NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1418 of 2023

[Arising out of the Order dated 06.10.2023, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Court-VI, New Delhi), in I.A/3780/2021 IN IB-937/PB/2018]

IN THE MATTER OF:

UNITECH MACHINES KARAMCHARI SANGH
Through its Secretary Sh. Anil Kumar On behalf of 92 workmen S/o Pal Singh aged about 49 years, Resident of 1/1 785C, 3 – Chander Nagar, District Saharanpur, Uttar Pradesh – 247001 **...Appellant**

Versus

Vivek Raheja
Resolution Professional of M/s Unitech Machines Limited Having its Registered Office at 806, Devika Tower 6, Nehru Place New Delhi-110019

Also at:

Vivek Raheja
Resolution Professional of M/s Unitech Machines Limited Having its office at: JD-2C, 2nd Floor Pitampura
DELHI-110034
ip.tradingengineers@gmail.com **...Respondent No.1**

Ankit International
SRA **...Respondent No.2**

Present:

For Appellant	:	Mr. Swarnendu Chatterjee, Ms. Harshita Rawat, Advocates.
For Respondent	:	Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Ms. Vanshika Agrawal, Advocates for RP. Mr. Amish Tandon, Ms. Anushree Kulkarni, Mr. Swankit Nanda, Ms. Akanksha Mishra, Advocates for R-2/SRA.

<u>J U D G M E N T</u>
<u>(Hybrid Mode)</u>

<u>[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]</u>

The instant appeal has been preferred by the appellant employee's union under Section 61(1) of the IBC being aggrieved by the impugned order passed by the Tribunal of date 06.10.2023, pertaining to IA/3780/2021 in IB-937/PB/2018 whereby the IA moved by the appellant employee union was dismissed.

2. Necessary facts required for disposal of the instant appeal are that the appellant in its appeal has stated its case as that the appellant were the workmen of the United Machines Ltd. (CD) who had undergone insolvency vide order dated 01.03.2019 of Ld. Tribunal passed with regard to the application moved by the financial creditor under Section 7 of the IBC, 2016.

3. It is further stated that the appellant union had moved an application on 21.07.2019 before the Ld. NCLT under Section 60(5) of the IBC, 2016 for issuing directions to the Resolution Professional for releasing salaries/wages/ statutory dues of the workmen of the CD and the resolution professional of the CD has released salaries and dues up to March, 2020 but neither the provident fund for four months prior to CIRP nor gratuity was cleared.

4. It is further stated that the Resolution Professional of the CD has issued an order/notice of lay off on 01.02.2020 without clearing the legitimate dues of the employees and without following the due procedure as prescribed under relevant provisions of the Industrial Disputes Act and the

said layoff notice is completely illegal and is violative of Section 25C, 25F and 25M of the Industrial Disputes Act, 1947 (for short 'ID Act').

5. It is further stated that the plea that layoff notice was issued on oral suggestion given by the Ld. Tribunal on 29.01.2020, is not corroborated by any order of Ld. Tribunal and the same has been taken as a lame excuse by the Resolution Professional to justify illegal order/circular.

6. It is further stated that after issuance of the layoff notice dated 01.02.2020 the Resolution Professional has also sent an email advising the workmen union to search for alternate jobs for its workers. Prayer has been made to quash/set aside the impugned order and also the layoff notice dated 01.02.2020.

7. Respondent No.1/RP in his reply stated that after commencement of the insolvency proceedings against the CD and after his appointment as the IRP, he collated claims submitted by various creditors and has discharged his duties diligently and also constituted the CoC and placed before it the Resolution Plan submitted by the Respondent No. 2 i.e. M/s Ankit International, however on 28.11.2019 the CoC in its 10^{th} meeting took the decision of not putting the resolution plan submitted by the Respondent No. 2 for voting having regard to its non-viability and in this regard an application for liquidation was filed by the Resolution Professional before the Adjudicating Authority.

8. It is further stated that simultaneously the Prospective Resolution Applicant (PRA)/Respondent No. 2 has also filed an IA to submit revised plan which was dismissed by the Adjudicating Authority on 29.01.2020 being IA No. 2748 (PB)2019 and on the same day the Resolution

Professional was orally advised by the adjudicating authority that as the CD has ceased its work, the workmen would no longer be required to attend the factories and the RP may consider of issuing a layoff notice, however these directions have not emerged in order dated 29.01.2020 of Adjudicating Authority.

