



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

I.A. 1846 OF 2022

IN

C.P.(IB) No. 193/MB/2019

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

Fullerton India Credit Company Ltd.

...Applicants

Vs.

Committee of Creditors

Through its Resolution Professional
Mr. Kshitiz Gupta

...Respondents

In the matter of

Easun-MR Tap Changers Pvt. Ltd.

...Operational Creditor

Vs.

Aditya Vidyut Appliances Ltd.

... Corporate Debtor

Order Pronounced on: 12/08/2024



Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Applicant : Adv. Shubham Hundia a/w Adv. Avesh Ganja

For the Respondent : Adv. Shyam Kapadia i/b Adv. Ajinkya Kurdukar

ORDER

Per: - Mr. Kuldip Kumar Kareer Member (Judicial)

1. The present Application is filed by the Applicant, namely, **Fullerton India Credit Company Ltd.**, Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 (“**Code**”).

FACTS OF THE CASE

2. The above Application has been filed by the Applicant seeking appropriate directions with respect to an inequitable Resolution Plan approved by the Committee of Creditor with majority of 83.56% and which is pending for approval before this Tribunal, inter alia, on the ground that the same does not give fair and equitable treatment to the Applicant in comparison to the other Financial Creditors.



3. It is stated that while determining the amounts payable to the Applicant in the Resolution Plan, the Resolution Applicant and the CoC have not considered several vital aspects. The Resolution Plan fails to take into consideration the security interest of the Applicant in the assets of the Corporate Debtor. The Immovable properties, in which the Applicant had a security interest, carry a valuation of approximately Rs. 25,00,00,000/- which has not been taken into consideration while arriving at the amount payable to the Applicant in the Resolution Plan.
4. The CoC has further failed to consider that the Resolution Plan gives vague timelines for repayment to the Applicant, which is greatly prejudicial to the rights of the Applicant under the law. Firstly, the amount payable under the Resolution Plan is less than 50% of the amount due and payable by the Corporate Debtor as of today and the duration of payment is also not immediate.
5. The Applicant is a secured creditor and has legitimate mortgage deeds in its favour for as many as five immovable properties belonging to the Corporate Debtor i.e. Aditya Vidyut Appliance Limited. That the value of these 5 immovable properties alone is substantially higher than the proceeds allocated to the Applicant under the Resolution Plan.



Reply filed by the Respondent

6. In reply, the Respondent has denied all averments made by the Applicant.
7. The Resolution Professional states that the averments made and alleged in the said paragraph are false and incorrect to the extent that that the successful resolution applicant is the promoter of the Corporate Debtor. According to the Resolution Professional, this allegation has been made with a mala-fide intention of misleading the Hon'ble Tribunal. The Applicant be put to strict proof thereof.
8. The Resolution Professional further states that the statement to the extent that Mr. Shankar Sevia Pawar is the promoter of the Corporate Debtor is baseless, incorrect and is hereby vehemently denied by the Resolution Professional. The Applicant by making and alleging such false and incorrect statement, has committed the grave offence of perjury and should be held liable for the same.
9. The Resolution Professional states that the submissions made in the said application are baseless, bad in law and are not legally tenable. The Resolution Professional states that it is a trite law, and has been held in catena of judgements of Hon'ble Supreme Court that value of security



interest of creditor ought not be taken as the benchmark for arriving at a viable and feasible Resolution Plan. The Applicant has miserably failed to understand and appreciate the intent and object of the Insolvency & Bankruptcy Code, 2016 (the "Code") which prioritizes the resolution of the stressed assets over recovery by the creditors including secured creditors.

10. The Resolution Professional states that submissions of the Applicant made in the applications are baseless and are not legally tenable. The Resolution Professional states that the Section 30(2)(b) of the Code specifically provides for the minimum amount payable to the dissenting financial creditor under the Resolution Plan. The Resolution Plan approved by the members of CoC in the present case passes the given litmus test wherein the Resolution Plan duly complies with the minimum payment obligations provided in the Code and the allied Regulations framed thereunder. The Resolution Professional further states that the Resolution Plan provides for a detailed and specific timeline for payment and implementation of the Plan. The Resolution Plan was discussed and deliberated, as also attended by the Applicant being the member of the CoC, at length by the members of CoC and then in their commercial wisdom approved the Plan by requisite majority finding the same to be feasible and viable. The timeline providing for



payment to financial creditor is at internal page number 25 of the plan amongst other places.

11. The Resolution Professional submits that it is a settled law that a dissenting secured creditor cannot suggest a higher amount to be paid to it with reference to the value of security interest held by it.
12. The Resolution Professional states that the members of CoC scrutinized and examined the commercial, legal and judicial aspect of the Resolution Plan and approved the same in its commercial wisdom.
13. The Resolution Professional craves leave of this Hon'ble Tribunal to add, alter, amend and/or modify the present reply as and when deemed necessary.

FINDINGS

14. We have heard the counsel for the parties and have gone through the records.
15. It is an undisputed fact that the Resolution Plan has been approved by the Committee of Creditor with majority of 83.56% votes in favour of the Resolution Plan and the Applicant, being one of the members of the



Committee of Creditor (COC), had voted against the approval of the Resolution Plan.

16. The contention of the Applicant is that the Resolution Plan has failed to consider the security interest of the Applicant in the assets of the Corporate Debtor. The amount payable to the Applicant under the Resolution Plan is less than 50% of the amount due and payable by the Corporate Debtor.
17. With regard to the above contention, this bench relies on the judgment of the Hon'ble Supreme Court in the matter of ***India Resurgence ARC Private Limited vs Amit Metaliks Limited and Anr. 2021 SC onLine SC 409***, where it has held the following in paragraphs No. 17, 18, 20 and 21:

"17. Thus, what amount is to be paid to different classes or subclasses of creditors in accordance with provisions of the Code and the related Regulations is essentially the commercial wisdom of the Committee of Creditors; and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest.



18. In Jaypee Kensington(supra), this Court repeatedly made it clear that a dissenting financial creditor would be receiving the payment of the amount as per his entitlement; and that entitlement could also be satisfied by allowing him to enforce the security interest, to the extent of the value receivable by him. It has never been laid down that if a dissenting financial creditor is having a security available with him, he would be entitled to enforce the entire of security interest or to receive the entire value of the security available with him. It is but obvious that his dealing with the security interest, if occasion so arise, would be conditioned by the extent of value receivable by him.

20. The extent of value receivable by the appellant is distinctly given out in the resolution plan i.e., a sum of INR 2.026 crores which is in the same proportion and percentage as provided to the other secured financial creditors with reference to their respective admitted claims. Repeated reference on behalf of the appellant to the value of security at about INR 12 crores is wholly inapt and is rather ill-conceived.

21. The limitation on the extent of the amount receivable by a dissenting financial creditor is innate in Section 30(2)(b) of the Code and has been further expounded in the decisions aforesaid. It has not



been the intent of the legislature that a security interest available to a dissenting financial creditor over the assets of the corporate debtor gives him some right over and above other financial creditors so as to enforce the entire of the security interest and thereby bring about an inequitable scenario, by receiving excess amount, beyond the receivable liquidation value proposed for the same class of creditors."

18. In the light of the law laid down in the aforesaid case, it can be safely held that the applicant cannot claim higher payment simply because it holds certain security interest over the properties of the Corporate Debtor.
19. We also take note of the decision of the Hon'ble Apex Court at para 42 in ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online***, whereby it was held that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved.

