

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 670 of 2023

[Arising out of order dated Order dated 31.03.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court III in IA. No. 1143 of 2022 in C.P. No. 2915 of 2019]

IN THE MATTER OF:

**1. SHREE GOPAL PAPER MILL LABOUR UNION
(REGD.)**

LAJPAT NAGAR, PAPER MILL COLONY,
YAMUNA NAGAR, HARYANA 135001

**2. SRI GOPAL PAPER MILL KAMGAR UNION
(REGD.)**

LAJPAT NAGAR, PAPER MILL COLONY,
YAMUNANAGAR, HARYANA 135001

...Appellants

Versus

1. ANUJ JAIN

RESOLUTION PROFESSIONAL
8TH FLOOR, BUILDING NO. 10
DLF CYBER CITY, PHASE II
GURGAON, HARYANA 122002.

**2. COMMITTEE OF CREDITORS,
THROUGH IDBI BANK**

IDBI TOWER, WORLD TRADE CENTRE COMPLEX,
CUFFE PARADE, COLABA, MUMBAI 400005.

3. FINQUEST FINANCIAL SERVICES PRIVATE LTD.

02, BOSTON HOUSE, 6TH FLOOR,
SUREN ROAD, ANDHERI (E)
MUMBAI 400093.

...Respondents

Present:

**For Appellants: Mr. Palash S Singhai and Mr. Harshal Sareen,
Advocates.**

**For Respondent: Mr. Ashish Dholakia, Sr. Advocate with Mr.
Ninamra Kopariha, Advocate for R-1.**

**Mr. Ankur Mittal and Ms. Yashika Sharma,
Advocates for CoC/R-2.**

**Mr. Dhruv Mehta, Sr. Advocate with Mr. Gaurav
Mitra, Mr. Kaustubh Prakash, Ms. Supriya**

Cont'd.../

**Majumdar, Ms. Hita Sharma, Ms. Prachi Bhatia
and Mr. Shyam, Advocates for R-3.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed against the order passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court III in I.A. No.1143 of 2022 by which order the Adjudicating Authority has allowed the I.A. filed by the Resolution Professional for approval of the Resolution Plan submitted by Finquest Financial Services Private Ltd. (Respondent No.3 herein). The Appellant claiming to be Registered Labour Union of the Employees of Shree Gopal Paper Mill, aggrieved by the approval of plan has come up in this appeal. Brief facts of the case necessary to be noticed for deciding the appeal are:

- (i) By order dated 17.01.2020 CIRP against the Corporate Debtor - Ballarpur Industries Ltd. commenced on an application filed under Section 7 of the I&B Code. The Respondent No.1 was appointed as the Resolution Professional.
- (ii) In pursuance of publication inviting filing of claim, the management of the Corporate Debtor filed a claim on behalf of the workmen for an amount of Rs.40 Crore. The Resolution Professional admitted the claim of workmen for 24 months before CIRP commencement date for amount of Rs.6.61 Crore and for employees 12 months before CIRP commencement date as Rs.0.93 Crore.

- (iii) In pursuance of request for Resolution Plan, Resolution Plan was submitted by Respondent No.3 dated 07.02.2022 updated as on 17.03.2022. On certain queries made by the Financial Creditors a Clarificatory Note dated 22.03.2022 was also sent by the SRA to the Resolution Professional.
- (iv) The Resolution Professional placed the Resolution Plan along with Clarificatory Note before the CoC. In the Resolution Plan, with regard to dues of workmen an amount of Rs.9 Crore was proposed and with regard to employees an amount of Rs.0.49 Crore was proposed. The Resolution Plan along with the Clarificatory Note was considered in the 26th CoC meeting held on 22.03.2022 and 88% members of the CoC voted for approval of the Resolution Plan.
- (v) The Resolution Professional after approval of the plan by CoC filed I.A. No. 1143 of 2022, which has been approved by the impugned order dated 31.03.2023. Aggrieved by the order dated 31.03.2023 this appeal has been filed.

2. We have heard Shri Palash S. Singhai, learned counsel for the Appellant, Mr. Ashish Dholakia, learned senior counsel appearing for the Resolution Professional, Shri Ankur Mittal, learned counsel for the Committee of Creditors. Shri Dhruv Mehta, learned senior counsel and Mr. Gaurav Mitra, learned counsel for the Successful Resolution Applicant.

