

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
KOLKATA BENCH- II**

**KOLKATA**

IA(IB)/537/KB/2023

IN

C.P (IB) No.1986/KB/2019

***An application Section 60(5) of the IBC,2016 read with Regulation 33  
of Insolvency and Bankruptcy Board of India ( Insolvency Resolution  
Process for Corporate Persons) Regulations ,2016 and Rule 11 of the  
NCLT Rules, 2016.***

And

**In the matter of:**

IL&FS Infrastructure Debt Fund ... Financial Creditor

Versus

McLeod Russel India Limited ... Corporate Debtor

AND

In the matter of:

Mr.Ritesh Prakash Adatiya, Interim Resolution Professional, of McLeod Russel  
India Limited ... Applicant

Versus

McLeod Russel India Limited ...Respondent No.1

And

IL &FS Infrastructure Debt Limited ... Respondent No.2

Date of hearing :23/03/2023

Order Pronounced on :29/03/2023

**Coram:**

***Mrs. Bidisha Banerjee, Member (Judicial)***

***Mr. Balraj Joshi, Member (Technical)***

**Counsels appeared through Physically/ Video Conference**

Mr. Ritesh Adatiya, Adv.	] For the RP
Mr.Rishad Medora, Adv.	] For the Financial Creditor
Ms.Ramya Haiharan, Adv.	]
Mr. Asmita Rakhecha, Adv.	]
Mr.Soumyjit Saha,Adv.	]
Mr.Joy Saha, Sr.Adv.	] For the Applicant/IRP
Mr.Sayantana Bose,Adv.	]
Ms.Ankita Choudhury,Adv.	]

**ORDER**

**Per: Bidisha Banerjee, Member (Judicial)**

1. Ld. Counsel for the parties were heard.
2. This application has been preferred by the IRP of McLeod Russel India Ltd. inter alia under Section 60(5) of the IBC,2016 read with Regulation 33 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations ,2016 and Rule 11 of the NCLT Rules, 2016 seeking following reliefs:
  - a. *Allow the instant Application.*
  - b. *Pass necessary directions to the extent that the IRP/Applicant be permitted to make the following payments with respect to dues partly related to period prior to Insolvency Commencement date and becoming due after the Insolvency Commencement date:*
    - i. *Payment of Rs.23,17,16,202/- (Rupees Twenty Three Crores Seventeen Lakhs Sixteen Thousand Two Hundred and Two only) for Bonus cum Ex-gratia to applicable workmen of the Corporate Debtor, pursuant to the Memorandum of Settlement, out of the Cash Flow of the Corporate Debtors.*
    - ii. *Payment of Rs.23,41,07,910/- (Rupees Twenty-Three Crores Forty One Lacs Seven Thousand Nine Hundred and*

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*ten only) pending Provident Fund and Gratuity of thirteen (13) tea estates in order to ensure that the Corporate Debtor can retain its Export License, out of the Cash Flow of the Corporate Debtors.*

*iii. Payment of Rs.7,40,36,547/- (Rupees Seven Crores Forty Lacs Thirty Six Thousand Five Hundred and Forty Seven only)in relation to pending ‘Green Leaf’ purchases to various vendors, out of Cash Flow of the Corporate Debtors.*

*c. Pass Necessary directions to the extent that the following payments may be made by the Financial Creditor for the first month of CIR Process and thereafter from the funds of the Corporate Debtor:*

*i. Payment of fees and costs and expenses incurred/to the incurred by the IRP/Applicant in relation to running the Corporate Debtor and discharging his obligations under the Code.*

*ii. Payment of fees and costs and expenses incurred/to be incurred by the IRP/Applicant in relation to engaging professionals for providing assistance/support in discharging his obligations under the Code.*

*iii. Payment of costs and expenses incurred or to be incurred from time by the IRP/Applicant on account of engaging legal counsel for requisite representation, aid and advice in the CIR Process.*

3. It is submitted that the issue involves payment of the arrears of the bonus to about 70,000 workers which has been agreed to by the previous management, failing which there is a possibility of workers' backlash.

4. The applicant has pleaded that since the CIRP has been put on hold by Hon'ble NCLAT by its order dated 22/02/2023 in Company Appeal

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(AT)(IB) No. 193/2023 with a direction upon the IRP/applicant to ensure that the Corporate Debtor is kept as a going concern, appropriate steps in compliance of section 20 would have to be taken up. The provisions section 20 of IBC, 2016 are extracted verbatim hereunder for clarity.

**“20 . Management of operations of corporate debtor as going concern.**

- (1) *The interim resolution professional shall make every endeavor to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.*
- (2) *For the purposes of sub-section (1), the interim resolution professional shall have the authority-*
  - (a) *To appoint accountants, legal or other professionals as may necessary;*
  - (b) *To enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;*
  - (c) *To raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property; Provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.*
  - (d) *To issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and*
  - (e) *To take all such actions as are necessary to keep the corporate debtor as a going concern”.*

5. It is submitted that the Officials of the Corporate Debtor informed the IRP about the liabilities of the Corporate Debtor, which relate to dues before the Insolvency Commencement date that are to be met.
6. The Ld. Sr. Counsel appearing for the IRP submits that the claims have been verified by the IRP and funds are available to meet the said expenses.

7. In such circumstances, in order to keep the Corporate Debtor as a going concern in the interim and to prevent adverse consequences for the Corporate Debtor, the IRP is permitted to do the needful in regard to the release of the said dues as would be required in accordance with various legal provisions and if nothing else stands in the way.
8. In case any assistance is required from the Personnel of the Corporate Debtor, including the promoters and any other persons associated with the management of the CD in running CD as a going concern, the same shall be sought by the IRP under section 19 of the Code.
9. IA(IB)/537/KB/2023 accordingly stands disposed of.
10. Urgent Certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

**(Balraj Joshi)**  
**Member (Technical)**

**(Bidisha Banerjee)**  
**Member (Judicial)**

Order signed on this, the 29<sup>th</sup> day of March, 2023

PJ.