

**NATIONAL COMPANY LAW TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD.**

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**BEFORE NATIONAL COMPANY LAW TRIBUNAL, ALLAHABAD  
BENCH, ALLAHABAD.**

**C.P. No. (IB) 36/ALD/2017**

**CORAM: SRI H.P. CHATURVEDI, MEMBER (Judicial)**

Application by Operational Creditor to initiate Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**(DISTRICT-KANPUR)**

**IN THE MATTER OF**

J.K. Jute Mills Mazdoor Morcha  
Through its General Secretary, Sri Raju Prasad,  
119/456, Darshanpurwa, Kanpur-208012,  
Uttar Pradesh.

----- Operational Creditor

**VERSUS**

Juggilal Kamlpot Jute Mills Company Ltd.  
Registered Office at 84/49, Zareeb Chowki,  
Kalpi Road, Kanpur-208012.

----- Corporate Debtor

**PRESENT:** Sri Pankaj Srivastava, Sri Ankit Kohli Counsel for applicant / operational creditor, Advocate Sri Arvind Kumar, Sri Somesh Khare and Sri Jahangir Haider for Corporate Debtor.

**ORDER**

**(Pronounced on 28.04.2017)**

The present application is filed under Sections 13 & 14 of the Insolvency and Bankruptcy Act stating that the Corporate Debtor M/s. J.K. Jute Mills Co. Ltd., Kanpur has committed default in making payment of the operational debts / worker dues to the applicant's Union. It is also stated that the operational creditor issued a demand notice to the corporate debtor In Form No. 3 (the Insolvency and Bankruptcy Code, 2016) demanding payment of its






operational debts. It is stated that no notice of existence of dispute was received by the operational creditor i.e. applicant's union within a period of ten days from the receipt of demand notice issued to the corporate debtor nor there has been any repayment of unpaid operational debts by the corporate debtor to the applicant's union, hence the present petition seeking such reliefs those are described hereinbelow:

- (I) *To admit the application and pass an order for initiating the corporate insolvency resolution process under Section 9 of the Insolvency and Bankruptcy Code, 2016.*
- (II) *To appoint an interim resolution professional under Sections 17, 18 and 25 of the Code.*
- (III) *To cause public announcement of the initiation or corporate insolvency resolution process under Section 15 of the Code and ;*
- (IV) *To declare a moratorium in terms of Section 14 of the Code.*

The operational creditor has furnished the details the prescribed format along with the present application which includes particulars about applicant's corporate debtor and on proposed interim resolution professional, further particulars of operational debt, relating documents, record and evidence of default in the prescribed format under the Code in Part I, II, III, IV & V of the Code.


As per the demand notice issued to the corporate debtor an amount of Rs. 131.90 Crores in lieu of services / wages is due which includes employment of workers the computation of wages / debts in tabular format is stated to be annexed with as Annexure No. A to the demand notice issued. However, such tabular form of computation of debts does not found to be annexed with the present application. Further in the prescribed format of the demand notice (as per column no. 6), it duly informed that the above mentioned unpaid debts are claimed by the operational creditor under the provision of the payment of Gratuity Act, Payment of Wages Act, Payment of Bonus Act and the Trade Union Act. A memorandum of understanding dated 18.10.2008 is said to have been executed by the management of the corporate debtor under the signature of Sri Govind Sharda. The another MOU dated 28.01.2009 has also been executed with the promoters of the corporate debtor company namely Sri





Ghansyam Sharda. In support there of the operational creditor encloses a copy of the above stated MOU in column 7 of the prescribed format of particulars of operational debts, the operational creditor also encloses other documents i.e. audited annual account of the corporate debtor as on 31.03.2012. The draft revival scheme dated 26.03.2012 (hereinafter to be referred as SDRS) which has been circulated by the BIFR (iii) special investigation audit report dated 04.09.2013 as submitted by the Stated Bank of India to the BIFR (iv) U.P. Government Gazette Notification No. 171/36-2-2011 Lucknow dated 07.07.2011 along with another Gazette Notification No. 4/942/36-2-14-76 (SM)/93 Lucknow dated 23.09.2014 on the basis of above referred documents the operational creditor / applicant made demand to the corporate debtor to make payment of unconditional unpaid operational debt (in default) of Rs. 131.90 Crores within ten days from the receipt of the notice failing which it shall initiate corporate insolvency resolution process in respect of the corporate debtor company. It is also stated by the applicant / operational creditor that there is no repayment of unpaid operational debt from the corporate debtor to the applicant union nor it receive any notice of existence of dispute within stipulated period of ten days from the receipt of the demand notice hence the present application for triggering of the IRP process before this Tribunal.


