

I/544753/2024

LABR-22015(15)/8/2018-IR SEC-Dept. Of LABOUR

Government of West Bengal

Labour Department, I. R. Branch

N. S. Building, 12<sup>th</sup> Floor, 1, K. S. Roy Road, Kolkata – 700001

No. Labr/ 765 /(LC-IR)/22015(15)/8/2018

Date : 07-08-2024

ORDER

WHEREAS an industrial dispute existed between M/s. Hidustan National Glass & Industries Ltd., Panchu Gopal Bhaduri Sarani, Rishra, P.O. – Prabhasnagar, Dist. – Hooghly, Pin – 712249 and their workman represented by Glass Employees' Union, Dr. P.T. Laha Street, P.O. – Rishra, Dist. - Hooghly regarding the issues, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947) ;

AND WHEREAS the parties have filed an application under section 10(2A) of the Industrial Dispute Act, 1947 (14 of 1947) to the Second Industrial Tribunal, Kolkata specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997 ;

AND WHEREAS the said Second Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 31.07.2024 in case No. VIII-18/2014 under section 10(2A) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide Memo No. Dte/2<sup>nd</sup> I.T./081/2024 dated 31.07.2024 ;

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said Award as shown in the Annexure hereto.

ANNEXURE

( Attached herewith )

By order of the Governor,

*Sd/-*

Assistant Secretary

to the Government of West Bengal

No. Labr/ 765 /1(5)/(LC-IR)

Date : 07-08-2024

Copy with a copy of the Award forwarded for information and necessary action to :-

1. M/s Hidustan National Glass & Industries Ltd., Panchu Gopal Bhaduri Sarani, Rishra, P.O. – Prabhasnagar, Dist. – Hooghly, Pin – 712249.
2. Glass Employees' Union, Dr. P.T. Laha Street, P.O. – Rishra, Dist. - Hooghly.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11<sup>th</sup> Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
- ✓ 5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

*Bm*

Assistant Secretary

No. Labr/ 765 /2(3)/(LC-IR)

Date : 07-08-2024

Copy forwarded for information to :-

1. The Judge, Second Industrial Tribunal, N. S. Building, 3rd Floor, 1, K.S. Roy Road, Kolkata - 700001 with respect to his Memo No. Dte/2<sup>nd</sup> I.T./081/2024 dated 31.07.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.

Assistant Secretary

*Sandeep Datta (VSP)*  
*07/08/24*



**Case No. VIII-18/2014**

**M/S. Hindustan National Glass & Industries Ltd.**

**Vs.**

**Workman Represented by Glass Employees' Union**

Order No. 125

Date: 31.07.2024

Both parties are present.

The petitioner has filed this case against the OP company praying for passing Award holding dismissal of Shri Tridib Routh and Shri Ranjan Debnath on 15.10.2012 and dismissal of Shri Dipu Manna and Shri Subir Kumar Ghosh on 28.02.2013 by the OP company are illegal and arbitrary and also prayed for reinstatement of their service with full back wages alongwith consequential benefits.

The OP company has contested this case by filing a Written Statement denying therein all the material allegations of the petitioner and the OP company has submitted that the case is not maintainable in its present form and law and the OP company prayed for dismissal of this case.

Record shows that thereafter on the basis of the issues framed by the Labour Department, the examination of the witnesses was started and the petitioner completed examination of witness on his behalf and then



the case was pending for evidence of the OP company and 19.04.2022 was fixed for evidence of the OP Company but on that date the petitioner filed one petition alongwith one Judgement dated 21.10.2021 and amended Judgement dated 22.10.2021 passed by the Hon'ble National Company Law Tribunal, Kolkata Bench, Kolkata and prayed for disposal of the proceedings before this Tribunal according to the abovementioned Judgement of the Hon'ble National Company Law Tribunal, Kolkata Bench, Kolkata.