3. Learned counsel for the Appellant challenging the approval of the Resolution Plan submits that the Resolution Plan does not provide for payment of Provident Fund and Gratuity, hence, the plan is not in compliance

with Section 30(2) of the I&B Code. It is submitted that workmen were entitled for full amount of Provident Fund and Gratuity till the commencement date. Resolution Plan having only made provision for 24 months' salary of the workmen, the plan deserves to be set aside. It is submitted that after the insolvency commencement date, the workmen were asked to work and they are entitled for salary from May 2020 till November, 2020 during which period the workers have worked but not paid any salary. Non-payment of Provident Fund and Gratuity is violation of statutory provisions. Learned counsel for the Appellant has referred to judgment of this Tribunal in **"Jet Aircraft Maintenance Engineers Welfare Association vs. Ashish Chhawchharia, 2022 SCC OnLine NCLAT 418"** where this Tribunal has held that workers are entitled of full payment of Provident Fund and Gratuity. Learned counsel for the Appellant submits that total outstanding towards Provident Fund is Rs.11.49 Crores and Gratuity is Rs.8.84 Crores, which is admitted by the Resolution Professional. Resolution Professional has added only two months' salary for May and June, 2020 as CIRP cost although salary slip was issued from June 2020 till November, 2020 to the employees.

4. Learned counsel for the Resolution Professional replying to the submissions of the learned counsel for the Appellant submits that there is no dispute that workers are entitled for full payment of Provident Fund and Gratuity. Learned counsel for the Resolution Professional submits that Appellant has not filed any claim before the CIRP and the claim which was filed was verified and final list of creditors was published as per which the workmen wages for 24 months prior to insolvency commencement date

amount to Rs.6.71 Crores and employees' wages for the period of 12 months preceding the insolvency commencement date amount to Rs.0.93 Crores. It is submitted that on 03.02.2021, the Resolution Professional received claim of Rs.10.20 Crore from Karam Chand Thapar & Bros. Ltd. Provident Fund Trust. It is further submitted that another claim was filed by EPFO Karnal which was subsequent to approval of the Resolution Plan by the CoC, which claim was filed only on 16.03.2023, which was after the Adjudicating Authority reserved judgment on plan approval application on 10.03.2023. The Resolution Professional in its Affidavit, however, has admitted that total Provident Fund dues is Rs.11.49 Crores and Gratuity dues is Rs.8.84 Crores, totaling to Rs.20.33 Crores. It is submitted that the commercial wisdom of the CoC approving the Resolution Plan cannot be questioned by the Appellant. Resolution Professional has duly assessed the Resolution Plans and placed the same before the CoC. It is submitted that the judgment of this Tribunal in **Jet Airways** was not delivered at the time when Resolution Plan was submitted, hence, the law was not crystallized regarding entitlement of Provident Fund and Gratuity.

5. Shri Ankur Mittal, learned counsel for the Committee of Creditors submits that the CoC have no quarrel with regard to the claim of the workers towards the Provident Fund and Gratuity. It is submitted that the Resolution Plan did not provide for Provident Fund and Gratuity dues and in event any payment has to be made to the workers for Provident Fund and Gratuity dues, the said payment has to be made by the Successful Resolution Applicant. The CoC is not liable to bear any burden regarding Provident Fund and Gratuity.

It is submitted that the Resolution Plan Para 4.5.2 provides for treatment of workmen liquidation dues at INR 9 Crores. It is submitted that the entitlement of Provident Fund and Gratuity is not part of the liquidation estate and in absence of any treatment provided for Provident Fund and Gratuity dues in the Resolution Plan, it is responsibility of the SRA to pay the said dues in full. The Provident Fund and Gratuity dues are not assets of the Corporate Debtor and do not fall under the waterfall mechanism of the Section 53 of I&B Code. It is liability of the Resolution Applicant to discharge the obligation to pay dues towards Provident Fund and Gratuity of workmen and employees. Learned counsel referring to the **Jet Airways case** submitted that in **Jet Airways** it was held that workers are entitled to receive full payment of Provident Fund and Gratuity Dues and direction was issued to the Successful Resolution Applicant to make the payment. It is submitted that in view of the law laid down by this Tribunal in **Jet Airways**, it is the Successful Resolution Applicant who has to make the payment. It is submitted that the Clarificatory Note of the Resolution Applicant dated 22.03.2022 was confined to CIRP cost and did not contemplate payment of Provident Fund and Gratuity Dues. It is submitted that payment of Gratuity and Employees Provident Fund not being contemplated by Resolution Plan, the liability has to be discharged by the Successful Resolution Applicant and the amount which is earmarked for the payment to the Financial Creditors cannot be subjected to any reduction due to any payment of Provident Fund and Gratuity.

