

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI, COURT – II**

**Item No. 1**  
**(IB)-418(ND)18**  
**IA/3150/2020, IA/675/2021**

**IN THE MATTER OF:**

**M/s. Alloys & Metals (INDIA) ... Applicant/Petitioner**

**Versus**

**M/s. Hindustan Paper Corporation ... Respondent**  
**Ltd.**

**Under Section: 9 of IBC, 2016**

**Order delivered on 26.04.2021**

**CORAM:**

**SHRI. ABNI RANJAN KUMAR SINHA**  
**HON'BLE MEMBER (J)**

**SHRI L.N. GUPTA,**  
**HON'BLE MEMBER (T)**

**PRESENT:**

**Mr. Pranay Agrawala, Mr. Dhruvad Das and Mr. Sarthak Gupta, Advocates**  
**in IA No. 675/2021**

**Mr. Anuj Jhawar, Mr. Manmeet Singh, Advocates for Applicant**

**Mr. Avijit Roy, Mr. Rana S Biswas and Mr. Sunil Sarma, Advocates for**  
**Assam Power Dist Co Ltd**

**ORDER**

**IA/3150/2020, IA/675/2021** : Orders in both the IAs are pronounced in the  
Open Court today.

**Sd/-**  
**(L. N. GUPTA)**  
**MEMBER (T)**

**Sd/-**  
**(ABNI RANJAN KUMAR SINHA)**  
**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH-II**

IA No. 3150 of 2020  
In  
Company Petition (IB)No. 418 of 2018

**IN THE MATTER OF:**

Section 60(5) of the Insolvency and Bankruptcy Code, 2016

AND

**IN THE MATTER OF:**

**Kuldeep Verma**  
**(Liquidator of Corporate Debtor)**  
**Having Office at**  
**46, BB Ganguly Street, 5<sup>th</sup> Floor, Unit No. 501,**  
**Kolkata-700012.**

...Applicant

**VERSUS**

**Union of India**  
**(Through Secretary, Department of Heavy Industries)**  
**Representing Shareholders & Governments**  
**Ministry of Heavy Industries and Public Enterprises**  
**Member of Stakeholders' Consultation Committee**  
**Through its Secretary**  
**Udyog Bhawan, New Delhi-110011**

...Respondent No. 1

**Canara Bank, Financial Creditor**  
**Member of Stakeholders' Consultation Committee**  
**Prime Corporate Branch**  
**21 Camac Street, Ground Floor**  
**Kolkata-700016**

... Respondent No.2

**State Bank of India, SAMB-II< Kolkata, Financial Creditor,**  
**Member of Stakeholders' Consultation Committee**  
**1<sup>st</sup> Floor, Jeevandeep Building**  
**1, Middleton Street, Kolkata-700071**

.... Respondent no. 3

IA No. 3150 of 2020  
In  
Company Petition (IB)No. 418 of 2018

**National Bank for Agriculture and Rural Development  
(NABARD), Financial Creditor  
Member of Stakeholders' Consultation Committee  
Abhilasha 1, 2<sup>nd</sup> Floor, 6 Royd Street, Near Bata More  
Taltala, Kolkata-700013**

.... Respondent no. 4

**Hemant Kumar Kakati  
Representative of Workers & Employees  
Members of Stakeholders' Consultation Committee  
Hindustan Paper Corporation Limited, Nagaon Paper Mill  
PO Kagajnagar-782413, District-Morigaon, Assam**

.... Respondent no. 5

**Mahalaxmi Continental Limited  
CIN: U51909AS2002PLC000759  
Gali No. 8, National Highway-37  
Beltola, Guwahati, Assam-783101**

.... Respondent no. 6

**Mr. Mahipal Kothari  
Representative of Members of Stakeholders' Consultation  
Committee  
C/o. Bharat Bamboo & Timber Suppliers  
Main Road, Bongaigaon-783380**

.... Respondent no. 7

**Order Delivered On: 26.04.2021**

**CORAM :**

**SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)**

**SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

**Mr. Vivek Sibal (Sr. Advocate) with Mr. Rahul Sharma Advocate for the liquidator and Mr. Kuldeep Verma, Liquidator for HPC Ltd. Mr. Siddharth Seem for Applicants, Mr. Ritin Rai, Senior Advocate, Mr. C.K. Sasi, Advocate, Mr. Ramola Nayanpally, Advocate, Mr. Aabhas Kshetarpal, Advocate, Ms. Gunjan Mathur, Advocate, Ms. Aditi Rao, Advocate (for State of Kerala), Dr. Sarbjit Sharma, Mr. Pranay Agrawala and Mr. Sarthank Gupta, Advocates for the Applicant, Mr. Anand Varma, AOR for Applicant.**

