IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT V, NEW DELHI

I.A No. 1311/2018

IN

Company Petition No. (IB) – 227/(PB)/2017

Under Section 74 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Section 425 of the Companies Act, 2013, 2016.

IN THE MATTER OF:

THE INDURE PRIVATE LIMITED.

.... OPERATIONAL CREDITOR/APPLICANT

VERSUS

B.K. COAL FIELDS PVT. LTD.

.... CORPORATE DEBTOR/ RESPONDENT

Order Pronounced on: 04.06.2026

CORAM:

SHRI MAHENDRA KHANDELWAL
HON'BLE MEMBER (JUDICIAL)

MS. ANU JAGMOHAN SINGH
HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Sunil Fernandes, Sr. Adv., Mr. Prashant Mehta, Mr. Abhishek Anand, Mr. Varun Gupta, Ms. Simran Wason, Mr. Raghav Marwah, Ms. Rajshree Chaudhary, Advs.

For the RP : Mr. Krishnendu Datta, Sr. Adv., Mr. Nakul Mohta, Adv., Ms. Riya Dhingra, Adv, Mr. Amulya Upadhyay, Advs.

For the CoC : Mr. Siddharth Yadav, Sr. Adv., Mr. Apoorv Agarwal, Ms. Vaishnavi, Advs

ORDER

1. The present Application has been filed by M/s Indure Pvt. Ltd., (Operational Creditor on whose Petition CIRP has been initiated) under Section 74 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Section 425 of the Companies Act, 2013, against Corporate Debtor seeking following prayers:

> *It is therefore, prayed in the interest of justice that this Hon'ble Tribunal may be pleased to allow the application of the Operational Creditor thereby initiating appropriate legal action against the Corporate Debtor and its officers under Section 74 of the IBC, 2016 or any other provision for contravening the provisions of Section 14 of the IBC, 2016 in accordance with law and concerned officers of the Corporate Debtor be subjected to penal consequences as provided in the IBC for their actions;*
>
> *Any other or further relief which this Hon'ble Tribunal may deem just, fit and proper be also granted in favour of the Operational Creditor.*

Contentions of the Applicant as mentioned in the Application-

2. The CIRP against the Corporate Debtor initiated vide Order dated 07.06.2018 and moratorium in terms of Section 14 of the IBC commenced from the date of said Order.

3. During the moratorium, Mr. Rajan Sinha and Mr. Devendra Singh Verma have been appointed as the new directors of the Corporate Debtor on 05.11.2018 by the Corporate Debtor. Copy of DIR 12 is annexed with the Application.

4. The action of Corporate Debtor for appointment of new Director during moratorium is contravention of the moratorium as mentioned in Section 14 of the IBC. Therefore, the Corporate Debtors and its officers have contravened to the provisions of the IBC, 2016 are liable to be prosecuted under the

provisions of Section 74 of the IBC or in alternative are liable to be prosecuted for contempt proceedings.

Contentions of the Applicant during the course of hearing and in Written Submissions –

5. In terms of Section 28 (1)(j) of IBC, any change in management of a Corporate Debtor is required to be approved by the COC with 66% majority. Mr. Vivek Kumar Gadkari resigned on 20.10.2018 and Mr. Rajesh Kumar Rana resigned on 06.11.2018 from Directorship in the CD. Mr. Vivek Kumar Gadkari and Mr. Rajesh Kumar Rana tendered their resignation after the initiation of CIRP on 07.06.2018.

6. Mr. Rajan Sinha and Mr. Devendra Singh Verma were appointed as the Director of the CD on 05.11.2018 after initiation of CIRP. These actions were approved and ratified by the COC in the 5th COC Meeting dated 03.11.2018.

7. The COC Members, namely A.P. Coal Washeries (2.13% voting share) and South West Mining (97.87% voting share) are 'Related Party' to the CD. The Applicant has already filed I.A. 1004/2018 challenging the inclusion of these entities as CoC members on the ground of 'related party'. These new Directors have been inducted by the CoC after filing of I.A. 1004/2018. The COC ought not to have and could not have approved the change in management of the COC when I.A. 1004/2018 was already sub-judice before this Adjudicating Authority.

8. This change in the management of CD was brought about at the behest of the COC to avoid the rigors of Section 5 (24) of IBC and to create an artificial opacity. This act of the COC in approving and ratifying the change in management further establishes the Related Party status of the COC Members, A.P. Coal Washeries and South West Mining.

9. Appropriate action may be taken against the CD and its officers for violation of Section 14 of IBC in terms of Section 74 of IBC. This Tribunal has the jurisdiction to adjudicate upon an application filed under Section 74 to the extent that this Tribunal may form an opinion on the violation of the

Section 14 which can be forwarded to Insolvency Bankruptcy Board of India ("IBBI") and Central Government. While the findings of this Tribunal will not be binding on the IBBI and Central Government, it may aid the IBBI and Central Government in deciding whether it is a fit case to initiate proceedings in terms of Section 236 of IBC. Reliance on the judgment of NCLAT in '**Almas Global Opportunity Fund SPC v CA Kannan Trivengadam**' CA (AT) (Ins.) 683/2022 dated 21.10.2022 has been made.