6. Learned Counsel for the Successful Resolution Applicant refuting the submissions of Respondent No.2 submits that the Resolution Plan read with

Clarificatory Note clearly deals with Provident Fund and Gratuity Dues. It is submitted that Clarification Note dated 22.03.2022, Para 1 sub-clause (vii) has clearly provided that due to operation of law or by any order of any Court or Tribunal or for any other reason if any additional amount is payable to any workman or employees, whether admitted claim or not, crystallized or uncrystalized, known or unknown, present or future, the same shall be paid out of the total financial outlay in order of priority. It is submitted that the Clarificatory Note which was issued by the Successful Resolution Applicant was approved by the Committee of Creditors in the 26th CoC meeting. The CoC who had approved the aforesaid clause contained in the Resolution Plan along with Clarificatory Note is bound to honour the same. Resolution Applicant has clearly contemplated if any additional amount is paid to the workmen or employee known or unknown under any order of Court or Tribunal, the same shall be paid out of total financial outlay and Clause 1(vii) of the Clarificatory Note contemplate the manner of payment. The CoC who has approved the said plan cannot now resile from its undertaking. The Resolution Plan approved by the CoC is binding on the CoC and the payment of Provident and Gratuity has to be made to the workers as per the Resolution Plan. It is submitted that the judgment of **Jet Airways** on which reliance has been placed by the CoC was clearly distinguishable. In the said case there was no inter se issue regarding payment of Provident Fund between the CoC and the SRA. In the Resolution Plan of the Jet Airways, there was no such clause as contained in the Resolution Plan in the present case, which embraces all present and future payments. The judgment of **Jet Airways** is clearly distinguishable.

7. We have heard learned counsel for the parties and perused the record.

8. Learned counsel for all the parties are *ad idem* on the entitlement of workers to receive full payment of Provident Fund and Gratuity. The Resolution Professional by filing affidavit has also given the details of Provident Fund dues and Gratuity dues upto insolvency commencement date. In Para 2 Sub-clause (s) details of dues relating to Workmen (24 months) and Employees (12 months) and details of PF dues and Gratuity dues have been tabulated. In Para 2 (s) Table No.1 and Table No.2 is as follows:

“Table No.1

Details of Dues relating to Workmen (24 months) and Employees (12 months)				
Particulars	Location	Components	Amount (Crores)	Total (Crores)
Workmen [As per Section 53(1)(b)(i)]	Shree Gopal Unit	Salary/Wages	6.71 (approx.)	6.71 (approx..)
Employees [As per Section 53(1)(c)]	Shree Gopal Unit	Salary/Wages	0.93* (approx.)	0.93* (approx.)

**Kindly note.in Reply dated 23.07.2023, the present amount was mentioned as INR 73 Lakhs instead on INR 93 lakhs on account of an inadvertent typographical error and is hereby corrected through the present affidavit.*

“Table No.2

Details of PF Dues & Gratuity Dues up till the ICD (i.e., 17.01.2020) as per Jet Airways case.				
Particulars	Location	Components	Amount (Crores)	Total (Crores)
Workmen & Employees	Shree Gopal Unit	PF Dues	11.49* (approx.)	20.33 (approx.)
		Gratuity Dues	8.84 (approx.)	

**Including interest & penalties of INR 3.21 Crores*

9. The issue which has arisen in the present appeal is regarding the liability of payment of Provident Fund dues whether has to be borne by the Successful Resolution Applicant or it has to be deducted from the financial outlay under the Resolution Plan. Thus, whether it is the Successful Resolution Applicant which has to bear the burden of Provident Fund dues and Gratuity Dues or it has to be discharged from the financial outlay in the Resolution Plan, is the question to be answered in this appeal.