"Para 42- Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with



*section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra). ”*

20. In view of the above cited case law, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent of scrutiny provided under section 31 of Code and the discretion of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code. In these circumstances, the grievance of the Applicant that its amount allocated to the Applicant in the resolution plan is not commensurate with the security interest held by it in the properties of the Corporate Debtors cannot be said to be tenable.
21. As a result of the aforesaid reason, the **I.A. No. 1846 of 2022** is **dismissed** being devoid of any merit.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

I.A. 30 OF 2021

IN

C.P.(IB) No. 193/MB/2019

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

Mr. Vijay Kumar Adnala,

A-202, Nirmal Co-op Housing Society,
Louis Wadi, Umed Nagar, Thane (W)

...Applicant

Vs

1. Committee of Creditors,

Through the Resolution Professional

Mr. Kshitiz Gupta,

Flat No, C/104, Lotus CHSL,

Gundecha Valley of Flowers, Thakur

Village, Kandivali (East), Mumbai –

101

2. Reliance Home Finance Limited

Reliance Centre, Ground Floor, 19,

Walchand, Hirachand Marg, Ballard

Estate, Mumbai – 400 001

...Respondents



In the matter of
Easun-MR Tap Changers Pvt Ltd,
...Operational Creditor
Vs
Aditya Vidyut Appliances Limited,
... Corporate Debtor

Order Pronounced on: 12/08/2024

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Applicant : Adv. Mily Ghoshal

For the Respondent : Adv. Shyam Kapadia i/b Adv. Ajinkya Kurdu

ORDER

Per: - Mr. Kuldip Kumar Kareer, Member (Judicial)

1. The present Application is filed by the Applicant, namely, Mr. Vijay Kumar Adnala, under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“**The Code**”) seeking the following reliefs:



- a. Direct the Respondent no. 1 to disburse the total amounts due to the Applicant.
- b. Direct the Resolution Professional to accept the claim of Gratuity of Rs. 32,57,377/- and disburse it accordingly.
- c. Direct the Resolution Professional to disburse the gratuity, provident fund and other such contributions of the applicant and ensure that the said gratuity, provident fund and other such contributions of the applicants are protected and or direct to pay regular salaries.
- d. Direct Respondent no. 2 to file the claim of balance loan amount for the said property with the Resolution Professional pending the acceptance of which the Respondent no. 1 be directed to serve the periodic EMIs to the Respondent no. 2.
- e. To remove the property being flat no. 904, 9th floor, Aradia, Plot no. 465, TPS 1, Panchapakdi, Samata Nagar, Thane (W) – 400 606 from the list of assets of the Corporate Debtor.
- f. Direct the Respondent no. 1 not to disturb the possession of the Applicant on the property being flat no. 904, 9th floor, Aradia, Plot no. 465, TPS 1, Panchapakdi, Samata Nagar, Thane (W) 400 606 permanently.
- g. Direct Respondent no. 1 to refund the insurance amount of Rs. 9,45,558/- to the Applicant
- h. Any other relief as deemed fit by this Tribunal.

FACTS OF THE CASE

2. The Applicant was employed as General Manager with Aditya Vidyut Appliances Limited (Corporate Debtor) since the year 1999 and, thereafter, vide letter dated 18.05.2017 the Applicant was promoted as Vice President (Works and Business Development).



3. The Applicant states that he submitted Form-D with the Resolution Professional vide letter 20.11.2019 along with all relevant annexures for a total claim of Rs. 96,73,184/-. The Resolution Professional has accepted the claim amounting to Rs. 64,15,807/- and the balance amount of Rs. 32,57,377/- has been rejected on the ground that the same consist of gratuity which is not payable as the Applicant is an on going employee of the Corporate Debtor.

4. The Applicant has submitted that the Corporate Debtor had assured the Housing Loan Assistance to all its employees through Housing Loan Assistance policy. In this regard, the Applicant purchased the flat no. 904, 9th floor, Aradia, Plot no. 465, TPS 1, Panchapakdi, Samata Nagar, Thane (W) 400 606 vide agreement dated 09.05.2016 executed between M/s Oasis Infra Ventures Pvt. Ltd, the Corporate Debtor and the Applicant and the same was registered in the office of registrar of sub assurance. Subsequently, the Corporate Debtor and the Respondent executed a loan agreement and the Respondent no. 2 issued the sanction letter dated 09.08.2016 on the basis of which the Corporate Debtor obtained a Financial Assistance from Respondent No. 2 amounting to Rs. 1,65,00,000/- and Respondent No. 2 created a charge on the portal of Ministry of Corporate Affairs on 17.08.2016 on the property in question.



5. The Applicant has further submitted that the Corporate Debtor was solely responsible to pay the EMIs for the said property. The Corporate Debtor defaulted in payment of the EMIs from June 2018 which were paid by the Applicant amounting to Rs. 1,64,000/-. The same has been accounted in the books of Corporate Debtor and duly accepted by the Resolution Professional to the extent of Rs. 29,32,547/-.
6. The Applicant has submitted that the Corporate Debtor completely stopped paying the EMIs. As a result, the Respondent No. 2 has encashed the insurance amount of Rs. 9,45,558/- procured from one Reliance General Insurance Co. Ltd.
7. Further, this Tribunal vide order dated 11.09.2019 admitted the Insolvency proceedings under Section 9 of the Code against the Corporate Debtor and appointed Mr. Kshitiz Gupta as the Interim Resolution Professional and invited the claims on or before 04.10.2019.
8. The Applicant has submitted that vide notice dated 03.08.2020, the Resolution Professional asked the Applicant to vacate the said property since the property belongs to the Corporate Debtor.
9. In the end, it has been requested that the Application be allowed.



REPLY FIELD BY THE RESPONDENT NO. 1

10. The Respondent has denied all the allegations, accusations and averments made in the present Application.
11. The Respondent has submitted that the Applicant in Form D dated 20.11.2019 claimed an amount of Rs. 96,73,184/-. The Applicant has included the Gratuity claim in the Form D. It has been submitted that since the applicant is in active employment of the Corporate Debtor, the question of payment of 'Gratuity' does not arise. Therefore, the Resolution Professional has admitted the claim amounting to Rs. 64,15,807/- excluding the claim of 'Gratuity'.
12. The Respondent has further submitted that the Corporate Debtor has availed the loan facility from the Respondent no. 2 to purchase the said property from M/s Oasis Infra-Ventures Private Limited. Since the Corporate Debtor had failed to make the payment of the EMIs, the Respondent no. 2 had submitted its claim with respect to the unpaid part of the said loan in the capacity of the Financial Creditor and the same has admitted by the Resolution Professional. Accordingly, the Respondent No. 2 is the part of Committee of Creditors of the Corporate Debtor.



13. It has further submitted that the Applicant remitted certain instalments of EMIs approximately to the tune of Rs. 29,32,547/- and the said payment was acknowledged by the Corporate Debtor in its books and accordingly the same has been admittedly considered by the Resolution Professional.
14. The Respondent No. 2, in accordance with terms and conditions of the Loan Agreement, encashed the Insurance of the Applicant. The Resolution Professional has submitted that that the said encashment was in accordance with the agreement entered into between the Corporate Debtor, the Applicant and the Respondent No. 2. Therefore, the Respondent submitted that the said amount should be claimed against Respondent no. 2 and not against Resolution Professional.
15. The Resolution Professional has submitted that the CIRP of Corporate Debtor is at penultimate stage wherein Resolution plan is approved by the CoC and it is pending for approval of this Tribunal. The claim of the Applicant, as admitted and considered by the Resolution Professional, shall be dealt strictly in accordance with the Resolution Plan.
16. With the above averments, the Respondent has prayed for the dismissal of the present Application.