As per the matter available on record the present application is filed on 28.03.2017 the present application is drafted by the parties on 25.03.2017, the notice of admission in present petition is signed on 27.03.2017. While the demand notice to the corporate debtor was issued on 14.03.2017, hence, the delivery of the demand notice is being seriously disputed by the corporate debtor by raising objection contending such that it received the demand notice only on 21.03.2017 while the present application is prepared on 25.03.2017, hence the present petition has been filed without expiry of stipulated 10 days period from the receipt of demand notice. Hence, as per the corporate debtor company, the present application is premature and not complete for admission and liable to be rejected.





The corporate debtor also contends that it sent a detail reply dated 25.03.2017 through Speed Post on 28.03.2017 to the above said demand notice. It is stated that the 10 days statutory period from the receipt of the demand notice was not elapsed. Hence, the present application does not fulfil mandatory requirements in prescribed format Part IV of the application. Hence is liable to be rejected on such ground alone. It is further contended in the objection that the demand notice issued to the corporate debtor is incomplete as it does not provide requisite details of default committed. As per the corporate debtor no default has taken place. It is also reported that the corporate debtor company has already filed a Civil Suit being Suit No. 249 of 2017 on 21.03.2017 titled as Juggilal Kamlapat Jute Mills Company Ltd. Vs. J.K. Jute Mazdoor Panchayat (CITU) and others. Wherein the Civil Court of learned First Additional Civil Judge (SD), Kanpur Nagar pleased to issue notices to all the defendants including the present petitioner J.K. Jute Mill Mazdoor Morcha. The next date of hearing in the said suit is fixed on 04.04.2017. The petitioner herein has also been served a copy the Suit and order passed. A copy of the said suit is further annexed with the objection.

The corporate creditor also raised some objection on maintainability of the present petition objecting to the *locus standi* of operational creditor being a worker's union contending that it has already filed an intervention application in another Company Petition No. 10/Alld./2017 moved by one Sri Surendra Trading Company against the same corporate debtor company before this Tribunal. Wherein, an appeal has been preferred against an interim order dated 09.03.2017 passed by this Tribunal before the Hon'ble NCLAT, New Delhi (bearing AT No. 09 of 2017) the issue involve therein whether J.K. Jute Mills Mazdoor Morcha being worker's union is a necessary party or otherwise which is *sub judice* before the Hon'ble NCLAT. Hence it is not open to it to file a fresh and parallel proceedings before this Tribunal. It is also stated that the alleged amount as claimed by the applicant union on behalf of its workers is vague in nature and disputed. It is noteworthy to state that most of the dues claimed by the alleged operational creditors seems for the period when the company / factory remained closed. The lockout in the company was challenged