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In  
Company Petition (IB)No. 418 of 2018

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**ORDER**

**AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER, JUDICIAL**

**IA/3150/2020:**

By filing this application, the liquidator has prayed for the following reliefs:

***(i). Pass appropriate orders/directions permitting the liquidator to proceed with the liquidation of the Corporate Debtor-HPCL in accordance with the law.***

***(ii). Pass such other order(s) as this Hon'ble Authority deems fit and proper in the facts of the case.***

2. We have heard the Ld. Counsel for the Liquidator and perused the averments made in the application.

3. In course of hearing, Ld. Counsel for the Liquidator informed that he had received a Revival Scheme from one M/s Mahalaxmi Continental Ltd, which is at page 245 of the application.

4. He submitted that he has also received the reply from Mr. Hemant Kakati, Representative of Workers and Employees, Members of Stakeholders' Consultation Committee, Hindustan Paper Corporation Limited, which is at page 246 of the application.

5. He further submitted that they have refused to accept the Revival Scheme on the ground mentioned in the mail.

6. He further submitted that two writ petitions are pending, one before the Hon'ble Delhi High Court and another one before the Hon'ble Guwahati High Court.

**IA No. 3150 of 2020  
In  
Company Petition (IB)No. 418 of 2018**



7. He further submitted that the order dated 02.05.2019 directing liquidation of the Corporate Debtor was challenged in Appeal by Hindustan Paper Corporation Association & Ors. and Cachar Paper Project Workers' Union (INTUC).

8. He further submitted that the Hon'ble NCLAT vide order dated 29.05.2019 has upheld the order dated 02.05.2019 passed by this Adjudicating Authority and directed the Liquidator to take steps to ensure that the Company remains as 'going concern' It also directed that the Liquidator is required to take steps under Section 230 of Companies Act, 2013. Hon'ble NCLAT further directed that if the members or the Corporate Debtor or the creditors or a class of creditor like Financial Creditor or Operational Creditor approach the Company through the liquidator for compromise or arrangement by making a proposal of payment to all the creditor(s), the liquidator on behalf of the Company will move an application under Section 230 of the Companies Act, 2013 before this Adjudicating Authority. Thereafter, steps were to be taken for outright sale of the 'Corporate Debtor' as going concern. Hon'ble NCLAT had also directed the liquidator to approach the Union of India through the concerned Department for realization of funds to ensure that the Corporate Debtor remains as 'going concern'.

9. He further submitted that pursuant to order of the Hon'ble NCLAT dated 29.05.2019 (as rectified on 23.07.2019), the liquidator made efforts to bring about a "scheme of compromise or arrangement under Section 230 of the Companies Act, 2013".



10. He further submitted that the applicant vide letter dated 04.07.2019 also requested the Secretary, Department of Heavy Industries (hereinafter referred to as DHI) and Department of Public Enterprises to consider proposing a scheme of compromise or arrangement in terms of Section 230 of the Companies Act, 2013 so that the liquidator can make appropriate application to this Adjudicating Authority.

11. He further submitted that in response, a letter was received from an Operational Creditor namely, M/s Mahalaxmi Continetal Ltd. (MCL) vide letter dated 12.08.2019 expressing its interest and requesting for time for submitting the revival scheme under Section 230 of the Companies Act for revival of Corporate Debtor.

12. Further, on the request of M/s. Mahalaxmi Continental Limited, (hereinafter referred as the respondent no. 6 or MCL), a meeting of stakeholders was called on 13.09.2019. In the meeting, MCL outlined key broad commercial proposal as follows:

*“Repayment for Secured Financial Creditor of Rs. 101 Crores and Rs. 420.49 Crores for the Operational Creditor and Rs. 1.07 Crores to other Creditors. It proposed payment of dues of workmen and employees by the Government of India. The Secured Financial Creditors requested respondent no. 6 to provide a respectable and substantially higher offer than Rs. 101 Crore keeping in mind the value of assets of Corporate Debtor. A Copy of the minutes of the said meeting held on 13.09.2019 is annexed herewith and marked as Annexure A-1. The representatives of Respondent no. 6 proposed that dues of workers and*



*employees need to be paid be erstwhile promoters of HPC Ltd which is Govt. of India.”*

13. He further submitted that the Respondent no. 6 vide letter dated 22.10.2019 communicated its continued interest in submitting the proposal for revival under Section 230 of the Companies Act, 2013 and sought more time to submit a scheme.