FINDINGS:-

17. We have heard the Counsel for the parties and have gone through the records.
18. So far as the claim of Rs. 96,73,184/- lodged by the Applicant with the RP is concerned, the same was admitted to the extent of Rs. 64,15,807/- . The amount of gratuity has been excluded from the claim by the RP on the ground that the gratuity of the Applicant would become due and payable when the Applicant would leave/retire from his employment with the Corporate Debtor. Since the Applicant continues to be in services of the Corporate Debtor, the gratuity cannot be paid at this stage. Considering these facts, we are of the considered view that the RP has rightly admitted the claim only partially excluding the amount of gratuity as the Applicant continues to be in service of the Corporate Debtor. However, it is being made clear that the gratuity would be paid to the Applicant as and when he leaves/retires from the services of the Corporate Debtor and it will be duty of the SRA to pay the gratuity at that stage.
19. As regards the other relief claimed by the Applicant with regard to Flat No. 904 is concerned, the Applicant is admittedly in possession of the said flat. It has been claimed by the Applicant that the flat was purchased



by the Corporate Debtor for giving it permanently to the Applicant for residential purposes. As per record, the said flat was purchased from Oasis Infra Ventures Private Limited by way of agreement of sale dated 09.05.2016 executed between Oasis Infra Ventures Private Limited, Aditya Vidyut Appliances Limited (Corporate Debtor) and the Applicant (i.e. Vijaykumar Ramarao Adnala) for a sum of Rs. 1,91,31,750/-. The Corporate Debtor is said to have taken a loan of Rs. 1.65 crores for purchasing the said flat from Respondent No. 2 i.e. Reliance Home Finance Limited. As per the arrangement agreed between the parties, the Corporate Debtor was supposed to pay the installments of the loan raised from Respondent No. 2 for purchasing the flat. The Applicant has claimed that he was forced to pay a sum of Rs. 29,32,547/- towards EMIs of the flat to Respondent No. 2 as the Corporate Debtor failed to pay the same, as admitted by Respondent No. 1 in his reply. As per record, Respondent No. 2 has filed a claim with the RP in respect of the outstanding loan amount advanced by it to the Corporate Debtor towards the purchase of the flat and the said claim falls in the category of Secured Financial Debt and would be dealt with in the Resolution Plan accordingly.

20. In the backdrop of the above mentioned facts, it has to be seen whether the relief claimed by the Applicant qua the flat in question can be granted



or not. The Applicant has claimed that the flat be removed from the list of the assets of the Corporate Debtor as it was purchased for the Applicant only. However, there is no document on record produced by the Applicant which could prove that the flat was purchased by the Corporate Debtor with an intent to transfer it to the Applicant permanently. No doubt the Applicant is a joint purchaser with the Corporate Debtor in the agreement of sale through which the flat was purchased. However, it is not clear as to exactly how much payment was made by the Applicant towards the sale consideration of the flat apart from the EMIs of Rs. 29,32,547/-. The entire controversy with regard to the exclusive ownership of the flat in question, in our considered view, cannot be decided by this Authority in the summary proceedings as the complex question of title is involved which can be decided only by a civil court having competent jurisdiction after recording evidence in detail of the parties involved. However, so far as the question of possession over the flat in question is concerned, since the Applicant has been residing therein as an employee of the Corporate Debtor and even otherwise he is a joint purchaser of the flat as per agreement of sale, the possession of the Applicant is liable to be protected till such time some appropriate remedy is sought by the Applicant from a competent civil court.



21. As a result of the above discussion, the **IA No. 30 of 2021** is party **allowed** to the extent that the Respondent No. 1/Corporate Debtor will not disturb the possession of the Applicant over the flat in question till such time appropriate remedy is sought from a competent civil court. The gratuity amount of Rs. 32,57,377/- along with any further amount which may become due on this account in future would be paid to the Applicant as per law laid by the Hon'ble NCLAT *in Jet Airways case (Company Appeal (AT) (Insolvency) Nos. 752, 643, 792, 801, 915 of 2021, 361, 771 & 987 of 2022)* by the Corporate Debtor or the SRA as and when the Applicant relinquishes the services of the Corporate Debtor.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

I.A. 2251 OF 2020

IN

C.P.(IB) No. 193/MB/2019

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

**Maharashtra State Electricity
Transmission Company Limited**

...Applicant

Vs.

Kshitiz Gupta,
Resolution Professional of Corporate
Debtor.

...Respondent

In the matter of

Easun-MR Tap Changers Pvt. Ltd.

...Operational Creditor

Vs.

Aditya Vidyut Appliances Ltd.

... Corporate Debtor

Order Pronounced on: -12/08/2024



Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Applicant : Adv. Prakash Shinde a/w Adv. Niyati Merchant.

For the Respondent : Adv. Shyam Kapadia i/b. Adv. Ajinkya Kurdukar.

Per: Mr. Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The present Application is filed by the above-named Applicant under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 (**“the Code”**) against the Respondent, who is the Resolution Professional of the Corporate Debtor, seeking the following reliefs:

- i. The Adjudicating Authority may pass an order setting aside the decision of the Respondent in admitting the Applicant’s claim as ‘Other Creditors’;
- ii. The Adjudicating Authority may pass an order directing the Respondent to accept/admit the claim of the Applicant as ‘Operational Creditor of the Corporate Debtor’.

Facts of the case which are necessary for adjudication of this application are briefly stated hereinbelow:

2. The Applicant is a wholly owned entity under the Government of Maharashtra, incorporated under the Companies Act, 1956, is engaged



in the business of transmitting electricity from the point of generation to the point of distribution.

3. The Applicant awarded the tenders to the Corporate Debtor to supply eighteen (18) power transformers and 4 Inter-Connecting Transformers (ICTs) for a consideration of INR 54,70,08,855.86/-. The Corporate Debtor supplied six (06) power transformers worth INR 12,31,92,021.24/-, but failed to deliver remaining 12 power transformers and 4 ICTs amounting to INR 42,38,16,834.62/-. Consequently, the orders placed by the Applicant to the Corporate Debtor were terminated and the undelivered equipment had to be procured through open public e-tenders at an increased cost of INR 62,19,78,000/-. The Applicant had to incur an extra amount of INR 19,84,46,135.38/- on the procurement of undelivered equipment which the Applicant seeks to claim damages from the Corporate Debtor ('Claim I').
4. The Applicant states that Transformers/ICT/Reactors were placed for repairing as per contract. However, the Corporate Debtor failed to repair six (6) Transformers/ICT/Reactors within the period stipulated under the contract and they are lying at the factory premises of the Corporate Debtor. On account of failure of the Corporate Debtor to repair the equipment despite guarantee period, the Applicant had no choice but to again claim the damages from the Corporate Debtor for the loss suffered by the Applicant ('Claim II').
5. The Corporate Debtor was admitted into the Corporate Insolvency Resolution Process ('CIRP') vide Order dated 11th September, 2019 passed in the above-captioned Company Petition and the Respondent



herein was appointed as the Interim Resolution Professional ('IRP'). The IRP issued a Public Announcement on 23.09.2019 inviting claims from the creditors of the Corporate Debtor. Pursuant to the afore-stated Public Announcement, the Applicant filed its claim before the IRP on 29th November, 2019.

6. The Applicant states that the claim is lodged for recovery of loss suffered by the Applicant on risk and cost basis against the Corporate Debtor. The Respondent sought details and clarifications along with the relevant documents from the Applicant in respect of its claim and the Applicant provided the same to the Respondent from time to time. Thereafter, the Respondent vide Letter dated 08th August, 2020 informed the Applicant of its claim in the following terms:

"In the light of the aforesaid, our client states that they hereby admit the Claim I and Claim II filed by you being a claim of approximately Rs. 19.84 crores and Rs. 65.71 crores respectively, as and by way of a 'contingent claim of loss' subject to adjudication of the same by a competent authority. Further, on the basis of the current facts and the governing law, the Claim I and Claim II shall be categorised as 'Other Creditors' and not under the category of 'Operational Creditor' subject to adjudication of the same."