by its workers before the State Government of U.P. and was declared illegal under the provision of Section 3 (A) of the U.P. Industrial Dispute Act. Thereafter, the present corporate debtor J.K. Jute Company Ltd. filed a Writ Petition (M/S) No. 7208 of 2014 before the Hon'ble Allahabad High Court at Lucknow Bench, wherein a stay against the impugned order of the State Government order has been granted on 19.11.2014. Therefore, as per the corporate debtor the adjudication of such dues which are disputed is not contemplated under the provision of Insolvency and Bankruptcy Code, 2016 because there is no crystalized and specific dues to the petitioner. It further objected that the petitioner is not an authorized representative of its workers in terms of the Insolvency and Bankruptcy Code nor is entitled to make such claim in a capacity of an operational creditor for such dues. Moreover, all workers of the of the Mill cannot exclusively be member of the applicant's union alone nor it received specific authorisation from worker's concerned for filing joint applications. It also objected that the demand notice sent by the operational creditor did not provided for specific details, as to how the amount is being claimed and calculated nor provided the detail particulars of worker's names, designation, area of service, service record and their contract with company for which they worked. Further the dates from their wages become due. Therefore, the objector / corporate debtor contends such the present petition is barred by law and not maintainable. The demand notice issued to the alleged operational creditor is incomplete the demand raised therein is being disputed through a civil suit and pending writ petition hence is liable to be rejected out rightly. The corporate debtor / objector also raised the question about the competency and jurisdiction of this Tribunal after passing an order on the application after elapsing the period of 14 days from filing the petition on 17.04.2017. The objector / corporate debtor also filed a company application on 17.04.2017 on these grounds and made a request to this Tribunal to stop the proceedings without passing any order as the adjudicating authority of NCLT became functuous officio in respect of the present Company.


We considered the above stated submission put forth on behalf of the objector / corporate debtor on the question of



jurisdiction of this Tribunal, it is a matter of record that this Tribunal issued a notice to the operational creditor on 07.04.2017 as per the provisions of Section 9 (5)(ii) (a) of the Code for removing the certain defects within seven days from receipt of such notice failing which the present application may liable to be rejected such notice was duly replied by the operational creditor on 17.04.2017 further this Court also made a request under section 64 of the Insolvency and Bankruptcy Code to Hon'ble the President, NCLT, Principal Bench, New Delhi seeking extension for time of ten days for pronouncement of the order. The Hon'ble President granted the same by its communication dated 19.04.2017 received by this Tribunal on 25.04.2017. It is also a legal position as settled by the Hon'ble the Principal Bench, New Delhi expressing its view in the matter of Pride Commercial Project Pvt. Ltd. Vs. M/s. Era Infra Engg. Ltd. (IP No. 26/ND/2017) interpreting the relevant provision that 14 days' period for disposal of an Insolvency and Bankruptcy application excludes Saturday, Sunday and closed holiday as well as vacation period falls in between. Further such period are to be counted from the date when the defects as pointed out in the application are rectified or removed. Therefore after excluding such period of Saturday, Sunday and closed holiday fall between 29.03.2017 till 17.04.2017, it cannot be presumed that the period of 14 days is already over or lapsed. In fact, keeping in view of the extension granted by the Hon'ble president under Section 64 of the Insolvency and Bankruptcy Code, this order is being pronounced well within prescribed time. Hence, such objection from the corporate debtor is overruled and the prayer sought for in the present company application, with regard to the competency and jurisdiction of this Tribunal is hereby rejected.

Hence, in our view, there is no fetter / rider upon this Tribunal to proceed further to dispose of the present petition on its merits and in accordance with law.

On the basis of the material made available on record of the present case, the petitioner / operational creditor filed a Supplementary Affidavit annexing with some additional documents in support of the application on 17.04.2017. In respect of the claimed / operational debt due on various heads





of workers payment like payment of wages, Bonus, Gratuity, Provident Fund etc. It also enclosed a copy of the application / representation made before the various statutory and State Government authorities for making claim for recovery of workers' dues i.e. before the Labour Commissioner, U.P. and District Collector / District Magistrate, State Government of U.P., BIFR and other authorities by requesting them to issue an appropriate direction for making payments of dues to their workers. Thus, it may be seen that the issue of payment of wages of workers has earlier been agitated before various Labour Forum / the Competent Authority under the Payment of Wages, Gratuity Act, and other Labour Laws by respective workers in their individual capacity and / or through the labour union they belongs. It is also a matter of record that the worker's union earlier has made some correspondence with the State Government Authorities to enforce the award passed by the Assistant Labour Commissioner under the payment of wages Act and for enforcing its recovery. It is also matter of record that some of the worker's named Dilip Kumar and 189 others have claimed their wages before these Authority wherein the recovery certificate were issued in 2014 and further referred the District Collector / State Government Authority to be recovered as arrears of revenue recovery. These recovery proceedings are said to be still pending. Further, the controlling authority of under payment of Gratuity Act also pleased to issue some recovery certificate in favour of applicants workers e.g. named Mrs. Gayatri Devi, Mrs. Urmila Devi, Mr. Ram Kishan, Mrs. Manju etc. who have filed their application in their individual capacity these recovery certificate were further referred to the District Collector, Kanpur which are pending. It is also a matter of record that the workers union also preferred an application before the BIFR for settling its dues. The same was also pending and *sub judice* before it, when the proceedings of (BIFR) came to be abated by virtue of enactment of Insolvency and Bankruptcy Code, 2016, which came into effect from 01.12.2016. It is also a matter of record that the issue of illegal lockout in the corporate debtor company has already been agitated before the Hon'ble Allahabad High Court Lucknow Bench by way of Writ Petition (M/S) No. 7208 (M/S) of 2014 filed by the corporate debtor, which is now *sub judice* and pending.