The petitioner filed objection against this petition and after hearing both sides the said petition dated 19.04.2022 was rejected by this Tribunal on the technical ground because in its written statement the OP company did not plead the ground of moratorium for disposal of this case according to the abovementioned Judgement of the Hon'ble National Company Law Tribunal, Kolkata Bench, Kolkata, though in 2015 the OP company submitted its written statement in this case.

Then the OP company filed one amendment petition dated 12.02.2024 praying for inserting the said plea of moratorium in its written statement by way of amendment and the petitioner filed written objection against this amendment petition and after hearing both sides the amendment petition was allowed.

As the petition dated 19.04.2022 filed by the OP company was rejected by this Tribunal on technical ground and as by way of amendment petition dated 12.02.2024 filed by the OP company, the amendment petition was allowed, the OP company filed one petition dated 26.06.2024 again alongwith one Judgement dated 21.10.2021 and amended Judgement dated 22.10.2021 passed by the Hon'ble National Company Law Tribunal, Kolkata Bench, Kolkata and prayed for disposal of the proceedings before this Tribunal according to the abovementioned Judgement of the Hon'ble National Company Law Tribunal, Kolkata Bench, Kolkata and then both sides were heard again on the point of



moratorium according to Section 14 of Insolvency and Bankruptcy Code, 2016 and abovementioned Judgement of the Hon'ble National Company Law Tribunal, Kolkata Bench, Kolkata.

Though this case has been pending for evidence of the OP company, in view of Order 14(2)(2) of the CPC, the Court or Tribunal can consider whether the case is maintainable at present in law before proceeding further for settlement of all other issues and even if the Opposite Party does not take any plea regarding maintainability of the case on the law point, the Court/Tribunal suo motto can decide at any stage of the case or even at the time of filing of the case as to whether the case is barred by law or by jurisdiction of Court/Tribunal.

In this case in view of Section 14 of Insolvency and Bankruptcy Code, 2016 and abovementioned Judgement of the Hon'ble National Company Law Tribunal, Kolkata Bench, Kolkata, both sides were heard on the point of maintainability of this case on law point at present.

The record is taken up today for passing order on the petition dated 26.06.2024 filed by the OP company and perused the petition dated 26.06.2024 and the written objection filed by the petitioner against this petition.

By this petition dated 26.06.2024 the OP company has prayed for disposal of this case in view of the order of the Hon'ble National Company Law Tribunal.

In this petition dated 26.06.2024, the OP company has submitted that one application was filed under section 7 of Insolvency and Bankruptcy Code, 2016 read with Rule 4 of The Insolvency and Bankruptcy Rules, 2016 by the DBS Bank limited seeking initiation of corporate insolvency resolution process in respect of the OP company before the National



Company Law Tribunal, Kolkata Branch and the Hon'ble Tribunal was pleased to pronounce one order on 21.10.2021 which was amended on 22.10.2021 holding that the application filed by the financial creditor under section 7 of The Insolvency and Bankruptcy Code, 2016 against the OP company was admitted and the Hon'ble Tribunal was pleased to declare a moratorium and public announcement in accordance with the provisions of The Insolvency and Bankruptcy Rules, 2016 and according to section 15 of The Insolvency and Bankruptcy Code, 2016, moratorium prohibits 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 or law, Tribunal, Arbitration Panel or other authority.

The OP company has further submitted in that petition dated 26.06.2024 that in view of the abovementioned order passed by the Hon'ble Tribunal, the present case has become infructuous and it cannot be proceeded further in this Tribunal

The OP company has submitted the abovementioned orders dated 21.10.2021 and 22.10.2021 passed by the Hon'ble National Company Law Tribunal, Kolkata Branch.

The petitioner has submitted in his written objection that the petition dated 26.06.2024 is not maintainable in law and it has no relevancy with the present case and the entire contents of this petition are not correct. Hence the petitioner has prayed for rejection of the petition dated 26.06.2024.