10. For answering the issue which has arisen in the appeal, we have to first notice certain clauses of the Resolution Plan. The copy of the Resolution Plan has been brought on the record by Additional Affidavit filed on behalf of the CoC. Clause 4 of the Resolution Plan deals with 'Financial proposal'. Clause 4.3.1 deals with total financial outlay proposed in the plan, which is Rs.700 Crores. Clause 4.5 of the Resolution Plan deals with Employee/Workmen claim. Clause 4.5.1 and Clause 4.5.2 of the plan is as follows:

“4.5.1 As per the Information Memorandum and the information provided in the Virtual Data Room, the total Employee and Workmen dues admitted by the Resolution Professional is about Rs.78.92 Crores (Rupees Seventy Eight Crores And Ninety Two Lakhs). The break-up for Employees and Workmen dues as provided by the Resolution Professional vide email dated July 17, 2021 is mentioned in the table below.

(Rs. Crore)

Sr. No.	Location	Employees 12 months before CIRP commencement date	Workmen 24 months before CIRP commencement date
1	KPM	0.26	19.78
2	SGU Unit	0.93	6.16

Sub Total (A)		1.19	26.39
		Employees dues more than 12 months before CIRP commencement date	Workmen dues more than 24 months before CIRP commencement date
1	KPM	8.76	24.44
2	SGU Unit	1.71	16.43
Sub Total (B)		10.47	40.87
Total (A+B)		11.66	67.26

4.5.2 Resolution Plan provides for payment of Workmen Liquidation Dues to the extent of Rs. 9 crores (Rupees Nine Crores Only) and for payment, to the extent of Rs. 0.49 crores (Rupees Forty Nine Lakhs Only) to employees which shall both be on pro rata basis based on the admitted claims of the employees and workmen. In accordance with the provisions of IBC and CIRP Regulations the employees and workmen of the Corporate Debtor shall be paid in priority over the Financial Creditors. If the actual amount payable under u/s 53 of the Code towards outstanding Workmen Liquidation Dues exceeds Rs 9 Crores (Rupees Nine Crores Only), the shortfall towards such outstanding Workmen Liquidation Dues, if any, shall be adjusted from the funds earmarked for settlement of Financial Creditors claim; accordingly, the amount proposed for settlement of Financial Creditors claim will be reduced on proportionate basis. The funds under this head will be utilized in the following manner:

- (i) Employees and Workmen are required to be paid not less than such amounts as would have been paid to them in case of liquidation of the Corporate

Debtor in accordance with the Code. Subject to Section 30 of the Code and Regulation 38 of the CIRP Regulations, under this Resolution Plan, all such amounts (including dues payable to workmen for a period of 24 months immediately preceding Insolvency Commencement Date) will be paid to the Employees and Workmen of the Corporate Debtor as would have been paid to them in case of liquidation of the Corporate Debtor as required under the Code.

- (ii) Towards the Workmen Liquidation Dues of Rs. 9 crores (Rupees Nine Crores Only), a sum of Rs 1.22 crores (Rupees One Crores Twenty Two Lakhs Only) will be infused by the Resolution Applicant/ its Affiliates/ the Financial Investor as equity and a further sum of Rs 7.78 crores (Rupees Seven Crores Seventy Eight Lakhs Only) will be infused by way of debt by the Resolution Applicant/ its Affiliates/ the Financial Investor. It is clarified that if the Workmen Liquidation Dues exceeds Rs. 9 crores (Rupees Nine Crores Only), any incremental amount, if required to be paid towards mandatory Workmen Liquidation Dues shall be paid in accordance with the opening paragraph of Clause 4.5.2.*
- (iii) Towards the Employees dues, against admitted claims of Rs.11.66 crores (Rupees Eleven Crores and Sixty Six Lakhs Only), a sum of Rs 0.49 crores (Rupees Forty Nine Lakhs Only) will be paid by the Resolution Applicant upfront on a pro rata basis.*

(iv) With respect to the remaining Workmen dues (other than as set out in (ii) and (iii) above), the estimated Liquidation Value of the same is NIL and all such workmen shall be deemed to have relinquished any further claim for any dues.”

11. Clause 4.5.2 mentioned that the Resolution Plan provides for payment of workmen liquidation dues to the extent of Rs.9 Crores and payment of Rs.0.49 Crores to employees which shall both be on pro-rata basis based on the admitted claims of the employees and workmen.