Contentions of the Resolution Professional in their reply

10. There is no violation of moratorium as Section 14 of the Code does not put any bar on change of the directorship of the Corporate Debtor during moratorium. There no prohibition/restriction on change of directorship pending moratorium.

11. As per the IBC the powers of the Board of Directors only stands suspended during moratorium period, and Board is not dissolved during Moratorium. This is more so in view of the fact that even during the moratorium period there are statutory compliances under the Companies Act, SEBI Act etc., which a company/Corporate Debtor is required to comply with and the same can only be done through the board of directors. Thus for a company to run its affairs under the aegis of the IRP/RP there is always a board of director which is required to be in place and only the managerial powers of the board stand suspended. For a Company to function it would always require a functional Board especially for statutory compliances.

12. Since the erstwhile directors of the Corporate Debtor Mr Vivek Gadkari and Mr Rajesh Rana resigned from the company it became imperative to fill up the vacancies on the board. No wilful/intentional disobedience to the order of moratorium has been done by the RP.

13. Reliance on judgment of NCLAT in M/s. **Subasri Realty Private Limited v. Mr. N. Subramanian & Anr**. Company Appeal (AT) (Insolvency) No. 290 of 2017, **Steel Konnect (India) Pvt. Ltd. v. M/s. Hero Fin Corp Ltd**., Company Appeal (AT) (Insolvency) No. 51 o/2017 have been made.

Our Analysis

14. The issues which need to be considered by us are (a) whether appointment of Directors during moratorium is violation of Moratorium under Section 14 of the IBC; (b) if so whether order under Section 74 of the IBC need to be passed.

15. Section 14 of the Code provides for moratorium. It reads as under:

*"**Moratorium***

14. *(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-*

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assels and Enforcement of Security Interest (SARFAESI) Act. 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corpora le debtor under section 33, the moratorium shall cease lo have effect from the date of such approval or liquidation order, as the case may be. "

16. In Section 14 there is no prohibition for appointment of any director of corporate debtor. As per Section 14(1), during moratorium, there is prohibition for-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFAESI Act. 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

17. Thus, under Section 14, there is no prohibition regarding appointment of director.

18. In fact, as per Section 17(1)(a), from the date of appointment of IRP, the powers of the Board of Directors of the Corporate Debtor stand suspended and be exercised by the IRP. Further, as per Section 28(1)(j), the IRP/RP has to take prior approval of the CoC in making any changes in the management of the Corporate Debtor.

19. The Hon'ble NCLAT in its judgment **Steel Konnect (India) Pvt. Ltd. v. M/s. Hero Fincorp Ltd.**, Company Appeal (AT) (Insolvency) No. 51/2017 observed as under:

> "*22. At this stage, it is desirable to notice that though pursuant to Section 17, the Board of Directors of a 'Corporate Debtor' stand suspended (for a limited period of 'Corporate Resolution Process maximum 180 days or extended period of 90 days i.e. 270 days), but they continued to remain as Directors and members of the Board of Directors for all purpose in the records of Registrar of Companies under the Companies Act 2013."*

20. The Hon'ble NCLAT in **M/s. Subasri Realty Private Limited v. Mr. N. Subramanian & Anr.** Company Appeal (AT) (Insolvency) No. 290 of 2017, observed as under:

> *" … we may clarify that after appointment of the Resolution Professional and declaration of moratorium, the Board of Director stands suspended, but that does not amount to suspension of Managing Director or any of the Director or officer or employee of the Corporate Debtor. To ensure that the Corporate Debtor remains on going concern, all the Director/ employees are required to function and to assist the Resolution Professional who manages the affairs of the Corporate Debtor during the period of moratorium."*

21. In the Written Submissions filed by the Applicant, the Applicant has submitted that as per Section 28(1)(j), RP with the approval of CoC can make changes in the management of Corporate Debtor. In the Written Submissions, the Applicant has submitted as under:

> *"19. In terms of Section 28 (1) (j) of IBC, any change in management of a Corporate Debtor is required to be approved by the COC with 66% majority. Mr. Vivek Kumar Gadkari resigned on 20.10.2018 (Pg. 7 of IA 1311/2018) and Mr. Rajesh Kumar Rana resigned on 06.11.2018 (Pg. 8 of IA 1311/2018) from Directorship in the CD. It is pertinent to note that Mr. Vivek Kumar Gadkari and Mr. Rajesh Kumar Rana tendered their resignation after the initiation of CIRP on 07.06.2018.*

