weaving machines. The machines manufactured at plant were supplied to various parts of the country and also abroad. The machines thus manufactured were used for making various types of HDP bags and tarpaulins. There are hardly any competitions for the Corporate Debtor. There were huge orders for the machines before it was illegally caused with lay off on 08.03.2019. There is no reasons for the Corporate Debtor to cause illegal lay off and in fact the Operational Creditor himself can take over the Corporate Debtor and run the Corporate Debtor. There are many highly skilled workers at the Corporate Debtor and many workers are working for the corporate debtor for more than 30 years.
- (9) It is also stated that the workers/employees of the Corporate Debtor are suffering with sever hardships due to the illegal lay off



and non-payment of wages to the workers, by the Corporate Debtor, since the month of October, 2018. Many of the claimant workers/employees have been working for the Corporate Debtor for more than 20 years. These workers have dependent family members. The illegal actions of the Corporate Debtor have put the workers/employees and their dependent family members in destitute positions. Many of the workers are forced to vacate their rented houses due to non-payment of rents for the past so many months. The Workers are hugely worried about the outcome of the CIRP and the Applicant stated that under Section 31 of the Insolvency and Bankruptcy Code 2016 any Resolution Plan accepted by the Adjudicating Authority shall be binding upon the workmen. Under both the Companies Act 1956 and the new Companies Act 2013, the workmen have been made secured creditors by law. As such the Applicant (Workmen/Employees) are the Operational Creditors as per IBC, 2016. Since the decisions of the CoC and this Adjudicating Authority is binding upon the workers then it is well within the principles of natural justice that Applicant must be given the opportunity to be heard for the same. The Applicant union would like the continued operations of the present plant of the Corporate Debtor and protect the industry and its dependent workers and their families and also for the payment of all the pending dues including statutory remittances. The Applicant also would make an endeavour for the continued operations of the Corporate Debtor as a going concern in this regard.

- (10) It is further stated that in the interest of natural justice, and equity it will only be fair that the Applicant be made a party to the present Company Petition and be given an opportunity to be heard if decision made by this Adjudicating Authority is binding upon them/affects them. Like all secured creditors, it would be grossly unconstitutional not provide the Applicant an opportunity to represent themselves and vote for or against the resolution plan



like all other secured creditors. The Applicant has made out a prima facie case for grant of the aforesaid reliefs. If the reliefs as prayed for are not granted, grave and irreparable loss will be caused to the Applicant. No loss or prejudice whatsoever will be caused to the Respondents.

3. Heard Shri L. Muralidhar Peshwa, learned Counsel for the Applicant and Shri Srikantiah Shivaswamy, learned Resolution Professional. We have carefully perused the pleadings of both the parties and extant provision of the Code.
4. Shri L. Muralidhar Peshwa, learned Counsel for the Applicant, while reiterating the averments made in the instant Application, as briefly stated supra, has further urged the Adjudicating Authority to direct the IRP.RP to consider the claims of the Union and involve at least one Representative of the employees of the Corporate Debtor so as to put forth their grievance for consideration by concerned authorities.
5. Shri Srikantiah Shivaswamy, the Resolution Professional, has no objection to consider the case of Applicants in accordance with law and he will suitable reply to the Applicants also.
6. In the result, I.A.423 of 2019 in C.P (IB)No.101/BB/2018 is disposed of by directing the Resolution Professional to invite the Authorised of the Employees Union of the Corporate Debtor to represent their grievances in all the meetings going to be conducted in CIRP of Corporate Debtor, and also consider their request to be part of COC in accordance with law.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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