9. It is further stated that as it was in the interest of CD, the layoff notice was issued which was challenged by the appellant by filing a Writ Petition bearing W.P. (C) 6953 of 2020 before the Hon'ble Delhi High Court however, the same was later on withdrawn with the liberty to approach the NCLT.

10. It is further stated that in the appeal filed by the Respondent No. 2 against the order of the Tribunal dated 29.01.2020 being CA (AT) (Ins) No. 265 of 2020 the impugned order therein was set aside and Respondent No. 2/PRA was permitted to submit a revised plan before CoC of the CD and the revised plan submitted by the Respondent No. 2 was ultimately approved by by the CoC on 17.09.2021 with a voting share of 89.71%. It is also contended that there is no infirmity in the impugned order as there was no work left at the factory of the CD and there was absolutely no need of any worker to go there and since the workers of the appellant has not done any work thereafter, they are not entitled for any salary or dues of the period whereon they have not attended the factory in pursuance of the layoff notice and also that Ld. NCLT was not having any jurisdiction to entertain any challenge to the layoff notice/circular.

11. Respondent No. 2/SRA in his reply apart from other facts have stated that in pursuance of the order of this appellate tribunal he had submitted a revised resolution plan which was approved by the CoC as well as by the

adjudicating authority and thereafter the appellant had preferred an IA No. 408/2022 seeking rejection of this resolution plan submitted by the Respondent No. 2 and the said IA was later on withdrawn by the appellant as it had become infructuous by the approval of the Resolution Plan by the Adjudicating Authority and therefore the appellant may not raise this issue again before this appellate tribunal.

12. It is further stated that the RP was well within its power to take appropriate steps to preserve and protect the assets of the CD including to continue the business operations of the CD as per Sections 20 and 25 of the IBC and was also empowered to see the viability of the continuation of the business operations of the CD.

13. It is also stated that the IBC is an overriding code and in view of Section 238 of the IBC the same will prevail over any other contrary provision of the Industrial Disputes Act, 1947.

14. It is also stated that since the resolution plan has been approved by Ld. Adjudicating Authority the application as well as the appeal has been filed by the appellant, contra to the doctrine of clean slate. Request has been made to dismiss the appeal with costs.

15. Appellant has also filed the rejoinder to the replies filed by the Respondent No. 1 and 2.

16. We have heard Ld. Counsel for the parties and have perused the record as well as the written submissions.

17. Ld. Counsel for the appellant while drawing the attention of this Tribunal towards the impugned order submits that the Ld. Tribunal has failed to appreciate that there is no power of adjudication vests in a

resolution professional and therefore he was duty bound to comply with the relevant provisions of the Industrial Disputes Act and could not have issued any notice of layoff without following the procedure prescribed in the Industrial Disputes Act. Reliance in this regard has been placed on **Swiss Ribbons Pvt. Ltd. vs. UOI & Ors. (2019) 4 SCC 17**.

18. It is further submitted that despite the appellant has challenged the resolution plan by filing an IA No. 408/2022 the same was approved without paying due regard to the lawful dues of the workmen, contrary to the mandatory requirement laid down in Section 30 (2) (b) of the IBC, in this regard reliance has been placed on **Sunil Kumar Jain vs. Sundaresh Bhat (2022) 7 SCC 540.**

19. It is also submitted that there would not be any repercussion of the withdrawal of the Writ Petition filed before the Hon'ble Delhi High Court as the same was withdrawn with a liberty to approach the Ld. NCLT and there is also no question of res judicata in consequence of withdrawal of IA No. 408/2022. Reliance in support of his submission was placed on **Jet Aircraft Maintenance Engineers Welfare Association vs. Ashish Chhawchharia, 2022 SCC Online NCLAT 418, Sunil Kumar Jain vs. Sundaresh Bhat (2022) 7 SCC 540, Era Labourer Union vs. Apex Buildsys Ltd.; Drish Shoes Workers Union vs. Drish Shoes Ltd.; Tourism Finance Corporation of India Ltd. vs. Rainbow Papers Ltd. 2019 SCC Online NCLAT 910.**

20. Ld. Counsel for Respondent No. 1 i.e. Resolution Professional submits that the entitlement of any workmen to wages as part of the CIRP costs arises only where the CD is being run as a going concern and the services of

such workmen having in fact has been utilised during the CIRP period and while rejecting the IA filed by the appellant, adjudicating authority has categorically recorded that no work has been carried out in the factory of the CD and there was no necessity for the workers to continue reporting to duty. It is also submitted that in fact while considering IA No. 2748 of 2019 an oral direction was given by the adjudicating authority to issue a layoff notice as no work was being carried out in the factory of the CD and there was no necessity of any worker to continue reporting to their duties and it is in furtherance of these observations the layoff notice dated 01.02.2020 was issued by him.