14. He further submitted that the applicant has received a non-binding proposal dated 06.11.2019 from Dr. BR Shetty/BRS Ventures and accordingly, a meeting of stakeholders was called on 11.11.2019. After deliberation, it was decided that the proposal was for takeover of the assets of the Corporate Debtor and not a proposal for revival under Section 230 of the Companies Act, 2013. Further, the proposed repayment amount was also not acceptable to the Creditors. In the said meeting, Respondent no. 6 assured that it is committed for revival of HPCL and is in the process of submitting a binding offer which would assure future employment, payment of full dues to workmen and employees and other benefits. That meeting concluded and it was duly communicated to the Respondent no. 6 that the scheme/proposal should provide for the following:

- Entire dues of workers and employees to be paid.
- Operational Creditor be paid minimum 65% of their principal outstanding.
- Banks and financial institutions to be paid their entire dues.

At the meeting, it was communicated to the respondent no. 6 that the entire dues of the workers and employees of approx. Rs. 550 crores have to be



paid and apart from the dues, the workers and employees also expect either future employment or VRS compensation.

Respondent no. 6 submitted in the said meeting that financial support of Government of India would be required to clear the liabilities of HPC Ltd. A Copy of the minutes of the meeting held on 11.11.2019 without annexure is annexed and marked as Annexure A-2.

15. He further submitted that no Scheme in terms of section 230 to 232 of the Companies Act, 2013 was received till 25.11.2019.

16. He further submitted that he has also filed an additional affidavit to bring the letter dated 29.10.2020 received from the Government of Assam seeking additional time of two months to act on the proposal.

17. He further submitted that under such circumstances, the Liquidator may be permitted to continue with the liquidation proceedings.

18. On the other hand, the **respondent no. 5 has filed the reply and** submitted that the Corporate Debtor is a Government of India Enterprise/Government Company under the control and supervision of the respondent no. 1. Further, the Corporate Debtor is also a State within the meaning of Article 12 of the Constitution of India.

19. Furthermore, as the functioning of the Corporate Debtor is under the administrative control of the Respondent no. 1, the said Ministry is responsible for making all administrative and policy decisions for the





workmen and employees of the Corporate Debtor, thus making them public servants.

20. Further, that it is pertinent to point out, in addition to being wholly owned by the Central Government, the Corporate Debtor is an instrumentality/agency of the Central Government over it, thus, reiterating that the Corporate Debtor is a state for the purpose of Article 12 of the Constitution of India.

21. Further, it is a well settled law that a Government Company that functions as an extended arm of the Central Government and performs government functions cannot be taken over by a Resolution Professional/Liquidator under the Code, and or by any other corporate body. Nor can such Enterprise ultimately be wound-up under the Insolvency Code.

22. Further, it is evident from the company profile of the Corporate Debtor that the Corporate Debtor is an extended arm of the Union Government to intensify the the growth of paper industry. That the Corporate Debtor was designed to be a catalyst for industrial growth in North East Region and was engaged in the task of developing indigenous expertise for setting up large newsprint and paper mills.

Further, Government Companies are not covered under the definition of Corporate Debtor under the Code.

23. Further, it is submitted that under Section 3(8) of the Code, a 'corporate debtor' has been defined as a 'corporate person' who owes a debt to any person. That further, Section 3(7) of the code states that a 'corporate



person' means a company as defined in clause 20 of Section 2 of the Companies Act, 2013 (hereinafter referred to as the 'Act') a limited liability partnership, as defined in clause (n) of sub-Section (1) of Section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider. Thus, what becomes clear from the foregoing is that a 'Government Company' as defined under Section 2(45) of the Companies Act, 2013 has been excluded from the definition of a Corporate Person and by extension, the definition of a Corporate Debtor.

24. Further, it is a settled position of law that Government Companies/public sector undertakings, such as the Corporate Debtor herein, being State would be Constitutionally liable to respect life and liberty of all persons in terms of Article 21 of the Constitution of India. Further, in the Company Appeal (AT) (Insolvency) No. 585/2019, the Hon'ble NCLAT vide its orders dated 29.05.2019 and 23.07.2019 directed Mr. Kuldeep Verma, Liquidator to keep the Corporate Debtor as a 'going concern'. A Copy of the order dated 29.05.2020 are marked and annexed as Annexure-A-7.

25. Further, it is not only the salaries and wages that are due and pending but also the statutory dues viz, provident fund, gratuity, pension and income tax are pending. That currently, the Hon'ble Delhi High Court in the proceedings in WP(C) No. 1062/2020 and CM Appl. 3505/2020 is seized of the issue of disbursement of the Employee Provident Fund dues. In the said matter, the Central Provident Fund Commissioner (CPFC) was



impleaded as a necessary party to obtain its response on disbursal of EPF dues worth Rs. 210 Crore lying in the Employees Provident Fund Trust.