In view of the above stated factual position, we feel that this forum being an adjudicating authority under the Insolvency and Bankruptcy Code is not expected to go into the detail of the controversy involved in respect of non payment of debts / wages or dues under the head of its under Gratuity / Bonus to workers as the amount claimed is being seriously disputed by the corporate debtor company and has already been or is being dealt with by various Labour Forum / Statutory / Government Authorities and in some of the matter their recovery as arrears of the revenue recovery is in process or pending. The competent authority concerned is expected to enforce the recovery in accordance with law towards payment of Gratuity, Payment of Wages Act as an arrears of revenue recovery against the corporate debtors in respect of labour award passed / orders issued by the Labour Court / Authority under the payment of wages Act, Bonus and Gratuity etc. on applications filed by the workers in their individual capacity or through their labour union.

We also considered the issue of the pendency of the reference before the BIFR under the provision of SICA rehabilitation, these proceedings were deemed to be stayed till the BIFR was considering the DRS after the Insolvency and Bankruptcy Code came into effect from 01.12.2016 these proceedings stands revived / restored consequentially, it is now again open to the party concern / worker to pursue its claim / dispute filed pending before the appropriate labour forum and before the competent court of law. Equally a liberty has further been granted to the operational creditors being a sick company, under Section 252 read with scheduled 8 of the I & B Code make a reference to the NCLT within 180 days from the commencement of the Code for proper adjudication of pending reference. It is an undisputed legal position that it is still open to the present corporate debtor being a sick company to make a reference pending before the BIFR for adjudication of issue with regard to the proposed DRS and other applications filed / claimed made by the various creditors / claimant, including the claim of the present petitioner. It is also to pertinent to note here that the Hon'ble Supreme Court in the matter of **Ghanshyam Sarda Vs. Shiv Shankar Trading Company and others, (2015) 1 SCC 298** had




earlier directed to the BIFR to decide the reference and determine the issue as to whether the corporate debtor company the J.K. Jute Mills has turned into positive assets value and to come out of sickness then its registration before the BIFR under the SICA Act to be deregistered. In case it is not found worthy by the BIFR about the assets value of the debtor company became positive then the BIFR was to consider for approval of the DRS. Such issue was still pending and under consideration before the BIFR when the present Code came into effect. This could not be determined either in favour of the corporate debtor company or on sanction / approval of the proposed DRS scheme. Since the BIFR has now becomes functionary in view of the Insolvency and Bankruptcy Code came into force, the Hon'ble Supreme Court in its recent judgment in the matter of **Bank of New York Mellon London Branch Vs. Zenith Infotech Limited, 2017 SCC Online SC 156** came to examine the relevant provision of the SICA sick industries (special provision) Act of 1985 and further SICA Repeal Act, 2003 by virtue of the present Code the Repeal has been given effect to on and from 01.12.2016. The section IV-B of the Repeal Act read with the provision made enable the company to make a reference before the BIFR (as per the provision of the Part IV-A of the Company Act 1956) the Hon'ble Supreme Court while interpreting above provisions and observe such the SICA Repeal Act has been amended by Section 252 of the Insolvency and Bankruptcy Code, 2016 and the provisions have been made therein akin to those in Repeal Section IV-(B) of the SICA except that reference by a company in respect of the abated proceedings is to be made to the NCLT within 180 days from the code coming into force. The Hon'ble Supreme Court went further to observe such that the reference is required to be dealt with in accordance with provisions of the I & B Code, thus, it disposed of the appeal by holding that it would still be open to respondent company to seek its remedies under the provisions of Section 252 of the Insolvency and Bankruptcy Code read with what is laid down in sections 13, 20 & 25 of the Code and the NCLT would be free and in fact required to decide on the said question in such manner as it may consider appropriate.





