

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 104
(IB)-202(PB)/2017

IN THE MATTER OF:

Punjab National Bank

...

Applicant/Petitioner

Vs

Bhushan Power and Steel limited

...

Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016, CIRP.

Order delivered on 02.02.2021

CORAM:

SH. B.S.V. PRAKASH KUMAR
HON'BLE ACTG. PRESIDENT

SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant

: Mr. Mritunjay Kumar Tiwary Adv. in I.A. 5079/2020.
Mr Rakesh Kumar appearing in IA no-4072

For Monitoring Prof.

: Mr. Abhinav Vasisht, Sr. Adv. Mr. Vaijayant Paliwal,
Ms. Charu Bansal, Ms. Prabh Simran Kaur, Advs.

ORDER

It is IA-320/2021 filed by the Monitoring Professional against Bajaj Finance Limited on the premise that Bajaj Finance has sold Mutual Fund Bonds given by the Corporate Debtor as security to it and appropriated the monies through Electronic Transfers while Plan approved by NCLT is pending for adjudication before Hon'ble Supreme Court of India.

In view thereof, the answering Respondent is hereby directed to explain as to how it could sell away the Mutual Fund Bonds of the Corporate Debtor given as security to the loan availed from the answering Respondent.

Parties are hereby directed to file one page written submissions on the next date of hearing.

List IA320/2021 for hearing on **08.03.2021**.

It is IA4021/2020 filed by some of the erstwhile employees of the company assailing the termination notice of employment to the employees of



the Corporate Debtor issued by the Respondent stating that the impugned notice dated 06.07.2020 is in violation of the Resolution Plan approved on 05.09.2019 because retirement age of the employees though not mentioned in the Resolution Plan or in the contract between the employees and employer, the monitoring agency determined the retirement age as 60 years, which is not only in contravention to the policy all through the company followed, but also causing hardship to the employees above the age of 60 years, therefore the termination notice dated 06.07.2020 shall be declared as null and void.

On perusal of this application, the point taken up by this Applicant is, this termination notice is in-contravention of Section 31 (1) of the Insolvency and Bankruptcy Code, 2016. When we asked the applicants counsel as to what is the point that is in-contravention to Section 31 (1) of the Code, no plausible answer has come from the Applicants' counsel except stating some of the employees whose age is more than 60 years have been retained in the company as employees.

The Applicants submit that since some other employees above 60 years are permitted to continue, they shall also be permitted to be retained in the company. To say that these employees are aggrieved of the termination notice issued by the company, they shall place material disclosing that their termination is in contravention to the terms and conditions binding the employees and the company or at least they must disclose material disclosing that the impugned notice is repugnant to the provision of a Statute. Neither of the points is proved by the applicants.

Apart from this, the Corporate Insolvency Resolution Process (CIRP) has come to end upon approval of the Resolution Plan. Now the Company is managed by the Monitoring Professional. This adjudicating authority will have jurisdiction to decide the issues either during CIRP period or during the liquidation. At least if the grievance espoused by the applicants emanates from the terms and conditions of the resolution plan, then there can be an occasion to this authority to interfere with, but that is not the situation.

Before making such submissions, the Applicants must keep in mind that the Steering Committee and the Monitoring Professional have been appointed by



the Resolution Applicant and by the Creditors, therefore this Applicant cannot claim that this transfer policy is not introduced by the company. Another interesting point is, all the Applicants in this application are aged above 60 years and one of them is aged of 73 years old.

The applicants cannot say that since the RP continuing as Monitoring Professional, he cannot take any action after the company has come out of CIRP, here the RP has become Monitoring Professional upon approval given by the competent authority, therefore the decision of the monitoring professional with the approval of the company cannot be construed as decision taken by the RP.

The Senior Counsel Mr. Abhinav Vashist appearing on behalf of the answering Respondent has stated that how the management is to be carried out is very much provided in Section 30 sub-section 2 (c) (d) of the IBC, therefore so long as the management of the Company continuing as stated in the Code, the notice issued by the Monitoring Professional on behalf of the Company shall not be faulted. In view thereof, we have not found any merit in this application; accordingly IA-4021/2020 is hereby **dismissed**.

On IA-5079/2020 filed, since the age limit has not been mentioned in the terms and conditions entered into between the employees and the employer and this issue being already decided in IA4021/2020, IA-5079/2020 is hereby **dismissed as misconceived**.

IA4072/2020 filed by the eleven retired employees raised the same issue which has been raised in IA4021/2020. The grievances of the Applicants is that Resolution Plan was not provided to them and three months notice was not given to them before termination, therefore this transfer policy shall be declared as null and void.

As against this submission, the Monitoring Professional Counsel has stated that this policy was introduced in the month of July 2020, whereas these employees were retired during the year 2019 itself after accepting Full and Final Settlement, these Applicants ought not to have filed this application after full and final settlement. In view thereof, we have not found any merit in this application; therefore IA4072/2020 is hereby **dismissed misconceived**.



On the application IA-4024/2020 filed, since the age limit has not been mentioned in the terms and conditions entered into between the employees and the employer and this issue already being decided in IA4021/2020, IA-4024/2020 is hereby **dismissed as misconceived**.

As to the employees dues, in case any of the employees dues have not been settled, the Monitoring Professional may take up this issue immediately and see those payments are made to them within one month hereof. Responding to the same, the Monitoring Professional Counsel has volunteered that in case any employee dues have not been settled, the Company will make Full and Final Settlement to such persons within one month hereof.

List IA-5489/2020 and IA3020/2020 and other pending applications for hearing on **08.03.2021**.

Sd/-

(B.S.V PRAKASH KUMAR)
ACTG. PRESIDENT

Sd/-

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

02.02.2021
Deepak Kumar