21. While relying on Sunil Kumar Jain vs. Sundaresh Bhat (supra) it is argued that the workmen are only entitled to wages for the period for which they have actually worked and once the CD has been acknowledged as non-operational entity there is a strong presumption of discontinued services of workers automatically and thus the same puts the appellant to strict proof to prove their engagement during the period after layoff.

22. It is further submitted that it was the duty of the resolution professional, by virtue of provisions contained under Section 17, 20 and 25 of the Code to take over the management and control of the CD and to run its operations as a going concern and to take all necessary steps for preserving and protecting the assets and value of the corporate debtor and the decision of layoff has been taken keeping in view the statutory duties bestowed on him by the Code.

23. It is further submitted that the resolution plan, having been approved by the CoC as well as adjudicating authority has attained finality and the

objections filed by the appellant to the resolution plan through IA No. 408/2022 has also been withdrawn by the appellant and thus the resolution plan having been approved by Ld. Adjudicating Authority, has become final and the same cannot be re-opened and is bound on all stakeholders.

24. It is also submitted that adjudicating authority lacks jurisdiction to entertain allegations of violation of any provisions of Industrial Disputes Act. Reliance in this regard has been placed on **Drish Shoes Worker Union vs. Drish Shoes Ltd., CA (AT) (Ins) No. 2281 of 2024**.

25. Ld. Counsel for Respondent No. 2 supported the submissions made by Ld. Counsel for the Respondent No. 1 however, added that the appeal has been filed in violation of the principle of clean slate theory as the resolution plan submitted by the Respondent No. 2 was approved by the CoC as well as by Adjudicating Authority and the objections filed by the appellant through IA No. 408/2022 were also withdrawn and thus the resolution plan has become absolute and binding on all stakeholders and therefore the instant appeal is not maintainable.

26. It is also submitted that SRA after approval of its resolution plan may not be asked to face a situation which may cause monetary hardship and was not in contemplation when the resolution plan was submitted and approved.

27. It is also submitted that the appellant workmen, having not worked after the layoff notice are not entitled for any wages or dues of that period.

28. Having heard Ld. Counsel for the parties and having considered the record including the written submissions filed by them it appears that the appellant union is aggrieved by the passing of the impugned order on the

score that the layoff of notice of date 01.02.2020 was issued by the resolution professional illegally and in violation of the relevant provisions of the ID Act.

29. The appellant also appears to have been aggrieved by the fact that the layoff notice of date 01.02.2020 stated to have been issued in pursuance of the oral directions of the adjudicating authority while in none of the orders passed by the adjudicating authority any such direction has been given.

30. The perusal of record would further reveal that IA No. 3780/2021 in IB-937/PB/2018 was moved by the appellant before Ld. Tribunal for grant of following reliefs/prayers:

> *"(a)Admit and allow this application;*
> *(b) Issue a direction/order to declare the layoff notice dated 01.02.2020 as illegal and arbitrary as the same had been passed by the Resolution Professional without complying the procedure given under Industrial Dispute Act, 1947;*
> *(c)Quash/set aside the layoff notice dated 01.02.2020 issued by the Respondent as the Resolution Professional does not have any power to direct lay-off/closure/retrenchment without an application under Section 33(7) of the IBC, 2016;*
> *(d)Pass such other or further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case".*

31. Ld. Tribunal has dismissed the above application by passing the impugned order and relevant part of the same is also reproduced as under:

> *"4. We have heard the submissions made by all the parties. The present Application has been filed by the Applicants seeking to declare the layoff notice dated 01.02.2020 passed by the Resolution Professional as illegal and arbitrary.*
>
> *5. The Respondent/RP is well within its powers to take appropriate steps to preserve and protect the assets of the Corporate Debtor including the continued business operations of the Corporate Debtor. The Code expressly provides for the same u/s 25 of the IBC, 2016. The*

Resolution Professional is therefore duty bound to protect the interests of the Corporate Debtor and in furtherance thereof had issued the notice dated 01.02.2020 as the Corporate Debtor lacked funds to pay the salaries of the workers. The Applicants have further contended that the said layoff is in complete derogation of Sections 25C and 25M of the Industrial Dispute Act, 1947 and under Section 2(n) of UP Industrial Disputes Act, 1947. However, Section 238 of the IB Code, 2016 states that the provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Therefore, there appears to be no illegality in discontinuing the services of the workmen and the layoff notice dated 01.02.2020 to that effect".