The Hon'ble Supreme Court in another matter has pleased to grant stay of proceedings against winding petition of a sick company considering such statutory period granted to the sick company to make reference **Reid & Taylor (India) Ltd. Vs. L & T Finance Ltd. and others** in **SLP No. 36395 of 2016**.

Therefore, we feel the statutory period of the corporate debtor company for filing reference before this Tribunal is not yet over. It is still open to it to make a reference of proceedings pending before the BIFR to the NCLT to be determined and decided in accordance with law; hence we are of the view that the demand raised by the operational creditor in its demand notice cannot be treated as conclusive proof of debts (as quantified amount of worker's wages & dues) which are finally adjudicated by a competent court of law. Because as the recovery proceedings in respect of payment of wages and payment of Gratuity are in process or pending with revenue recovery authorities. Hence, this forum is not expected to go into the detail of the controversy of amount of wages / worker's dues to be determined and to quantify the amount operational debts which is said to be defaulted and thereafter to pass an order on admission and to initiate IRP process against the corporate debtor. It is matter of record that a Civil Suit bearing No. 249 of 2017 has already been filed by the corporate debtor against the workers' Union including operational creditor / the present petitioner on 21.03.2017 wherein the order for issue of notice has been passed by learned Civil Judge to all the defendants including the present petitioner. As the demand notice was received by the corporate debtor in the evening of 21.03.2017 (at 4.16 PM) hence it can be presumed well that a competent Civil Court might have passed an order for issue of notice during the court's hours only and after filing of suit which was filed well before the delivery of the demand notice to it by the corporate debtor. It can be safely concluded the suit in question might have been filed in forenoon sessions, hence, the Civil Court could be able to hear the plaintiff counsel and passed an appropriate order thereon. In view of such factual position available on record the present application is found not fit for admission and not maintainable under the Insolvency and Bankruptcy Code.





It is also matter of record that Hon'ble Allahabad High Court Lucknow Bench in Writ Petition (M/S) No. 7208 of 2014 has pleased to stay the notification issued by the Labour Commissioner against the prohibition of the lockout but went to express its concern about the closure of the mills and expected such efforts to be made by the company for opening of the Mill and to payments of wages to its workers. Hence such issue is also *sub judice* before the Hon'ble Allahabad High Court Lucknow Bench, as the petitioner corporate debtor has agitated such plea in said writ petition that workers have not been cooperative with the management in order to revive the Mill and Mill is closed since 08.03.2014. There is no production at all in the Mill but only certain monetary expenses to be borne by the company. While contrary to this in the present application filed under the Insolvency and Bankruptcy Code workers / wages of workers for such disputed period of lockout in the company has also been claimed while the company was not manufacturing any product, therefore, we are of the view that payment of wages for such lockout period on closure of the Mill is in dispute and is *sub judice* / pending before the Hon'ble Allahabad High Court (at Lucknow Bench). Further, hence this forum under the present Code is not expected to go into enquiry or usurp a power of a competent Labour Court. The Statutory Authority under the labour laws are expected to determine the workers dues and to enforce its recovery. In view of this Court also the present petition fails and is not found fit for admission. Hence is liable to be rejected.