12. Learned counsel for the Successful Resolution Applicant has relied on the Clarificatory Note dated 22.03.2022 which was issued by the Successful Resolution Applicant. Clause 1 of the Clarificatory Notes is as follows:

“1. Clauses 4.3.1, 4.3.6, 4.4.2, 4.6.2.(b) & (e) of the Resolution Plan are summarized below:

- i. The Total Financial Outlay envisaged in the Resolution Plan is Rs. 700 Crores.*
- ii. The estimated unpaid CIRP Costs as informed by the Resolution Professional is about Rs. 64.82 Crores, as on February 28, 2022, which has been fully provided for in the Total Financial Outlay.*
- iii. Further as provided by the Resolution Professional vide email dated March 16, 2022, the estimated CIRP Costs for the next one year (i.e. from March 01, 2022 to February 28, 2023) is Rs.15.08 Crores. Therefore, the total estimated CIRP Costs payable upto February 28, 2023 is Rs. 79.90 Crores.*
- iv. Out of the estimated CIRP Costs of Rs. 15.08 Crores for the next one year, a sum of Rs. 5.71*

Crores has already been provided for in the Total Financial Outlay. Therefore, the Total Financial Outlay currently provides for a total of Rs.70.53 Crores towards CIRP Costs.

- v. The remaining estimated future CIRP Costs upto Rs.9.37 Crores, to the extent incurred, shall be paid through*
 - a. firstly, the surplus generated pursuant to the liquidation value payable to dissenting Financial Creditors being less than the amount allocated to them under the Resolution Plan ("Surplus") (to the extent available) and/or*
 - b. Secondly, in case of shortfall in the aforesaid Surplus, it will be funded by the Resolution Applicant additionally upto Rs.9.37 Crores only.*
- vi. If the aggregate of actual CIRP Costs upto February 28, 2022 and the estimated CIRP Costs from March 01, 2022 till NCLT Approval Date exceeds Rs. 79.90 Crores then the excess CIRP Costs beyond Rs. 79.90 Crores shall be funded in the following order of priority:*
 - a. Firstly, from the Surplus in excess of Rs.9.37 Crores and*
 - b. Secondly, to the extent there is a shortfall in the Surplus available under (a), any further pending/ incremental unpaid CIRP Costs shall be adjusted from the funds earmarked for settlement of assenting Financial Creditors claim; accordingly, the amount proposed for settlement of assenting*

Financial Creditors claim will be reduced on proportionate basis.

- vii. It is further clarified that, if, due to operation of law or by any order of any court or tribunal or for any other reason if any additional amount is payable to any workmen or employees, whether admitted claim or not, crystallised or uncrystallised, known or unknown, present or future, the same shall be paid out of the Total Financial Outlay, and such amount shall be in following order of priority:*
- a. Firstly, from the Surplus in excess of Rs. 9.37 Crore.*
 - b. Secondly from the funds earmarked for settlement of Financial Creditors claim; accordingly, the amount proposed for settlement of Financial Creditors claim will be reduced on proportionate basis*
- viii. In an event where Surplus, is further available (after meeting 100% of the CIRP Costs and the payments referred to herein above in para 1.vii) then such undistributed Surplus, shall be distributed pro rata to the assenting Financial Creditors in the form of NCDs and CRPS in the proportion of the payout allocated to them under the Resolution Plan.*
- ix. The Resolution Applicant shall fund additionally upto Rs. 9.37 Crores over and above the Total Financial Outlay to meet the estimated unpaid CIRP Costs only.”*

13. Learned counsel for the Successful Resolution Applicant placed reliance on Clause 1 (vii), as extracted above. The Resolution Plan as updated on

17.03.2022 along with Clarificatory Note dated 22.03.2022 came to be considered in the 26th CoC meeting held on 22.03.2022. One more clause which is relevant in the Clarificatory Note to be noticed is Clause 6, which provides as follows:

“6. This clarificatory note shall be deemed to be an integral part of the Resolution Plan. Kindly note that, in the event of any inconsistency between the terms of this clarificatory note and those of the Resolution Plan, the former shall prevail in relation to matters set out herein.”