7. Being aggrieved by the classification as Other Creditors instead of Operational Creditor, the Applicant herein has preferred the above application impugning such classification and seeking necessary directions from this Bench to the Respondent to classify its claim as that of Operational Creditor instead of Other Creditors.



Reply filed by the Respondent

8. For the purpose of adjudicating this application, the only issue which needs to be addressed is whether the Respondent was justified in classifying the Applicant as “Other Creditor” instead of “Operational Creditor” and the same is a question of law. Hence, we are dispensed with the needs to get into the facts in details and therefore, it is sufficient to state that the Respondent has filed his reply on affidavit dated 19.03.2022 in the above-captioned matter objecting to the IA filed by the Applicant.

ANALYSIS AND FINDINGS

9. We have heard the counsel for the parties and examined the pleadings of the parties and the documents available on record.
10. In the instant case, the Applicant is aggrieved by the classification of its claim by the Respondent. The Respondent based on the claim filed by the Applicant, has classified the Applicant as ‘Other Creditor’ while admitting the claim; whereas the Applicant avers that based on the nature of the claim filed by it, the Applicant should have been classified as ‘Operational Creditor’ instead of ‘Other Creditor’.
11. The Applicant has pleaded in this application that the claim was lodged against the Corporate Debtor for recovery of loss suffered by the Applicant on risk and cost basis. On perusal of the facts narrated hereinabove, it is crystal clear that the claim filed by the Applicant before the Respondent is in the nature of damages for recovery of its loss. The Respondent admitted the claim of the Applicant as



‘contingent claim of loss’ subject to adjudication of the same by a competent authority and classified the Applicant as “Other Creditors” and not “Operational Creditor”.

12. In common law, there are two concepts, namely “debt” and “damages”. A “debt” in common law is recovered by an action for an agreed sum. Per contra, an action for “damages” is different from an action for recovery of debt, wherein, the concepts of causation, remoteness, compensation, etc. are applicable. The said concepts are not applicable to an action for recovery of debt. It is a well settled law that damages, in the absence of a decree crystallising the same, are uncrystallised and indeterminate. Our above view is supported by the Judgment of Hon’ble Supreme Court of India in Union of India v/s. Raman Iron Foundry [(1974) 3 S.C.R. 556], wherein the Hon’ble Apex Court held as follows:

*“In the present case, the claim is for damages for breach of the contract. The damages claimed are liquidated damages under cl. 14 of the Contract; **but under Indian law there is no difference in the nature of the claim whether it be for liquidated damages or for unliquidated damages. Even if there is a stipulation for liquidated damages, a party complaining of breach of contract can recover only reasonable compensation for the injury sustained by him, the stipulated amount being merely the outside limit. The claim in the present case therefore stands on the same footing as a claim for unliquidated damages. A claim for unliquidated damages does not give rise to a debt until the liability is adjudicated upon and damages assessed by an adjudicatory authority. When there is a breach of contract, the party who commits the breach does not eo instanti incur any pecuniary obligation nor does the party***



complaining of the breach become entitled to a debt due from the other party. The only right which the party aggrieved by the breach has is the right to sue for damages and this is not an actionable claim. A claim for damages for breach of contract is therefore not a claim for a sum presently due and payable and the appellant is not entitled, in exercise of the right conferred upon it under cl. 18, to recover the amount of such claim by appropriating other sums due to the respondent.”

13. Under the tenets of IBC, an uncrystallised sum of damages cannot be termed as an operational debt, as the liability in respect to such a sum is uncrystallised and indeterminate. It would not be out of place to state that where the claim for damages is crystallised in the form of a decree or an award, in such cases, depending on the nature of the underlying transaction, a claim may be treated as an operational debt or other debt, as the case may be.
14. In the present case, there is nothing on record to show that the Applicant has obtained a decree or an award in its favour against the Corporate Debtor in respect of the damages claimed by it. Hence, in the absence of a decree or an award fixing the quantum of damages, if any, payable by the Corporate Debtor to the Applicant in respect of provision of goods and services, it cannot be said that the claim of the Applicant has crystallised into an operational debt; and thus, we find no fault with the act of the Respondent in treating and classifying the Applicant as ‘Other Creditor’ and not ‘Operational Creditor’ on the basis of the claim filed by it.



15. In view of the foregoing findings, analysis and discussion, we hold that the Respondent/RP was fully justified in treating the claim of the Applicant as other debt and classifying the Applicant as 'Other Creditor' and not as 'Operational Creditor'. Hence, no interference with the impugned Letter of the Respondent dated 08th August, 2020 is warranted. Consequently, **we hereby dismiss I.A. No. 2251 of 2020** leaving the parties to bear their own costs.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

I.A. 2372 OF 2020

IN

C.P.(IB) No. 193/MB/2019

Under Section 9 of the Insolvency &
Bankruptcy Code, 2016

Mr. Shankar Baban Vare and Ors.

...Applicants

Vs.

Committee of Creditors

Through its Resolution Professional

Mr. Kshitiz Gupta

...Respondents

In the matter of

Easun-MR Tap Changers Pvt. Ltd.

...Operational Creditor

Vs.

Aditya Vidyut Appliances Ltd.

... Corporate Debtor

Order Pronounced on: 12/08/2024



Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Applicant : Adv. Mily Ghoshal

For the Respondent : Adv. Shyam Kapadia i/b Adv. Ajinkya Kurdukar

ORDER

Per: - Mr. Kuldip Kumar Kareer Member (Judicial)

1. The present Application is filed by the Applicant, namely, **Mr. Shankar Baban Vare and Ors.**, Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 (**“Code”**) seeking directions against the Respondent/RP to disburse the salaries due till date and also accept the claim of Rs. 2,21,67,016/- and further to accept the claim of Nilesh Javir amounting to Rs. 3,39,785/-. It is further prayed that the Resolution Professional be directed to ensure proper protection of the gratuity, provident fund and other such contributions of the applicants.

FACTS OF THE CASE

2. The Applicants state that they have been employed with the Corporate Debtor for a considerable number of years and have the salaries from the Corporate Debtor as their only source of income.



3. The applicant states that petition under section 9 of the Insolvency and the Bankruptcy Code was filed by the Operational Creditor and the said Petition was admitted by the Hon'ble bench of National Company Law Tribunal Mumbai vide order dated 11.09.2019 whereby one Mr. Kshitiz Gupta was appointed as the Interim Resolution professional.
4. The Applicants states that accordingly Form A was published by the Interim Resolution professional and the claims were invited and the last date of inviting the claims was 04.10.2019.
5. That the Applicants state that the Applicants submitted their respective FORM D-Proof of Claim by a Workmen or an Employee vide letter dated 30.09.2019 along with all relevant annexures attached thereto for a total claim of Rs. 5,36,23,817/-. (The Applicants crave leave to refer to the Copy of the respective FORM D-Proof of Claim by a Workmen or an Employee dated 30.09.2019 along with all relevant annexures attached thereto filed by the Applicants as and when produced by the leave of the Hon'ble Court).
6. That the Applicant states that the Resolution Professional has accepted the total claim of Rs. 3,14,56,800/- of the Applicant as the same is reflecting in the list of the workmen and Employees displayed on the website of the Corporate Debtor whereas the balance amount of Rs.



2,21,67,016/- has not been accepted by the Resolution Professional on the pretext that the said amount belongs to gratuity and since the applicants continue to be the employees of the Corporate Debtor, the same cannot be accepted. Further, an amount of claim of Rs. 3,39,785/- belonging to one Mr. Nilesh Javir (Respondent no. 54 herein) is not accepted by the Resolution Professional in spite of submitting the Form D for the best reasons known to the Resolution Professional.