It is imperative to note here that the applicants / union operational creditor has already also been impleaded as respondent no. 20 in a pending writ petition before the Hon'ble Delhi High Court bearing No.1110 of 2017. In this writ petition another workers Union M/s. J.K. Jute Mill Mazdoor Ekta Union on behalf of the workers of the company has contended that the petitioner union does not qualify under Section 6 of the Insolvency and Bankruptcy Code, hence, therefore, it cannot invoke its jurisdiction in NCLT under Sections 7, 8 and 10 of the Code thus by virtue of abetment of BIFR proceeding the petitioner union is left with no other efficacious remedy but to file a writ petition challenging the illegal sell of the



assets by the company without obtaining the permission from the BIFR under the provision of SICA Act and also to challenge the constitutional validity of Section 4-B of the SICA Repeal Act read with Section 252 of the Insolvency and Bankruptcy Code being violative of Article 14 of the Constitution of India. Thus in this writ petition. The petitioner workder's Union which is a counter part Union of the present petitioner has taken an alternative plea contending that a Workers' Union is not eligible or having no *locus standi* to be come an operational creditor and to file petition before the NCLT under the above stated provisions of the Insolvency and Bankruptcy Code. As this legal issue is being deal with and is *sub judice* before the Hon'ble Delhi High Court and the present applicant / operational creditor through its President, General Secretary has already been impleaded therein as a respondent no. 20 among others workers' Union. Its response to the said writ petition is not made available to us nor it discloses about its stand on the question of eligibility / locus standi raised in above stated writ petition on interpretation of relevant clause of Insolvency and Bankruptcy Code for filing an application by the worker's union as operational creditor before the NCLT. The applicant operational creditor in the present petition did not make us clear as to whether they are agreeing to or opposing the above stated stands taken / contention made by the writ petitioner before the Hon'ble Delhi High Court and as to whether they have expressed their disagreement by filing their reply counter affidavit to the writ petition opposing such stand that no remedy is provided to the Workers' union for filing an application before the NCLT under the present Code, after the abetment of proceedings before the BIFR (in view of the Repeal of the SICA Act and commencement of I & B Code, 2016) that apart in the writ petitioner Union before the Hon'ble Delhi High Court such prayer has been made for appointment of the Court Receiver to preserve of the assets of J.K. Jute Mills Company Ltd. and for issue of other appropriate directions. This writ petitions union has claimed confidence of more than 153 workers as member of the petitioner union. The prayer made for appointment of Receiver is identical in nature as good as of appointment of IRP under the present Code by this Tribunal. Therefore, we feel such legal question and issue involved therein are under consideration and is seized of by



the Hon'ble Delhi High Court. Hence by following principal laid down in Section 11 of the CPC this Tribunal is not expected to allow and run a parallel proceeding for deciding an identical issue which has arisen out of the same cause of action among the workers and the corporate debtor company. In order to avoid multiplicity of proceedings and on this count also the present petition before this Tribunal fails and is not found fit for admission.

It is also matter of record that the present applicant union filed this IB petition on behalf of all the workers of the Mill, while some of the worker's named as Mr. Mata Prasad and others appeared in person and opposed the present petition stating that they did not authorise in their individual capacity to the applicant union to file the present application. They also contended that they belong to a different worker's union but their name find places in worker's claim list which is not proper hence they have prayed for rejection of the petition on this ground also.

Notwithstanding, the above it is undisputed legal position that it is still open to the corporate debtor company to make a reference before the NCLT under the provision of Section 252 read with Section 8 Scheduled of the Insolvency and Bankruptcy Code for adjudicating the claims as well for sanctioned and approval of the DRS is pending before the BIFR in compliance of the directions issued by the Hon'ble Supreme Court in the matter of **Ghanshyam Sarda Vs. Shiv Shankar Trading Company and others** and it also undisputed facts the wages of the workers for the actual work done by the workers and payment of amount of Gratuity etc. are not fully paid to the corporate debtor company nor the corporate debtor has claimed fully discharge from its liability towards payment of amount of the wages that may not be crystallised but already recorded in the DRS scheme as well as reflected in records of the company towards heads of payment of workers dues. Hence, it is settled that it cannot be a case of total denial of liability for making payment of workers wages along with others creditors by the corporate debtor.