14. Before the CoC, Voting Agenda 1, which was placed for voting was as follows:

“RESOLVED THAT pursuant to sub-section (4) of Section 30 of the Insolvency and Bankruptcy Code, 2016, the Committee of Creditors (CoC) of Ballarpur Industries Limited (BILT) after assessing the (a) feasibility and viability of the Revised Resolution Plan submitted in the corporate insolvency resolution process of BILT (b) provisions for its effective implementation, (c) criteria as per Evaluation Matrix and (d) other requirements of applicable CIRP-regulations, hereby accords its approval to the Revised Resolution Plan dated 7th February 2022 (as updated on 17th March 2021) read with the annexures submitted along with the original resolution plan dated 21 May 2021 and clarification dated 22nd March 2022 submitted by Finquest Financial Solutions Private Limited”.

15. The result of voting on 26th meeting held on 22.03.2024 was issued on 15.04.2022 as per which Item No.1 was approved with 88% voting rights. The Resolution Plan Clause 4.5, as noted above, dealt with process for payment of workmen liquidation dues to the extent of Rs.9 Crores and Rs.0.49 Crores for the employees. Clause 4.5 clearly does not contemplate payment of any Provident Fund or Gratuity dues. The question which needs to be answered in the present appeal is whether the Clarificatory Note, which was submitted by the Successful Resolution Applicant contemplated to cover Provident Fund or Gratuity dues or not. The clause which needs to be considered is Clause 1 (vii) of the Clarificatory Note, which is as follows:

“(vii) It is further clarified that, if, due to operation of law or by any order of any court or tribunal or for any other reason if any additional amount is payable to any workmen or employees, whether admitted claim or not, crystallised or uncrystallised, known or unknown, present or future, the same shall be paid out of the Total Financial Outlay, and such amount shall be in following order of priority:

- a. Firstly, from the Surplus in excess of Rs. 9.37 Crore.***
- b. Secondly from the funds earmarked for settlement of Financial Creditors claim; accordingly, the amount proposed for settlement of Financial Creditors claim will be reduced on proportionate basis.”***

16. The above clarification mentioned that if, due to operation of law or by any order of any court or tribunal or for any other reason if any additional amount is payable to any workmen or employees, whether admitted claim or not, crystallised or uncrystallised, known or unknown, present or future, the same shall be paid out of the Total Financial Outlay, and the priority is given in Sub-clause (a) and (b). In view of the above, the purport of Clause 1(vii) is extensive and the SRA's intent was that if due to any reason by operation of law or by order of any Court or Tribunal any additional amount is to be paid to the workmen and employees, the same shall be paid out of the total financial outlay. We are of the view that the claim of Provident Fund and Gratuity which are liability to be paid as per law to the workmen are clearly covered by a very wide Clause 1(vii). Further, Clause 6 of the Clarificatory Note clearly mentions that the Clarificatory Note shall be deemed to be part of the Resolution Plan and in event there is any inconsistency between the terms of the Clarificatory Note and those of the Resolution Plan, the Clarificatory Note shall prevail. Thus, the intention of the Resolution Applicant was clear that what is contained in the Clarificatory Note has to be given overriding effect.

17. Learned counsel for the CoC contended that the Clarificatory Note was only with regard to CIRP cost and the clarification which was called for from the SRA was only with regard to CIRP cost, hence, the Clarificatory Note cannot be read beyond clauses pertaining to payment of CIRP cost. Clarificatory Note contemplate certain clarification with regard to CIRP cost, however, the Note cannot be said to be confined to the CIRP cost since any

additional cost paid to the workmen and employees were fully covered. Clause 1(vii) cannot be confined to any payment towards CIRP cost only. Thus, the submission of the CoC cannot be accepted that Clause 1 (vii) has to read only confined to CIRP cost. Clause 1(vii) is couched in wide terms and encompasses all liabilities towards any additional payment made to workmen or employees and the entitlement of workmen and employees, as raised in this appeal, which is payment of Provident Fund and Gratuity dues to the workmen and employees, by virtue of law as is now crystalized by judgment of this Tribunal in Jet Airways. We, thus, cannot accept the submission of the CoC that Clarificatory Note has to be confined to only CIRP cost.

18. Further, as noted above, Clause 6 of the Clarificatory Note gives the overriding effect to the Clarificatory Note over the Resolution Plan. Hence, the Resolution Plan has to be read with in accord with Clarificatory Note. We have already noticed the Agenda Item 1 before the CoC, which in clear terms include the Clarificatory Note, which was put for voting. The Financial Creditors, who were expert in financial matters and were well aware of all contents of the Resolution Plan after considering all aspects of the matter have approved the Resolution Plan. Agenda Item 1 being approved by 88% vote share, approval was for Resolution Plan and Clarificatory Note which was specifically mentioned therein.