Perused the orders dated 21.10.2021 and 22.10.2021 passed by the Hon'ble National Company Law Tribunal, Kolkata Branch and by the said orders the Hon'ble National Company Law Tribunal, Kolkata Branch was pleased to admit the petition filed by the financial creditor u/s. 7 of The Insolvency and Bankruptcy Code, 2016 and declare a moratorium



and public announcement in accordance with sections 13 and 15 of The Insolvency and Bankruptcy Code, 2016 and the Hon'ble National Company Law Tribunal, Kolkata Branch declared that the order of moratorium shall have effect from the date of admission till the completion of corporate insolvency resolution process and moratorium u/s. 14 of The Insolvency and Bankruptcy Code, 2016 prohibits 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 or law, Tribunal, Arbitration Panel or other authority.

According to section 14 of The Insolvency and Bankruptcy Code, 2016, moratorium prohibits 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 or law, Tribunal, Arbitration Panel or other authority.

The Hon'ble Supreme Court has held in a case namely *Alchemist Asset Reconstruction Company Limited versus Hotel Gaudavan Private Limited and Others as reported in (2018) 16 Supreme Court cases 94* that the moment an insolvency petition is admitted, the moratorium that comes into effect under section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against corporate debtors.

On perusing the abovementioned decision of the Hon'ble Supreme Court, I find that in that reported case, at first several proceedings had been taken and ultimately a petition filed under the Insolvency and Bankruptcy Code, 2016 was admitted by the National Company Law Tribunal, New Delhi and as a result, the moratorium that is imposed by section 14 came into effect on that date and then one writ petition was filed against that order which was admitted only to the extent of challenge to the vires of the insolvency code, is pending and one special leave petition against the said order was dismissed and meanwhile,



despite the moratorium, a letter was issued by the Respondent No. 1 to Respondent No. 2 invoking the arbitration clause between the parties and in another order dated 31.05.2017, the National Company Law Tribunal, New Delhi referred to section 14(1)(a) of the Insolvency Code and stated that given the moratorium that is imposed, no arbitration proceedings could go on and one first appeal was filed before the District Judge concerned under section 37 of the Arbitration and Conciliation Act, 1996 and it was registered and notice was issued.

In the abovementioned case, the Hon'ble Supreme Court quashed the said proceedings in view of section 14(1)(a) of the Insolvency Code.

In this present case also before this Tribunal, I find that the case was started in 2014 and on 07.01.2015 the OP company submitted its written statement and according to the petition dated 26.06.2024 filed by the OP company, the Hon'ble National Company Law Tribunal, Kolkata Branch, passed the abovementioned two orders regarding moratorium on 21.10.2021 and 22.10.2021 and then the OP company has filed this present petition dated 26.06.2024 praying for disposal of this case in view of the abovementioned orders passed by the Hon'ble National Company Law Tribunal, Kolkata Branch.

So considering the abovementioned Judgement passed by the Hon'ble Supreme Court as reported in *(2018) 16 Supreme Court cases 94*, Section 14 of Insolvency and Bankruptcy Code, 2016 and abovementioned Judgement of the Hon'ble National Company Law Tribunal, Kolkata Bench, Kolkata dated 21.10.2021 and amended Judgement dated 22.10.2021, I hold that at present this case before this Tribunal is not maintainable in law and it cannot be proceeded further legally because it is not maintainable in law at present and accordingly it is to be dismissed.



Hence, it is

**ORDERED**


that the case no. VIII-18/2014 under Section 10(2A) of The Industrial Disputes Act, 1947 is dismissed on contest against the OP company as it is not maintainable in law.

Let this Order be treated as an Award.

According to Section 17AA of The Industrial Disputes Act, 1947, let a certified copy of this award be sent to the Principal Secretary to the Government of West Bengal, Labour Department, New Secretariat Buildings, 1, K.S. Roy Road, Kolkata 700 001 for information, and let a certified copy of this award be supplied to each of both the parties of this case, free of cost, forthwith for information.

The case is disposed of today.

Dictated & corrected by me.

  
Judge



(Shri P.S. Mukhopadhyay)  
Judge  
2<sup>nd</sup> Industrial Tribunal, Kolkata

**Judge**  
**2nd Industrial Tribunal**  
**West Bengal**