20. Further, Mr. Rajan Sinha and Mr. Devendra Singh Verma were appointed as the Director of the CD on 05.11.2018 after initiation of CIRP). These actions were approved and ratified by the COC in the 5th COC Meeting dated 03.11.2018. [Pl see CD Master Data @Annex A-1 Pg. 5A of IA 1311/2018 and COC MOM 05.11.2018 @Annex A-2 of RP Reply to IA 1311/2018]

21. At the cost of re-iteration, it is most humbly submitted that the COC Members, namely AP Coal Washeries 2.13% voting share) and South West Mining 97.87% voting share) are 'Related Party' to the CD. Further, the resignation of Mr. Vivek Kumar Gadkari and Mr. Rajesh Kumar Rana and appointment of Mr. Rajan Sinha and Mr. Devendra Singh Verma as the Directors of the CD was subsequent to filing of IA 1004/2018 by the OC challenging the formation of COC on 05.10.2018. Pertinently, the COC ought not to have and could not have approved the change in management of the COC when IA 1004/2018 was already sub-judice before this Hon'ble Tribunal.

22. It is most humbly submitted that this change in the management of CD was brought about at the behest of the COC to avoid the rigors of Section 5 (24) of IBC and to create an artificial opacity. This act of the COC in approving and ratifying the change in management further establishes the Related Party status of the COC Members AP Coal Washeries and South West Mining."

22. The abovesaid submissions of the Applicant indicate that the Applicant has no grievance regarding power of CoC to make necessary changes in the Management/Board of the Corporate Debtor. However, their contention is that since the composition of the CoC has been challenged on the ground of 'related party' in I.A. No. 1004/2018 decision taken by the said CoC for appointment of Directors is violation of law.

21. We may state that as far as contentions raised in I.A. No. 1004/2018 regarding related party issue, the same is to be considered while deciding I.A. No. 1004/2018. In the present IA we are only considering issue (a) whether

appointment of Directors during moratorium is violation of Moratorium under Section 14 of the IBC; (b) if so, whether order under Section 74 of the IBC need to be passed.

22. In the light of aforementioned provisions of the Code and the judgment of the Hon'ble NCLAT, it emerges that there is no prohibition in making any changes in the management of the Corporate Debtor during moratorium, provided it has been approved by the CoC with requisite majority. We may however make it clear that we have not considered the issue as to whether there was need to appoint new Director or not.

23. In the present case, CoC in the 5th COC Meeting dated 03.11.2018 with requisite majority has taken a decision to appoint Mr. Rajan Sinha and Mr. Devendra Singh Verma as Directors. The said decision of CoC may fall within the mandate under Section 25(1)(j) of the Code.

24. The contention of the Applicant that since their I.A. 1004/2028 questioning the composition of CoC was pending and during pendency of the said IA any decision taken by the CoC is bad in law is not a correct proposition of law in the light of provision contained in proviso in Regulation 12(3) of CIRP Regulations, 2016 and decided judgments. Regulation 12(3) reads as under:

> *"12. Submission of proof of claims.*
>
> *(3) Where the creditor in sub-regulation (2) is (a financial creditor under Regulation 8), it shall be included in the committee from the date of admission of such claim:*
>
> *Provided that such inclusion shall not affect validity of any decision taken by the committee prior to such inclusion."*

25. The Hon'ble NCLAT in **DBS Bank India Pvt. Ltd. vs Rakesh Kumar Jain & ors.,** Company Appeal (At) (Insolvency) No. 540 of 2021, in their judgment dated 15.09.2022 has considered the above proviso and stated that this Regulation clearly stipulates that if any decision is taken by the committee, prior to the reconstitution, its validity will not be affected.

26. The Hon'ble NCLAT in **Mehar Bhoomi Bhawan Pvt Ltd. vs Shashi Bhushan Prasad,** Company Appeal (AT) (Insolvency) No. 1876 of 2025 judgment dated 22.12.2025 has considered aforementioned Regulation and has stated asunder:

> *"We have already noticed Regulation which provides that a change in the constitution of CoC shall not affect earlier decision taken by the CoC."*

27. In view of above provision of Regulation and the law laid down, it is clear that even upon the reconstitution of CoC, validity of decisions taken by the erstwhile CoC can't be questioned on the ground of reconstitution of CoC.

28. In the light of above discussion, we are of the view that decision taken by the CoC for appointment of new Directors of Corporate Debtor during moratorium cannot be said to be in violation of moratorium imposed under Section 14 of the Code. Consequently, no order under Section 74 as sought is to be passed. Decision taken by CoC during pendency of I.A. 1004/2028 can also not be said to be faulty or illegal. The Merits of I.A. 1004/2018 shall be considered separately.

29. Accordingly, the instant application bearing **I.A. 1311/2018** in CP (IB) No. 227/2017 is **dismissed**.

Let a copy of the order be served to the parties.

Sd/-	**Sd/-**
(ANU JAGMOHAN SINGH)	**(MAHENDRA KHANDELWAL)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**