7. That the Applicants state that the Resolution professional has erred in not giving a proper and stable position to the Applicants. The Applicants are in dilemma that in case they are still employees of the Corporate Debtor, the Resolution Professional has failed in paying them their salaries, which is a part of the CIRP cost.
8. That the Applicants state that the Applicants are still employed by the Corporate Debtor and they have strived in every possible manner to revive the Corporate Debtor which can be very easily portrayed from the sales report generated by the Applicants in a collective manner till such time as the Corporate Debtor was in a situation to deliver its transformers into the industry which could not have been possible without the efforts of the Applicants herein.



9. That the Applicants state that most of them are all senior citizens or belonging to lower middle class and are the only bread winners of their families. The applicants have already been much affected because of the failure of the management to sustain the Corporate Debtor which has eventually turned from a profit earning entity into a loss making one. Due to the failure of the Corporate Debtor, the Applicants have already suffered a lot and to add to their misery, the pandemic situation that broke globally showed its equal wrath on the Applicants.
10. The Applicants state that now their families and dependants daily survival is at stake and the same can be taken care only by this Hon'ble Court as in spite of repeated requests, the Resolution Profession and the Committee of Creditors have failed to release any amount of salaries to the Applicants.

Reply filed by the Corporate Debtor

11. In the reply filed by the Respondent, it is stated that the claim forms were submitted by the Applicants vide letter dated 30.09.2019 (Form B/ Claim Form). Further, the receipt of the said claim forms submitted by the Applicants has been admitted. The Respondent scrupulously conducted the necessary due diligence in respect to the collation and verification of claims supported by the annexed documents as statutorily



required under the Insolvency and Bankruptcy Code, its allied rules and regulations and admitted the claim amount to the extent tenable in accordance with the law.

12. According to the respondent, the applicants refer to the three factual aspect which are as follows:

- (a) firstly, in regard to the admission of claim amount to an extent of Rs 3,14,56,800/- by the Respondent in pursuance of the said claim form submitted by the Applicants and the acceptance memo has already been displayed and updated on the website of the Corporate Debtor. As the statement to the extent of admission amount is correct and hence it does not warrant any further justification or reply by the Respondent.
- (b) Secondly, with regard to the rejection of amount to the tune of Rs 2,21,67,016/- (differential amount), the Respondent respectfully states and submits that it is the Applicant's assertion or admission of fact that the Applicants continue to be employed with the Corporate Debtor. Further, the Respondent states and submits that the Committee of Creditors had in its Commercial wisdom resolved to maintain 'status quo' on the aspect of the employees and workers employment position and resolved not to terminate any employees and workers during the CIRP period. The Respondent further submits that differential amount is in correlation to the gratuity components of remuneration which is payable to an employee only in 'the event of termination of employment of a subject employee as specifically provided



under Section 4 of Payment of gratuity Act, 1972. As the Applicants employment has not been terminated by the Respondent nor any of the Applicants in capacity of 'employees' have tendered their resignations as per the terms and conditions of employment service, and hence, on the aforesaid reasons, they are not entitled to the gratuity payments.

- (c) The Respondent/Resolution Professional states and submits that the Applicant Nilesh Javir's claim form was received by the Respondent vide an email intimation dated October 25, 2020 wherein the concerned Applicant claimed an amount of Rs 3,39,785 (Rupees Three Lakh Thirty- Nine Lakh Seven Hundred and Eighty-Five only). It is important to note and disclose that the Exhibit 'C' relied upon by the Applicants is the old list of Employees and Workers dated October 05, 2020 and the Resolution Professional has already uploaded the revised list of the Employees and Workers dated May 20, 2021 and the said revised list is already available and was uploaded by the Resolution Professional on the website of the Corporate Debtor. Further, the Resolution Professional has already admitted the claim of the Applicant, Nilesh Javir, to the extent of Rs 2,76,625/- and the said admitted claim amount has already been included in the Information Memorandum for the consideration of Resolution Plan by the Prospective Resolution Applicant. A copy of the revised list of Worker and Employees of the Corporate Debtor dated May 20, 2021 is annexed as 'Annexure A'.



13. The Respondent further categorically denies the misplaced factual proposition contended by the Applicants that their rights have been adversely affected. The Respondent further respectfully submits that the Applicants agreed to work on subsidized, terms and conditions of their service. Further, it is imperative to note that the Corporate Debtor business operation came to a standstill from February, 2019 onwards and the Applicants were not working during the state of dormancy in the business operations of the corporate position, Further, during the pendency of Corporate Debtor resolution process, the Applicants were not working and hence, it is incorrect to state that the Respondent has usurped the rights of the Applicants. The Respondent has further denied that the Applicants are entitled to recover the salaries or compensation during the CIRP as they were not working for the said period and for the said reason, the said claim in terms of salary during CIRP cannot be included as a part of CIRP cost. With reference to the contents specifically mentioned in Paragraph 8 of the Application, the Respondent states that the Respondent had already considered the claim form of the Applicants and admitted the claim amount to the extent factually correct and in accordance with the law.
14. The Respondent acknowledges the direct or indirect contribution made by the Applicants in order to run the company successfully for the period



prior to the CIRP. However, the Respondent reiterates that, factually, the business operation of the Corporate Debtor came to standstill and from the month of February, 2019, the Corporate Debtor was not functioning and its business operation was shut down.

15. The Respondent further submits that the gratuity amount is to be paid in the event of termination of employment by employee or employer. Further, the Applicants have themselves admitted in paragraph 9 of the Application, that they continue to be employees of the Corporate Debtor. Hence, the claim for gratuity does not pass the qualifying conditions or essential criteria as enunciated under Payment of Gratuity Act as mentioned in the preceding paragraph. Hence, for the said reasons, the Respondent submits that the Applicants are not qualified to claim the gratuity against the Respondent.
16. The Respondent states that a Resolution Plan submitted by a Resolution Applicant has already been approved by the consolidated CoC vide Resolution dated 12 January, 2022 in accordance with the Code, its Rules and Regulations. Further, in pursuance to the Resolution of Resolution Plan, the Respondent through Resolution Professional, has already filed an Interlocutory Application bearing No. 211 of 2022 before Hon'ble Tribunal. Mumbai Bench seeking approval/ ratification



of the Resolution Plan as statutorily required under Section 30 read with Section 310 the Code. However, due to confidentiality nature of the Resolution plan, the Respondent cannot disclose the substantive treatment or provisions in connection with or having nexus to the cause of action for preferring the Application by the Applicant regarding the amount payable to Worker and Employees.

17. The Respondent states that the Applicants, factually, were not in continuous service during CIRP period i.e. September 11, 2019 to January 12, 2022. For the purpose of clarification, the Corporate Debtor was a part of consolidated CIRP aligned with sister concern. Aditya Fabrication Limited (AFPL) and the CIRP of Corporate Debtor was timely extended in pursuance of the Interlocutory Application preferred by the Resolution Professional before the National Company Law Tribunal, Mumbai Bench: The Respondent craves leave to refer and rely upon the appropriate orders timely passed by the Hon'ble Tribunal for the purpose of computation of the CIRP Period. In consideration of the extensive period available to the respective creditors, any claim pertaining to the salaries or remuneration accruable or entitled during CIRP period is not to be entertained and must be denied.