19. Learned counsel for the CoC also sought to contend that Clarificatory Note should be read against the SRA, the document in form of Resolution Plan having been drafted by the SRA, in case of any ambiguity. There is no ambiguity in the Resolution Plan and the Clarificatory Note. The Clarificatory

Note is clear and covers any kind of additional payment. In this context, the learned counsel for the CoC has also referred to doctrine of Contra Proferentum. We may refer to judgment of Hon'ble Supreme Court in **“(2020) 16 SCC 489, The Silppi Constructions Contractors vs Union of India & Ors.”** where the Hon'ble Supreme Court has laid down that author of the document is the best person to interpret the document. In Para 20 of the judgment following was laid down:

“20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.”

20. This Tribunal also in **“Company Appeal (AT) (Ins.) No.1072 of 2023, Authum Investment & Infrastructure Limited vs. SREI Equipment Finance Limited”** reiterated the same proposition that the author of the

document is the best person to interpret the same. In the present case, the SRA who has submitted the Resolution Plan as well as the Clarificatory Note with overriding clause in Clarificatory Note is the best person to know and explain the contents. More so, the clauses of the Clarificatory Note being not ambiguous does not require any interpretation. It is golden rule of interpretation that when words are clear and does not admit any ambiguity, no principle of interpretation need to be applied.

21. The learned counsel for the CoC has relied on the doctrine of Contra Proferentum, which doctrine was noticed by the Hon'ble Supreme Court in its judgment in **"AIR 2022 SC 3056, Haris Marine Products vs Export Credit Guarantee Corporation (ECGC) Ltd."**. In Para 16 of the judgment, Rule of Contra Proferentum was explained. The doctrine of Contra Proferentum as relied by the CoC does not render any help in the facts of the present case. The Clarificatory Note and the Agenda Item 1 which was put for voting was clear and categorical. The Resolution Plan and the Clarificatory Note which was approved by the CoC cannot be now refuted by learned counsel for the CoC denying any liability.

22. Learned counsel for the CoC has relied on judgment of **Jet Airways**. In the judgment of **Jet Airways**, which was decided by this Tribunal, it is true that one of the questions framed i.e. Question No. II was "Whether the workmen and employees are entitled to receive the payment of provident fund, gratuity and other retirement benefits in full since they are not part of the liquidation estate under Section 36(4)(b)(iii) of the Code?". The said question was answered in Para 71 of the judgment, which is as follows:

“71. In view of the aforesaid discussion, we arrive at following conclusions:

- (i) The workmen and employees are entitled for payment of full amount of provident fund and gratuity till the date of commencement of the insolvency which amount is to be paid by the Successful Resolution Applicant consequent to approval of the Resolution Plan in addition to the 24 months workmen dues as the workmen is entitled to under Section 53(1)(b) of the Code. It is made clear that in addition to part amount of provident fund and gratuity as proposed in Resolution Plan to workmen, Successful Resolution Applicant is obliged to make payment of balance unpaid amount of provident fund and gratuity to workmen and employees.”*

23. In the ***Jet Airways case***, this Court held that workmen are entitled for payment of Provident Fund and Gratuity dues and directed that the said amount to be paid by the SRA by virtue of Para 134. Subsequently, an application was filed by the Successful Resolution Applicant in Company Appeal (AT) (Ins.) No. 752 of 2021 seeking clarification of the judgment, which too was disposed of on 02.12.2022, where this Tribunal referring to Clause 6.4.2(e) of the Resolution Plan held that clause has only referred to liquidation value of the workmen and did not contemplate Provident Fund and Gratuity of the workmen. As in the present case, Clause 4.5, which we have noticed above which deals with employee and workmen and liquidation value clearly did not include Provident Fund and Gratuity. However, in the present case, the Clarificatory Note Clause 1 (vii) clearly contemplate inclusion of all

additional payments to the workmen and employees' consequent to any law, order of the Court or Tribunal. Hence, Clause 1 (vii) being wide in terms covers payment of Provident Fund and Gratuity Dues, as found by us. No such clause was there in the **Jet Airways** matter, as has been placed before us in the present case i.e. Clause 1 (vii) of Clarificatory Note and further there was no inter se issue between the CoC and the SRA in the **Jet Airways case** so it may be any precedence with regard to issue which is in the present appeal. We, thus, are of the view that the judgment of **Jet Airways** does not render any help to the CoC in the issue which is raised in the present appeal.