As the scheme of DRS of the company was under consideration before the BIFR and the Statutory period for



making a reference is not yet over, the corporate debtor is being a sick company may claim statutory protection for stay winding up proceedings or proceeding before competent Civil Court / Statutory Labour Forum, hence it is equally and legally expected on the part of the corporate debtor to preserve its assets and not to create any third party interest there on till such statutory period for making a reference is made by it to the NCLT is not over. Notwithstanding above our such observation is subject to order or direction passed if any by the Hon'ble Allahabad High Court at Lucknow Bench and Hon'ble Delhi High Court in the pending writ petitions and further subject to out come of pending the case / suit / application already filed or to be filed by the workers and / or by the labour union before a competent court of law i.e. Civil Court, Labour Court or suit cases filed against them before a competent court of law. Our this observation shall not be meant to come in the way for implementation of an order, direction issued if any by the Hon'ble High Courts and / or by a Competent Court of law.

With above stated observation the present application is not found fit to be admitted hence hereby is rejected. The main reasons for rejection of application may be summaries as under:

I. The Operational Creditor in its application (in prescribed format Part V Column III) has made such statement that there are none case pending before the Tribunal / Court or Arbitrator on the adjudication of the default at the time of filing of the present Application on 28 March, 2017. However, a perusal of the objections filed by Corporate Debtor in reply to the demand notice of the Operational Creditor, It is seriously disputed informing such the Corporate Debtor has already filed a civil suit 249/2017 before the court of the Civil Judge Kanpur, UP on 21<sup>st</sup> March, 2017 wherein the learned Civil Court has pleased to issue notice to opposite parties including the Operational Creditor, in support of its contention the Corporate Debtor has enclosed a copy of the tracking report of delivery of speed post (the demand notice issued) dispatched by the Optional Creditor. The same was delivered to the Corporate Debtor Company through its director Mr. Shashi Kant Jha at 4.17 PM on 21<sup>st</sup> March, 2017.




II. There is no rebuttable evidence available on record to show that there is no dispute about the debt pending in a Civil Court before receipt of notice by the Corporate Debtor Company. In normal prudence it can be expected well that the suit in question has been filed on 21.03.2017 during court hours and after the presentation of a suit the Civil Court could be able to issue notices to dependants including the operational creditor, hence by no stretch of imagination it can be concluded that the suit has been filed by Corporate Debtor after receipt of demand notice.

III. As per matter available on record of record the demand notice was delivered though Speed Post on 21.03.2017 at 4.17 PM in the office of the director of the Company situated at R. K Nagar, Kanpur while the suit in question was filed before the Civil Court situated in different locality not necessarily a nearby locality.

IV. It is also matter of record the worker's union / creditor issued a demand notice to the Corporate Debtor on 14<sup>th</sup> March, 2017 and prepared the present Application for the purpose of filing on 25<sup>th</sup> March, 2017.

V. As the notice is received by Corporate Debtor only on 21<sup>st</sup> March it cannot be presumed concluded that 10 clear days were given enabling the Corporate Debtor for either making repayment of debts or to inform about the dispute in existence. Hence, we find that present application on this ground alone is not complete and found fit for admission.

VI. It is also a matter of record that the present Operational Creditor has earlier been impleaded as one of the Respondent's before Hon'ble Delhi High Court in a pending Writ Petition (C) No. 1110 of 2017 filed by another workers union named as J.K. Jute Mills Mazdoor Ekta Union through its President / General Secretary having office at Kalpi Road, Zarib Chowk, Kanpur wherein the President / GS J.K. Jute Mills of Mazdoor Morcha darshan Purwa Baba Road, Kanpur has been impleaded as a Respondent No. 20 among other respondents e.g. Union Of India, General Manager, IDBI, BIFR and J.K. Jute Mills Company Ltd. through its director including management official in the said writ petition. The relief is sought for therein





to challenge the Constitutional Validity of Section 252 of Insolvency & Bankruptcy Code, 2016 read with Section 4(b) of SICA special Repeal Act contending such the I & B Code does not provide for efficacious remedy to workmen for implementing the direction passed by Supreme Court by 13.11. 2015 and 18.11. 2015 to approach the NCLT once the BIFR reference stands abated.