18. The Respondent submits that prayers made in the application are untenable in law, ultra-vires and arbitrary as no direction can be passed by the Tribunal to direct Committee of Creditors or Resolution Professional, to release or disburse the disputed gratuity amount, as the same is a subject matter required to be addressed and adequately treated by the Resolution Applicant in its Resolution Plan.
19. The Respondent states that the Resolution Applicant cannot be permitted for the modification or withdrawal of the Resolution Plan after the Approval of the same by the Committee of Creditors. Further, the Application, if allowed, would open floodgates for further litigations pertaining to claims at the advance stage of the Resolution Plan Approval and would possibly push the Corporate Debtor in liquidation which is not a primary objective of the Legislative framework of the Code.
20. In the end, the Respondent has prayed for the dismissal of the Application

FINDINGS

21. We have heard the counsel for the parties and have gone through the records.



22. So far as the claim of Rs. 5,36,23,817/- lodged by the Applicant with the RP is concerned, the same was admitted to the extent of Rs.3,14,56,800/-. The amount of gratuity has been excluded from the claim by the RP on the ground that the gratuity of the Applicant would become due and payable as and when the Applicant would leave/retire/terminate from his employment with the Corporate Debtor. Since the Applicants continue to be in services of the Corporate Debtor, the gratuity cannot be paid at this stage. Considering these facts, we are of the considered view that the RP has rightly admitted the claim only partially excluding the amount of gratuity as the Applicants continue to be in service of the Corporate Debtor.
23. Even otherwise Section 4 of the Payment of Gratuity Act, 1972 which mandates that the employer to maintain a gratuity fund and to pay the requisite gratuity to a workman on termination of their services. The relevant extract of the Section 4 of the Payment of Gratuity Act, 1972 is as under:

*“Section: 4
Payment of gratuity.*



*(1) Gratuity shall be payable to an employee **on the termination of his employment** after he has rendered continuous service for not less than five years, -*
(a) on his superannuation, or
(b) on his retirement or resignation, or
(c) on his death or disablement due to accident or disease:...”

24. The bench observes that the Applicants employment has not been terminated by the Respondent nor any Applicants as and in the capacity of 'employees' have tendered their resignations as per the terms and conditions of employment service. Therefore, the claim of the Applicants in respect of gratuity does not survive. However, it is being made clear that the gratuity would be paid to the Applicants as and when they leave/retire from the services of the Corporate Debtor and it will be duty of the SRA to pay the gratuity at that stage as per the law laid down by the Hon'ble NCLAT in *Jet Airways case (Company Appeal (AT) Insolvency No. 752,643,782,801,915 of 2021)*.

25. So far as the claim of Rs. 3,39,785/- of Nilesh Javir is concerned, the same has been admitted by the Resolution Professional to the extent of Rs. 2,76,625/- as per the record of the Corporate Debtor, as reflected in Annexure 'A' in the reply filed by the Resolution Professional. It has not been established by the Applicants that claim of Nilesh Javir was to the extent of Rs. 3,39,785/- nor any document or any other document



brought on record. Therefore, it cannot be said that the claims of Nilesch Javir was to the extent of Rs. 3,39,785/-. Since the due claim has been admitted, in our view, no relief can granted in this regard.

26. As a result of the aforesaid reason, the **I.A. No. 2372 of 2020** is **dismissed**. However, it is being made clear that it shall be the duty of the Corporate Debtor/Successful Resolution Applicant to pay gratuity to the Applicant as and when they retire, leave their service of the Corporate Debtor or their services are discontinued or terminated.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

I.A. 2374 OF 2020

IN

C.P.(IB) No. 193/MB/2019

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

Mr. Shrikrishna Patil and Ors.

...Applicants

Vs.

Committee of Creditors

Through its Resolution Professional

Mr. Kshitiz Gupta

...Respondents

In the matter of

Easun-MR Tap Changers Pvt. Ltd.

...Operational Creditor

Vs.

Aditya Vidyut Appliances Ltd.

... Corporate Debtor

Order Pronounced on: 12/08/2024



Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Applicant : Adv. Mily Ghoshal

For the Respondent : Adv. Shyam Kapadia i/b Adv. Ajinkya Kurdukar

ORDER

Per: - Mr. Kuldip Kumar Kareer, Member (Judicial)

1. The present Application is filed by the Applicant, namely, **Mr. Shrikrishna Patil and Ors.**, Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016, 2016 impugning the rejection of their claim by the Respondent, who was the Interim Resolution Professional ('IRP') of the Corporate Debtor. The Applicant has further prayed that the Respondent/IRP be directed to disburse the gratuity, provident fund and other such contributions of the Applicants and ensure that the said gratuity, provident fund and other such contributions of the Applicants are protected.



Submissions of the Applicant:-

2. The Applicants state that they have been employed by the Corporate Debtor for a considerable number of years and the salaries from the Corporate Debtor are their the only source of income.
3. The Applicants further state that the Form A was published by the Interim Resolution professional and the claims were invited from all wherein the last date of inviting the claims was 04.10.2019.
4. The Applicants further state that thereafter the Applicants submitted their respective FORM D-Proof of Claim by a Workmen or an Employee vide letter dated 30.09.2019 along with all relevant annexures attached thereto for a total claim of Rs. 90,44,549/-. However, the Respondent-Resolution Professional has admitted the claim of the Applicants only to the tune of Rs. 83,78,970/- and the same is reflected in the list of the workmen and Employees displayed on the website of the Corporate Debtor. Thus, being aggrieved by the claim rejection, the Applicant have filed this application.



5. The Applicants further state that the Applicants are no more under employment with the corporate Debtor and few of the Applicants are not employed anywhere and are still struggling for employment.

Reply filed by the Respondent:-

6. The Applicants submitted claim form for a total claim of Rs. 90,44,549/- and the Respondent has admitted the claim amount only to the extent of Rs. 83,78,970/- after due diligence and verification of the claims on the basis of the employee's documents and records available with Corporate Debtor/or the HR department of the Corporate Debtor.
7. The Respondent states that a Resolution Plan submitted by a Resolution Applicant has already been approved by the consolidated CoC vide Resolution dated 12th January, 2022 in accordance with the Code, its Rules and Regulations. Further, in pursuance to the Resolution of Resolution Plan, the Respondent through Resolution Professional, has already filed an IA No. 211 of 2022 before this Tribunal, seeking approval/ratification of the Resolution Plan, the Respondent cannot disclose the substantive treatment or provisions in connection with or having nexus to the cause of action for preferring the Application by the Applicant regarding the amount payable to worker and employees.



8. The Respondent/ Resolution Professional states and submits that the said admitted claim was put forth before the Prospective Resolution Applicant for their consideration.
9. The Respondent submits that the prayers in Application are untenable in law, ultravires and arbitrary as no direction can be passed by the Tribunal to direct Committee of Creditors or Resolution Professional, to release or disburse the balance amount during pendency of approval of Resolution Plan by the Tribunal and any payment to the respective creditors including the Applicants will be required to be made in accordance with the Resolution Plan.
10. The Respondent states and submits that the Resolution Applicant cannot be permitted for the modification or withdrawal of the Resolution Plan after approval of the same by the Respondent, Committee of Creditors. Further, the Application, if permitted, would resultantly lead to floodgate of litigation pertaining to the claims at the advance stage of the Resolution Plan approval by the Tribunal and would possible bring the Corporate Debtor on the verge of liquidation, which was not the primary objective of the Code.



11. The Respondent submits that the Application is liable to be dismissed on the grounds mentioned in the above preceding paragraphs.

Findings:-

12. We have heard the counsel for the parties and have gone through the records.
13. It is an undisputed fact that the Applicants were the employees of the Corporate Debtor. The Corporate Debtor was admitted into the Corporate Insolvency Resolution Process ('CIRP') vide order dated 11.09.2019, passed u/s 9 of the Code in CP(IB) No. 193/I& BP/2019. Pursuant to the CIRP Order, Form A was published by the Respondent and the claims were invited. The last date of inviting the claims was 04.10.2009. The Applicants submitted their claim in Form D vide Letter dated 30.09.2019 for a total claim of 90,44,549/- and the Respondent has admitted the claim amount only to the extent of Rs. 83,78,970/-. Therefore, the Applicants have prayed that the Respondent be directed to admit the balance amount of claim of Rs. 6,65,579/- and also to disburse the gratuity, provident fund and other such contributions of the Applicants and ensure that the said gratuity, provident fund and other such contributions of the Applicants are protected.



