

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
MA 541/2017 in CP 1A/I&BP/2017

Under Section 10 of IBC, 2016

Engineering Labour Union (CITU) Applicant

In the matter of

U. B. Engineering Pvt. Ltd. Respondents.

Order delivered on 07.11.2017

Coram: Hon'ble B.S.V. Prakash Kumar, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

For the Applicant: Mr. Ajit Abhyankar, General Secretary, Engineering Labour Union (CITU)

For the Respondent: Mr. Ashish Pyasi, Advocate, i/b Dhir & Dhir Associates

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

Oral Order dictated in the open court on 6.11.2017

1. It is an application moved by Engineering Labour Union (CITU) against the Corporate Debtor company, stating that the Resolution Professional has not considered the dues to the workers, basing on that stand, this applicant has asked for extension of IRP time before initiating liquidation of the Corporate Debtor, with a direction to the Resolution Professional to call for an appropriate proposal for the revival of the company guaranteeing continuation of the present staff members and workers and the Corporate Debtor to clear the pending salary/wage dues, allowances and benefits payable to the staff members and unpaid gratuity to the retired staff members.

2. On perusal of the application and exhibits thereof, it appears that the Union filed this application on the assumption that this Bench is entitled for extension of Insolvency Resolution Process time to reconsider the company as a going concern to protect the rights of the workmen of the company.

3. Looking at the documents he has filed, it appears that he has not filed even a single document pointing out that either the Committee of Creditors or the Insolvency Resolution Professional did something so as to cause loss either to the workmen or to any of the class of creditors mentioned therein.
4. On perusal of Section 24, it appears that Resolution Professional is under obligation to give notice of each meeting of the Committee of Creditors to the Members of Committee of creditors, members of the suspended Board of Directors or the partners of the corporate persons, as the case may be and also operational creditors or their representatives if the amount of their aggregate dues is not less than 10% of the debt.
5. If at all any of these persons aggrieved of the resolution passed by the Committee of Creditors, then they have to show that notice has not been served upon them before holding Committee of Creditors meeting. Since the workmen fall within the category of the Operational Creditor, if at all he has any grievance that notice has not been served upon workmen, before raising such a grievance, such aggrieved party is under obligation to show that the amount due to such aggrieved class is not less than 10% of the debt, that has not been done by the applicant.
6. Though the Union Leader representing this matter has not given any figure to say how much debt is due to the workmen, he has said that it would be roughly around Rs.20 crores, but on verification of records, it appears that the outstanding debt due and payable by the Corporate Debtor is around Rs.800 crores, whereby even if the workmen is considered as representing the class of entire Operational Creditor, it would not be more than 2% of the outstanding debt. For the debt due to the applicant being less than 10% of the due, the workmen could not be considered as aggrieved to say that notice of the meeting of the Committee of creditors has not been given where Committee of Creditors rejected the Resolution plan placed by the Resolution applicant.
7. In any event, if at all, this Union representing the workmen of the company claims that their claim has not been properly reflected and/or not considered, they are at liberty to ask for verification of the claim under Section 39 of the IB Code, 2016. If at all they have any further grievance in respect to their claim, they are at liberty to proceed in accordance with this Code before the Adjudicating Authority.
8. On the top of it, since the workmen dues is placed in preference order next to costs of Insolvency Resolution process and liquidation, the workmen need not be under the assumption that their claim would not be considered when liquidation has been ordered. If at all they have any grievance in respect of under valuation, they are

supposed to place material before this Bench to say that assets of the company have been under-valued.

9. By going through the application as well as the documents annexed to it, nothing has been placed to say that the assets of the company have been under valued under the supervision of IRP.

10. Therefore, we have not found any merit in the application moved by the Trade Union for reconsideration in respect to resolution plan by Committee of Creditors, hence, this application is hereby dismissed without costs.

Sd/-

V. NALLASENAPATHY
Member(Technical)

Sd/-

B. S. V. PRAKASH KUMAR
Member (Judicial)