24. In view of the foregoing discussion we are of the view that Clause 1 (vii) of the Clarificatory Note clearly contemplate payment of Provident Fund and Gratuity dues which have to be paid as per priority as contemplated in Clause 1 (vii), as extracted above. Thus, the payment of Provident Fund and Gratuity has to be paid as per the Resolution Plan read with Clarificatory Note Clause 1 (vii) and we do not accept the submission of counsel for the CoC that amount of Provident Fund and Gratuity dues has to be borne by the Successful Resolution Applicant independent of Resolution Plan read with Clarificatory Note.

25. We have already noticed the amount of Provident Fund and Gratuity as admitted by the Resolution Professional i.e. Provident Fund dues – Rs.11.49 Crores and Gratuity dues – Rs. 8.84 Crores. We, thus, are of the view that the said amount has to be paid as per the Resolution Plan read with the Clarificatory Note.

26. Now we come to one more submission advanced by learned counsel for the Appellant that Appellants were called to work by the Resolution Professional and they have worked from May to November, 2020 and they have not been paid salary for the aforesaid period. Learned counsel for the Resolution Professional in his reply has admitted that certain employees were called to work and against the work in the month of May and June, 2020 salary has been included in the CIRP cost. In Para 19 of the reply of the Resolution Professional following has been stated:

“19. It is submitted that due to non-availability of funds, the plant operations at Shree Gopal Unit could not be resumed. Consequently, from July 2021 onwards only a limited number of essential employees were required by the RP. At this stage, it is pertinent to mention that the wages for the month of May 2021 to June 2021 have duly been included in the CIRP cost by the RP.”

27. It has been further stated that entitlement of salary from June to November, 2020 has never been accepted nor the employees actually worked. With regard to salary slips of five employees filed with the appeal, learned counsel for the Resolution Professional submitted that the said salary slips were issued on the request of the employees and is not proof of that they had worked. It is submitted that it is the Resolution Professional who has to take decision regarding allowing employees to work during CIRP period. It submitted by the Resolution Professional that certain employees were called to commence the work but the work did not proceed and in the CIRP cost the Resolution Professional has included the certain part of payment of salary to

the workmen and claim of the Appellant for payment of salary from July to November, 2020 cannot be accepted or included in the CIRP cost.

28. When we look into the minutes of meeting of the CoC held on 22.03.2022, 26th CoC meeting, details of CIRP cost till 28th February, 2022 have been included. In Para 4 of the minutes following CIRP cost has been noticed:

“Other On-going expenditure from 17th January 2020 till 28th February 2022 is given below:

Nature of Expenditure	Total payable (Figures in Lacs)	Remarks
Salary & Wages	4,559.34	
Permanent Workmen – SGU	812.06	This represents salary payable to the certain set of employees and workman during the period when the plant is non-operational (except maintenance period)
Casual Workmen – SGU	288.27	
Retainers – SGU	33.14	
Permanent & Casual Workmen – Kamalapuram Mill	3,425.87	
Total	4,559.34	

29. The Resolution Professional is the best judge to compute the CIRP cost and pay wages to the workmen during the CIRP period. Thus, the Resolution Plan having already included payment of salary to some extent in the CIRP cost, we see no reason to issue any direction for payment of salary as claimed by the Appellant from month of July to November, 2020.

30. In result of the foregoing discussion and our conclusions, we dispose of this appeal in following manner:

- (i) The approval of Resolution Plan by order dated 31.03.2023 is upheld subject to declaration that workmen and employees are entitled for payment of full Provident Fund and Gratuity.
- (ii) The Resolution Plan read with Clarificatory Note Clause 1 (vii) contemplate payment of Provident Fund dues and Gratuity dues which was computed by the Resolution Professional as Provident Fund dues of Rs.11.49 Crores + Gratuity dues of Rs.8.84 Crores, totaling to Rs.20.33 Crores (for Shree Gopal Unit), which is to be paid as per the priority mentioned in Clause 1 (vii) of the Clarificatory Note.

Appellants are not entitled for any other relief. Parties shall bear their own cost.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

1st July, 2024

Archana