14. We have examined the matter carefully and have given our thoughtful consideration to it.
15. In the instant case, though the Applicants have impugned the claim rejection by the Respondent, they have not produced any evidence or material on record to show or substantiate that they were entitled to the portion of the claim rejected by the Respondent. We find that the Applicants have merely provided the list of workmen and employees displayed on the Corporate Debtor's website showing the amount of claim filed, the amount of claim admitted and the amount of claim rejected. However, in our considered view, this does not substantiate or prove the claim of the Applicants. Per contra, the Respondent has pleaded in his reply on affidavit that he has admitted the claim amount after conducting due diligence and verification of the claims on the basis of the employee's documents and records available with the Corporate Debtor and/or the HR department of the Corporate Debtor. We observe that there is nothing on record to show that the Respondent has not verified the claims of the Applicants with due diligence.
16. As there is no document on record to prove that the Applicants were entitled to the amount of claim of INR 6,65,579/-, which was rejected



by the Respondent, we are unable to direct the Respondent to accept or admit the rejected claim of INR 6,65,579/-. Further, the Applicants have prayed for directions to the Respondent to disburse the gratuity and provident fund and other such contributions as also to ensure that such funds and contributions are protected. However, yet again, the Applicants have failed to show or substantiate that they were entitled to any gratuity or provident fund or there has been a contribution by the employees or employers to such funds. The Applicants have not even stated the amounts due to them under the gratuity or provident funds or any other Funds. Thus, we are constrained to observe that the prayer in terms of Para 12(c) is extremely vague, unclear and unsubstantiated. Hence, we are unable to direct the Respondent to disburse the gratuity, provident fund, etc. in terms of prayer in clause (c) of Para 12 of the above-captioned application.

17. In view of the foregoing findings and discussions, the reliefs prayed for by the Applicants as the above-captioned application cannot be granted. Accordingly, **IA No. 2374 of 2020 is dismissed** being devoid of merits.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

I.A. 2474 OF 2020

IN

C.P.(IB) No. 193/MB/2019

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

Mr. Sushil Vithal Pawaskar,

703/704 Vasanta B, Dosti Vihar, Opp.

Kores, Pokhran road no. 1, Thane

(west)

...Applicant

Vs

Committee of Creditors,

Through the Resolution Professional

Mr. Kshitiz Gupta,

Flat No, C/104, Lotus CHSL,

Gundecha Valley of Flowers, Thakur

Village, Kandivali (East), Mumbai - 101

...Respondent

In the matter of

Easun-MR Tap Changers Pvt Ltd,

...Operational Creditor

Vs



**Aditya Vidyut Appliances Limited,
... Corporate Debtor**

Order Pronounced on: 12/08/2024

Coram:

**Mr. Anil Raj Chellan
Member (Technical)**

**Mr. Kuldip Kumar Kareer
Member (Judicial)**

Appearances:

For the Applicant : Adv. Mily Ghoshal

For the Respondent : Adv. Shyam Kapadia i/b Adv. Ajinkya Kurdukar

ORDER

Per: - Mr. Kuldip Kumar Kareer Member (Judicial)

1. The present Application is filed by the Applicant, namely, Mr. Sushil Vithal Pawaskar, under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**“The Code”**) seeking the following reliefs:
 - a. Direct the Resolution Professional to disburse the total amounts due of the Applicant.
 - b. Direct the Resolution Professional to accept the claim of Gratuity of Rs. 10,35,388/- and disburse it accordingly.



- c. Direct the Resolution Professional to disburse the gratuity, provident fund and other such contributions of the applicant and ensure that the said gratuity, provident fund and other such contributions of the applicants are protected.
- d. Any other relief as deemed fit by the Court.

FACTS OF THE CASE

2. The Applicant was appointed as Sr. Vice President (Global) in Marketing Department vide Letter of Appointment dated 03.01.2011 by Aditya Vidyut Appliances Limited (Corporate Debtor) for a consolidated package of Rs. 20,00,000/- per annum.
3. The Applicant has submitted that vide letter dated 18.01.2011, the Corporate Debtor had committed an incentive amounting to 0.5% of the total business volumes generated by the Applicant. In this regard, the Applicant has generated the sales of Rs. 2,06,87,19,337/- during his tenure from 2011 to 2017 and, therefore, was entitled to an incentive of Rs. 1,03,43,597/-. The Applicant has submitted that out of the said incentive, an amount of Rs. 20,00,000/- has been paid by the Corporate Debtor and an amount of Rs. 83,43,597/- remained unpaid balance of the total incentive.



4. Vide Letter of Increment dated 18.05.2017 the Corporate Debtor offered an increment to the Applicant and revised its package to Rs. 33,74,960/-.
5. The Applicant has submitted that from the month of December 2018, the salaries along with the other expenses in consonance with the various heads were not paid to Applicant. The unpaid salary of the Applicant amounts to Rs. 18,90,904/- and the outstanding voucher expenses amounts to Rs. 2,83,236/- are also due.
6. Thereafter, vide letter of resignation dated 31.05.2019, the Applicant resigned from the job and subsequently, obtained satisfaction certificate dated 25.06.2019 from the Corporate Debtor.
7. Further, this Tribunal vide order dated 11.09.2019 admitted the Insolvency proceedings under Section 9 of the Code against the Corporate Debtor and appointed Mr. Kshitiz Gupta as the Interim Resolution Professional of the Corporate Debtor.
8. The Applicant had submitted Form D vide letter dated 30.09.2019 claiming an amount of Rs., 1,05,17,737/- and the same is reflected in the list of workmen and employee displayed in the website of Corporate Debtor. The Applicant has further submitted that the total Gratuity amounting to Rs. 10,35,388/- is due upon the Corporate Debtor.



9. With the above averments, the Applicant has prayed for the disbursal of the total amount due to the Corporate Debtor.

REPLY FILED BY THE RESPONDENT

10. The Respondent has submitted that Form-B submitted by the Applicant for a claim of Rs. 1,05,17,737/- has been admitted by the Respondent in toto.

11. The Respondent has further submitted that due to confidentiality issues, the Respondent cannot disclose the substantive treatment or provisions made for any payments being made to the Applicant, other employees and workers of the Corporate Debtor

12. The Respondent has further submitted that no claim on account of pending gratuity of Rs. 10,35,388/- was filed by the Applicant and, therefore, the same cannot be admitted at the time of approval of Resolution Plan as it would undermine, frustrate and defeat the primary objective of the Code.

13. The Respondent has further submitted that the Applicant's claim was included in the Information Memorandum and the same was put before the Resolution Applicant for its consideration.



14. The Respondent has submitted that at this stage, the Resolution Applicant cannot be asked to modify or alter the Resolution Plan after its approval of the same by the Committee of Creditors.
15. With the above averments, the Respondent has prayed for the dismissal of the present Application.

FINDINGS: -

16. We have heard the Counsel for the parties and have gone through the record.
17. Admittedly, the Applicant was appointed as Senior Vice-President vide letter dated 03.01.2011 on a consolidated salary of Rs. 20 lacs per annum. The Applicant claims to have served the company till 25.06.2019 when his resignation was accepted. As per the case of the Applicant, the Resolution Professional has accepted the total claim of the Applicant towards the outstanding salary to tune of Rs. 10517377/-. However, the gratuity amount of Rs. 10,35,388 has not been admitted.
18. On the other hand, the Respondent in the reply, has claimed that the alleged claim of Rs. 1035388/- on account of the gratuity was not submitted by the Applicant along with the original claim of salary and, therefore, the same has not been admitted. It has also been claimed on behalf of the Respondent



that since the Resolution Plan has been approved any claim including the claim for gratuity cannot be entertained or admitted at such a belated stage when the Plan has already been approved.