26. Ld. Counsel for the Liquidator further submitted that under these circumstances, a necessary direction may be given to the liquidator to proceed with the liquidation.

27. In the light of the submissions, now we consider the prayer of the liquidator and we notice that the Liquidator as well as the Respondent no. 5 in its reply have enclosed the order passed by the Hon'ble NCLAT in the Company Appeal (AT) (Insolvency) no. 585/2019 dated 29.05.2019 the para 5 of which reads that:

**“Taking into consideration the aforesaid facts and circumstances, we are not inclined to interfere with the impugned order dated 2nd May, 2019, but direct the Liquidator to follow the decision of this Appellate tribunal in Company Appeal (AT) Insolvency) No.224 of 2018”.**

28. Since, a direction as mentioned above has already been given by the Hon'ble NCLAT, while disposing of the Appeal, therefore, in our considered view, there is no law which permits this Adjudicating Authority to reconsider/review the order already passed by the Hon'ble NCLAT, the Liquidator is well advised to proceed as per the directions given by Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 585/2019.

29. So far as the points raised by the Respondent no 5 is concerned, these have already been decided by the Hon'ble NCLAT. Further, as informed by the parties, the matter of applicability of the IBC, 2016 to the Corporate



debtor is pending before the Hon'ble High Court of Delhi as well as Hon'ble High Court of Guwahati.

30. Hence, in our considered opinion, there is no need to give any further direction to the Liquidator. The Liquidator is well advised to proceed as per the direction already given by the Hon'ble NCLAT. Accordingly, the prayer of the Applicant (Liquidator) is hereby rejected.

31. Hence **the present Introlocatory Application stands Dismissed.**

Sd/-

**(L. N. Gupta)**  
**Member (T)**

Sd/-

**(Abni Ranjan Kumar Sinha)**  
**Member (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH-II**

IA No. 675 of 2021  
IN  
Company Petition (IB) No. 418 of 2018

**IN THE MATTER OF:**

Section 60(5) of the Insolvency and Bankruptcy Code, 2016

AND

**IN THE MATTER OF:**

Hemant Kumar Kakati  
Representative of Workers and Employees,  
Members of Stakeholders' Consultation Committee  
Hindustan Paper Corporation Limited  
Nagaon Paper Mill, PO Kagajnagar-782413  
District Morigoan, Assam

...Applicant

VERSUS

Kuldeep Verma  
(Liquidator of Hindustan Paper Corporation Limited and Ors).

...Respondent

**Order Delivered On: 26.04.2021**

**CORAM:**

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)  
SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

**PRESENT:**

Mr. Vivek Sibal (Sr. Advocate) with Mr. Rahul Sharma Advocate for the liquidator and Mr. Kuldeep Verma, Liquidator for HPC Ltd. Mr. Siddharth Seem for Applicants, Mr. Ritin Rai, Senior Advocate, Mr. C.K. Sasi, Advocate, Mr. Ramola Nayanpally, Advocate, Mr. Aabhas Kshetarpal, Advocate, Ms. Gunjan Mathur, Advocate, Ms. Aditi Rao, Advocate (for State of Kerala), Dr. Sarbjit Sharma, Mr. Pranay Agrawala and Mr. Sarthank Gupta, Advocates for the Applicant, Mr. Anand Varma, AOR for Applicant.

**ORDER**

**AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

**IA/675/2021:**

By filing this application, the applicant i.e., Hemant Kumar Kakati, Representative of Workers and Employees, Members of Stakeholders' Consultation Committee, Hindustan Paper Corporation Limited has prayed for the following reliefs:

- a. "Quash the present liquidation proceedings being CP(IB) No. 418/ND/2018 as being without inherent jurisdiction.***
- b. In the alternative, stay the present liquidation proceedings being CP(IB) Np. 418/ND/2018 till such time that the Writ Petition (C) No. 575 of 2020 titled Hindustan Paper Corporation Ltd. Officers and Supervisors Association Versus the Union of India and Ors is finally disposed of.***
- c. Direct the Union of India, through the Department of Heavy Industries to deposit the arrears in salaries of the workmen and employees in discharge it its liability under Art. 21 of the Constitution and***
- d. Pass any other order it may deem fit in the interest of justice and equity."***

2. Heard the Ld. Counsel for the applicant and perused the averments made in the application.



3. Ld. Counsel for the applicant (the Representative of Workers and Employees, Members of Stakeholders' Consultation Committee, Hindustan Paper Corporation Limited) has submitted that the matter regarding the applicability of the provision of the I &B Code to government companies is pending before the Hon'ble Bombay High Court and the Hon'ble Guwahati High Court.

