

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI

PRINCIPAL BENCH

(IB)-378(PB)/2017

IN THE MATTER OF:

Alchemist Asset Reconstruction Co. Ltd. APPLICANT / PETITIONER
And
Moser Baer India Limited RESPONDENT

SECTION:

Under Section 7 of Insolvency & Bankruptcy Code

Order delivered on 31.01.2018

Coram:

CHIEF JUSTICE (RTD.) M. M. KUMAR
Hon'ble President

Sh. S. K. MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

PRESENTS:

For the Petitioner(s)

Mr. Karan Kanwal, Advocate with Mr.
Devendra Sing, Resolution Professional

Mr. Anurag Sharma, Ms. Gunjan Mittal,
Advocates for Applicant, M/s. Vimal Hi-
Tech Pvt. Ltd.

For the Respondent(s)

Ms. Varsha Banerjee, Adv.for Mr. Deepak
Puri and Ms. Neeta Puri

Mr. Dinkar Singh, Adv.

ORDER

C.A. No. 06(PB)/2018

Reply to the application may be filed by learned Counsel for the non-applicant-Moser Bare India Limited through Mr. Deepak Puri and Mrs. Neeta Puri, suspended Directors. Let reply be now filed within a week with a copy in advance to the Resolution Professional-applicant.





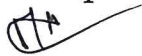
Rejoinder, if any, be filed within 3 days thereafter with a copy in advance to the Counsel opposite.

List the matter on 15th February, 2018.

C.A. No. 24(PB)/2018

This is an application filed by the Resolution Professional with a prayer for passing an order declaring the lockout of factory premises of the Corporate Debtor situated at 66, Udyog Vihar Industrial Area, Greater Noida, District Gautam Budh Nagar, U.P. as illegal. A further prayer has also been made for issuance of necessary directions to the local administration including Police authorities of Police Station Surajpur Kotwali, Surajpur, Greater Noida, District Gautam Budh Nagar, U.P. in terms of Regulation 30 of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to provide necessary assistance to the RP and his team to enable them to visit the Plant/Factory of the Corporate Debtor situated at the aforesaid address and also to facilitate their visit the registered office of the Corporate Debtor situated at 43-B, Okhla Industrial Estate, Phase-III, New Delhi-110020.

In respect of the issue concerning lock out, the workers have filed CA No. 24(PB)/2018 showing that lock out has been declared as illegal by the Deputy Labour Commissioner/Conciliation Officer, Gautam Budh Nagar vide his order dated 14.11.2017. It has also been pointed out that Resolution Professional has participated in the meetings held with the Deputy Labour



Commissioner-cum-Conciliation Officer thereafter. The operative part of the order, when translated in English, reads as under:

“Thus, keeping in view the facts and circumstances as prevailing on date and in order to continue the regular production in the aforesaid Industrial Unit as well as to maintain Industrial peace, law and order, the lockout declared by the Management on 04.11.2017 is declared void. The aforesaid declaration is made by keeping in view the provisions of Section 3 of the Uttar Pradesh Industrial Disputes Act, 1947. The lockout has been declared illegal so as to protect the rights of the workers.

Yours faithfully,

Sd/-

(B.K. Rai)

Deputy Labour Commissioner,
Gautam Budh Nagar,

No. 21659-61

Copy to:

1. Senior Chief Secretary/Chief Secretary,
Uttar Pradesh(Labour), Lucknow
2. District Magistrate, Gautambudh Nagar in reference to
directions issued by him.”

In view of the order passed by the Deputy Labour Commissioner-cum-Conciliation Officer, the first prayer made by the Resolution Professional is rendered infructuous and does not survive for adjudication at the hands of this Tribunal.



In respect of other two prayers, we are of the view that the District Magistrate and the SSP including the authorities at the Police Station, Surajpur Police Station, Greater Noida are directed to assist and facilitate the Resolution Professional in terms of the Regulation 30 of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and to provide the Resolution Professional and his authorised team necessary assistance to enable them to visit the Plant/Factory of the Corporate Debtor situated at 66, Udyog Vihar Industrial Area, Greater Noida, District Gautam Budh Nagar, U.P. and to permit him to carry on the day-to-day affairs of the Corporate Debtor in accordance with the provisions of the Insolvency & Bankruptcy Code. Similar assistance is also required to be provided by the D.C.P. of Delhi Police and the officers at the police station, Okhla Phase-III, New Delhi-110020, so as to enable the Resolution Professional and his team to visit the registered office of the Corporate Debtor situated at 43-B, Okhla Industrial Estate, Phase-III, New Delhi-110020 so that he may carry on the day-to-day affairs of the Corporate Debtor in accordance with the provisions of Insolvency & Bankruptcy Code and Regulation 30 of the Regulations.

We further direct that the Resolution Professional shall take into account any application of the Workmen with regard to disbursement of their wages in view of the fact that lockout has been declared unlawful by the Deputy Labour Commissioner-cum-Conciliation Officer in his order dated 14.11.2017.



We grant liberty to the Resolution Professional to file any additional application, if there is non-cooperation either by the ex-management or by any of the authorities to whom directions have been issued in the order passed today.

Applications CA no. 06(PB)/2018 and CA no. 24(PB)/2018 are disposed of in the above terms.

C.A. No. 07(PB)/2018

Prayer made in this application is to seek leave of the Tribunal to file the claim before the IRP for further necessary action. The applicant has stated that publication dated 17.11.2017 inviting claims came to the notice of the applicant on 22.12.2017, which is after the last date of filing of the claim.

It is appropriate to mention that Public announcement of Corporate Insolvency Resolution Process is required to be made by the Insolvency Resolution Professional by incorporating the information indicated in section 15(1). It also includes that the public announcement shall contain the last date of submission of claims. There is no provision in the Parliamentary Statute i.e. Insolvency & Bankruptcy Code for extending the period beyond the last date for submission of claims. However, Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 vide regulation 12(2) has provided that a Creditor can submit the proof of claim even after the stipulated date mentioned in the public announcement. According to the provisions of regulation 12(2) such claim can be filed till the approval of a resolution plan by the Committee. The



aforesaid regulation comes in direct conflict with the provisions of Parliamentary Statute with the provision of section 15(1)(c) of the Insolvency & Bankruptcy Code. We do not think that by subordinate legislation the timeline provided by Insolvency & Bankruptcy Code could be eroded in such a manner as to cause delay in the Corporate Insolvency Resolution Process. Therefore we are unable to persuade ourselves to issue directions to the Resolution Professional to entertain the claim made by the applicant. If such a course is to be adopted, then Resolution Professional has to invite fresh claims from rest of the world by inserting a new Public Notice so as to enable all other left out claimants to file their claim before Resolution Professional. It will cause considerable delay in the finalization of Corporate Insolvency Resolution Process.

As a sequel to above discussion, application fails and the same is dismissed.

Sd/-

(M. M. KUMAR)
PRESIDENT

Sd/-

(S. K. MOHAPATRA)
MEMBER (TECHNICAL)