19. Having considered the rival contentions raised by the Counsel for the Parties, we are of the considered view that as per the law laid down in *Jet Airways*, the gratuity claim of an employee is required to be mandatorily paid. It is not disputed in this case that the Applicant served the Company for more than five years. Therefore, as per the provisions of the Payment of Gratuity Act, 1972, the Applicant is entitled for gratuity and non-payment of gratuity of an employee can itself affect the legality of Resolution Plan.
20. Accordingly, the above **IA 2474 of 2020 is allowed** with a direction to the Resolution Professional to consider and allow the claim of the Applicant in respect of the gratuity which became due on the date he left the services of the Corporate Debtor as per law laid by the *Hon'ble NCLAT in Jet Airways case (Company Appeal (AT) (Insolvency) Nos. 752, 643, 792, 801, 915 of 2021, 361, 771 & 987 of 2022)*.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT-II

I.A. 2911 OF 2021

IN

C.P.(IB) No. 193/MB/2019

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

Mr. (CA) Kshitiz Gupta,

The Resolution Professional of Aditya
Vidyut Appliances Limited and Aditya
Fabrication Private Limited

F-52, First Floor, Centrium,

Lokhandwala Township, Akurli Road,

Kandivali (E), Mumbai- 400 101

...Applicant

Vs

The Office of Tehsildar, Bhiwandi,

Maulana Azad Road, Kacheri Pada,

Gulzar Nagar, Bhiwandi, Thane, 421

302.

...Respondent

In the matter of

Easun-MR Tap Changers Pvt Ltd,

...Operational Creditor

Vs



**Aditya Vidyut Appliances Limited,
... Corporate Debtor**

Order Pronounced on: 12/08/2024

Coram:

**Mr. Anil Raj Chellan
Member (Technical)**

**Mr. Kuldip Kumar Kareer
Member (Judicial)**

Appearances:

For the Applicant : Adv. Mily Ghoshal

For the Respondent : None

ORDER

Per: - Mr. Kuldip Kumar Kareer Member (Judicial)

1. The present Application is filed by the Applicant, namely, Mr. (CA) Kshitiz Gupta, Resolution Professional of Aditya Vidyut Appliances Limited (Corporate Debtor) under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“**the Code**”) seeking the following reliefs:

- a. Direct the Respondent to de-attach the office building with immediate effect; and
- b. Restrain the Respondent from taking any adverse actions with respect to the concerned premise and/or the Corporate Debtor till the conclusion of the Corporate Insolvency Resolution Process; and



- c. Restrain the Respondent from taking any adverse actions with respect to the concerned premise and/or the Corporate Debtor after the approval of Resolution Plan, if any, in light of Section 32-A of the Insolvency & Bankruptcy Code, 2016
- d. Direct the Respondent to adhere to the provisions of the Code for the purpose of recovering the arrears of land revenue with respect to the concerned premise and/or the Corporate Debtor, and
- e. Direct the Respondent to offer their unconditional support and cooperation for the purpose of smooth and efficient Corporate Insolvency Resolution Process,
- f. Pass any such order as this Tribunal may deem fit in the interest of justice, equity or otherwise.

FACTS OF THE CASE

2. This Tribunal vide order dated 11.09.2019 admitted the Insolvency proceedings under Section 9 of the Code against Aditya Vidyut Appliances Limited (Corporate Debtor) and appointed Mr. Kshitiz Gupta (Applicant) as the Interim Resolution Professional of the Corporate Debtor. Accordingly, the Public Announcement dated 23.09.2019 inviting the claims of the Creditors was published.



3. This Tribunal vide order dated 15.05.2020 admitted the Company Petition no. 547 of 2020 under Section 7 of the Code against Aditya Fabrication Private Limited and appointed the Applicant as Interim Resolution Professional for conducting and supervising the CIRP.
4. IA No. 78 of 2021 in CP 193 of 2019 was filed by the CoC of the Corporate Debtor through State Bank of India seeking consolidation of both CIRPs for such reason of common assets and heavy interdependence of both the Corporate Debtors and the lenders. This Tribunal vide order dated 16.04.2021 allowed the said consolidation and appointed the Applicant as the Resolution Professional to conduct and supervise the common CIRP.
5. The registered address of the Corporate Debtor is at Survey No. 168, Hissa No. 10, Sonali Village, Bhiwandi By-pass Road, NH-3, Thane 421 302, Maharashtra, India (hereinafter referred to as **“Office Building”/“concerned Premise”**) which can also be proved from the Company Master Data.
6. The Applicant has submitted that the Respondent, being the land revenue authority under the state land revenue legislation, is alleged to have a claim against the Corporate Debtor amounting to Rs. 6,00,000/- and in this regard, the Applicant has received the Notice of Attachment dated 01.03.2021 issued



by the Respondent stating that the concerned premise shall be forfeited by the State Government upon the completion of a period of 15 days from the date of the notice due to non-payment of land revenues.

7. The Applicant requested the Respondent to remove the attachment from the premise of the Corporate Debtor vide letters dated 12.03.2021. In this regard, the Applicant has further sent an email dated 20.04.2021 to the Respondent. The Applicant has also sent a hand delivery of the letter dated 12.03.2021 on 07.06.2021. Further, the Applicant has sent letter dated 30.06.2021 enumerating all the facts and circumstances to the Respondent.

8. Thereafter, the Applicant appeared before the Respondent and explained the situation. The Applicant was asked to make a formal application for the departmental and the documentation purposes. The Applicant has sent an application through the hand delivery to the Respondent on 07.07.2021 asking the Respondent to lodge its claim before the Applicant and unseal the office building. The Applicant again got delivered the letter dated 28.10.2021 to the Respondent.

9. The Applicant has submitted that the actions of the Respondent are inconsistent with the provisions of the 'Moratorium' and the directions of this Tribunal issued vide order dated 11.09.2019.



10. The Applicant has submitted that despite the repeated requests and reminders, the Respondent has neither filed its claim nor unsealed the office building till date which constrained the Applicant to file the present Application.

FINDINGS:-

11. Notice of the Application was issued to the Respondent No. 1. Nobody turned up on behalf of the Respondent nor any reply was filed. A service affidavit showing that the notice was served upon the Respondent has been filed by the Applicant.

12. We have heard the Counsel for the Applicant and have gone through the record.

13. In this case, CIRP was commenced against the Corporate Debtor vide the order dated 11.09.2019. Similarly, vide order dated 15.05.2020, the other Corporate Debtor namely Aditya Vidyut Fabrication was also admitted on CIRP in pursuance of the order of NCLT Bench, New Delhi. The CIRP against the above referred Corporate Debtors was consolidated vide the order dated 16.04.2021 by this Bench and the Applicant i.e. Kshitiz Gupta was appointed as Resolution Professional to conduct the common CIRP.



14. It has been claimed by the Applicant that the Respondent issued a notice of attachment dated 01.03.2021 on the ground that the Corporate Debtor owes a sum of Rs. 6 lacs to the Respondent on arrears of land revenue in respect of property No. 168.12 HR Sonali Taluka Bhiwandi. However, in our considered view, since CIRP against the Corporate Debtor namely Aditya Vidyut Appliances Limited commenced with effect from 11.09.2019, the property of the Corporate Debtor could not have been attached for non-payment land revenue dues of Rs. 6 lacs after the imposition of the moratorium.
15. Therefore, the said notice of attachment cannot be sustained in the eyes of law being hit by Section 14 of the Insolvency and Bankruptcy Code. Under these circumstances, appropriate remedy available with the Respondent was to file a claim before the Resolution Professional for the recovery of the outstanding dues of Rs. 6 lacs.
16. In view of the above discussion, the above **IA 2911 of 2021 is allowed** with an order that the notice of attachment or the attachment, if any, carried out on the basis of the notice dated 01.03.2021 is hereby set aside. There shall be no order as to costs.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)