4. He further submitted that the Corporate Debtor is a Government of India Enterprise/Government Company under the administrative control of the Respondent no. 2/Union of India through Secretary, Department of Heavy Industries.

5. He further submitted that it is a settled principle of law that Government Company cannot be taken over by a Resolution Professional/Liquidator under the IBC Code.

6. He further submitted that the provision of Article 21 of Constitution of India is applicable and state cannot escape from its liability when a human rights problem of such magnitude involving the starvation deaths/suicide by the employees has taken place by reason of non-payment of salary to the employees of Public Sector Undertaking for such a long time.

7. He further submitted that if the process of Code is allowed to flow its natural course, the Fundamental Rights of the workmen and the employees of the Corporate Debtor will be grossly violated.



8. He further submitted that the matter is under challenge by the applicant before Hon'ble Guwahati High Court and the same is still pending.

9. He further submitted that the violation of the IBC is challenged before the Hon'ble Guwahati High Court and so, the liquidation proceedings may be stayed.

10. Now, in the light of the submissions, we consider the prayer of the Applicant.

11. So far as the first prayer of the applicant to Quash the present liquidation proceedings under CP(IB) No. 418/ND/2018, as being without inherent jurisdiction is concerned, in the course of hearing, the applicant could not produce any law to show that this Adjudicating Authority is empowered to review its own order and quash the liquidation proceedings. That is the reason in the course of hearing, Ld. Counsel for the applicant submitted that since the violation of the Code to declare the moratorium against the Government Company is under challenge before the Hon'ble Guwahati High Court in Writ Petition (C) No. 575/2020, the petitioner is not pressing this prayer. Hence, we are not inclined to consider this prayer.

12. At this juncture, we also notice that the applicant has enclosed various orders passed by Hon'ble Guwahati High Court in WP (C) No. 575/2020. We also notice that this prayer was also raised by the applicant before the Hon'ble Guwahati High Court and at page 31, the applicant has enclosed the order dated 24.06.2020 passed by Hon'ble





Guwahati High Court, in which it is mentioned that **“respondent Nos.4 and 5 states that the issue raised before this Court apparently has already been raised before the Hon’ble High Court of Delhi at New Delhi by virtue of WP(C) 1062/2020 titled Cachar Paper Project Workers Union (INTUC) vs. Union of India and Anr.”**. Therefore, we are of the considered view that the prayer which the petitioner has made before us has already been raised by the other union and the matter is under consideration not only before the Hon’ble Delhi High Court but also before the Hon’ble Guwahati High Court and that is another reason, the petitioner has not pressed the first prayer.

13. Now, we consider the second prayer of the applicant to stay the liquidation proceedings. It is an admitted fact that the liquidation order was passed by this Adjudicating Authority on 14.05.2019 and liquidator was appointed. Thereafter, in the year 2020, the applicant has filed a writ application WP(C) No. 575/2020 before the Hon’ble Guwahati High Court and raised all these issues. But the applicant however, failed to produce any document to show that the applicant had prayed for stay of the liquidation proceedings in that writ petition.

14. So far as the stay of the liquidation proceedings is concerned, we are of the view that under the IBC 2016, there is no provision to stay the liquidation proceedings once the order of liquidation is passed by the Adjudicating Authority. If the applicant is aggrieved by the order of liquidation passed by this Adjudicating Authority, he has a remedy to file an appeal before the Hon’ble NCLAT.



15. We further notice that the liquidation order dated 02.05.2019 passed by this Adjudicating Authority was challenged by the Hindustan Paper Corporation Ltd. Officers and Supervisors Association and Ors. in the Company Appeal (AT) (Insolvency) No. 585/2019 before the Hon'ble NCLAT and the said Appeal was disposed of and the order of liquidation was confirmed.

16. In our considered view, since the liquidation proceedings have already started, the matter regarding the power of the Adjudicating Authority to pass a liquidation order against -a Government Company is sub judice before the Hon'ble High Courts of Guwahati as well as Delhi and the order of Liquidation has already been confirmed by the Hon'ble NCLAT in the Company Appeal (AT) (Insolvency) No. 585/2019, we are not inclined to pass any stay order in favour of the applicant. Accordingly, the prayer to stay the liquidation proceedings is hereby rejected.

17. Hence **the present Introlocatory Application stands Dismissed.**

Sd/-

**(L. N. Gupta)**  
**Member (T)**

Sd/-

**(Abni Ranjan Kumar Sinha)**  
**Member (J)**