VII. It is also pleaded in such Writ Petition that due to abetment of Proceedings before BIFR, it rendered the Petitioner remedy less and the workers union cannot initiate the proceeding before the NCLT for redressal of its grievance in the light of the SICA Repeal act 203 and the present I & B Code. Therefore, it is only open for Companies whose appeal / inquiry since abated to initiate a fresh proceeding before NCLT in accordance with Section 252 read with 8<sup>th</sup> Schedule of the code within 180 days from commencement of code. As per the petitioner that section does not make it compulsory to make a reference before NCLT and does not provide for protection of the assets akin Section 22 (a) of SICA till such time Company starts proceeding before NCLT.

Accordingly, the petitioner union on behalf of its workers in Corporate Debtor Company made such prayer for grant of ex-parte stay on the assets of the Company and to pass an order for appointment of receiver.

VIII. In view of the above, we feel that almost similar nature of reliefs has been sought in the petition before us as claimed before the Hon'ble Delhi High Court in pending Writ Petition by seeking stay on the assets of and for appointment of court Receiver in the corporate debtor company.

IX. The above stated Writ Petition was filed before Hon'ble Delhi High Court in January, 2017. However, the present applicant being respondent No. 20 did not disclose such facts about the pendency of the writ petition nor about its stand taken in support of or opposing to the writ petition or about its reply filed if any the said writ petition.

X. Since the eligibility and *locus standi* of a workers union as an operational creditor / financial creditor for filing petition




before the Adjudicating Authority under I & B Code is still under consideration and *sub-judice* before the Hon'ble Delhi High Court wherein the present applicant union / Operational Creditor is a party as being respondents no. 20 and similar nature of relief for appointment of receiver is being sought for. Hence, we are of the view that the present petition under the I & B Code ought not to be entertained with a view to avoid multiplicity of proceedings.

XII. As per material available on record and pursuant to the direction issued by the Hon'ble Supreme Court in the matter ***Ghanshyam Sarda Vs. Shiv Shankar Trading Company and others, (2015) 1 SCC 298***, the Hon'ble Supreme Court pleased to direct to the BIFR (in Paras 37 & 38 of the Judgment) to complete such exercise within 2 months from the date of receipt of the order to determine the issue whether the net worth of the corporate debtor turned positive or not and in case the BIFR is satisfied that company has turned positive then it shall deregister the reference of the company. Upon such deregistration the company will come out of the supervisory jurisdiction of the BIFR. In case it is not satisfied then it shall consider the scheme for revival of the sick company.

However, as per record such enquiry could not be completed by the BIFR till the present code came into effect and thereafter all the proceedings pending before it stood abated.

XII. Notwithstanding, the above, as per Section 252 read with 8<sup>th</sup> Schedule of the I & B Code a liberty has been granted to a Corporate Debtor to make a reference within 180 days from the date of I & B Code came into effect to this tribunal. For consideration of DRS scheme / pending reference which could not be finalized. Therefore, in the light of the above mentioned decision of the Hon'ble Apex Court and read with the provision under Section 252 and 8<sup>th</sup> schedule of the Code, the corporate debtor is legally expected not to create third party interest over the assets of the Company till such statutory period for filing reference is over. Thereafter it would be subject to outcome of / order passed by a competent court of Law / Statuary Labour Authority, if union or worker's approach to it by filing suit / claim for recovery of their labour dues or / and suit / proceedings filed against them before a competent court of law.





However, our above stated observation is subject to final decision / interim direction / order passed by the Hon'ble Allahabad High Court in pending writ petition No. 7208 (M/S) of 2014 and in another Writ Petition No. 1110 of 2017 pending before Hon'ble Delhi High Court or by a Competent Court of Law as the case may be. Our above stated observation shall not meant to come in the way to implement an order / direction issued by a Competent Court / Statutory Authority, Labour Forum.

Hence the present petition is not maintainable and not found fit for admission under Section 9 of the I & B Code. Hence, the application is hereby rejected. However, no order as to costs.

  
(H.P. CHATURVEDI, MEMBER (Judicial)) 28/04/2017

Order Date : 28.04.2017  
Sharad Srivastava