32. It is also evident that the tribunal having considered Section 238 of the Code was of the view that provisions of the Code shall have overriding effect not withstanding anything in consistent contained in any other law for the time being in force and thus held that there appears no illegality in discontinuing the services of the workmen by issuing the layoff notice of date 01.02.2020.

33. The circular dated 01.02.2020 by which the services of workmen were discontinued is also placed below for convenience:

CA Vivek Raheja
B. Com (Hons.), FCA, Insolvency Professional, CMA, DISA
Certificate course on Forensic Audit (FAFP) conducted by ICAI, Certificate course on concurrent Audit Conducted by KAI

February 1, 2020

CIRCULAR

As all of you are aware that the company Corporate Insolvency Resolution Process (CIRP) under the IB Code, 2016, after completion of 9 months' period, now the matter is pending before Hon'ble NCLT Court for admission into liquidation.

As all of you would appreciate the efforts of mine as a RP to maintain the company as a going concern by generating the possible funds from Customers and paid the wages

including other essential Statutory dues of PF etc. to the extent possible and I am working further on these lines. The find crunches in the company has repeatedly been explained and brought to the knowledge of all concerned such as Labours, Employees, CoC and Hon'ble NCLT Court also.
Even during the last hearing in NCLT Court on 29.01.2020, Hon'ble Judge had also opined and advised to those Labour Union Representative present in the Court not to go for duties when there is no work at Factory.
Therefore, I hereby inform all the workmen to consider this Circular as a Notice for lay off with a request for searching appropriate alternate job (if any) pending NCLT order whatever the decision by Hon'ble NCLT Court will be made applicable accordingly. However, I am trying my level best to generate funds from EPC division and other dues (if any) from Customers to disburse the wages, PF etc. to the extent possible and in the meantime I am again taking up the issue with COC through Hon'ble NCLT Court also.
The Labours will not be provided with any Bus facility and Canteen facility (if any) with immediate effect as the dues to these Agencies are already overdue and they are demanding for the same.
Trust the same will be taken with due spirit.

Sd/-
Vivek Raheja
Resolution Professional
For Unitech Machines Limited
IBBI Regn. No. IBBI/IPA-001/IP-P00055/2017-18/10133

34. The perusal of this notice would give an impression that the notice has been issued by the resolution professional on account of fund crunches as the RP was not in a position to keep the CD as a going concern. It has been mentioned in the circular/notice of layoff that the efforts has been made by the RP to keep the Company (CD) as a going concern by generating funds from customers and has also paid the wages and other essential statutory dues of PF, etc of the workmen to the extent the payment was possible. It is also mentioned therein that the financial constraints have repeatedly been explained and brought to the knowledge of all concerned

such as labourers, employees, CoC and Adjudicating Authority also and in this background the resolution professional of the CD appears to have issued the layoff notice informing all the workmen to search appropriate alternate job pending NCLT order.

35. Thus the question arises that even if there were financial constraints in keeping the CD as a going concern even then the RP was not empowered to issue layoff notice when there was absolutely no work was going on in the factory of the CD and whether he was bound to follow the relevant provisions of the ID Act. It is pertinent to mention here that the RP has paid salaries and dues of the workmen up to March, 2020.

36. Much emphasis has been given by Ld. Counsel for the appellant on non-adherence to Sections 25C, 25F and 25M of the ID Act. This issue appears to have been covered fully by the Judgment of this court passed in **Drish Shoes Worker Union vs. Drish Shoes Ltd., CA (AT) (Ins) No. 2281 of 2024** wherein in identical facts this appellate tribunal held that the Adjudicating Authority has done nothing wrong in calculating salaries of the workmen till the layoff period. The appellate tribunal based its judgment on its earlier judgment passed in "**Era Labourer Union of Sidcul, Pant Nagar, through its Secretary vs. Apex Buildsys Ltd.", CA (AT) (Ins) No. 1572 of 2024.** The relevant portion of the same is reproduced as under:

> *"8. Learned counsel for the Respondent submits that the issued raised in the present appeal is fully covered by judgment of this Tribunal in "**Company Appeal (AT) (Ins.) No.1572 of 2024, Era Labourer Union of Sidcul, Pant Nagar, through its Secretary Vs. Apex Buildsys Ltd.**". In the said judgment also both layoff as well as computation of salary was challenged before the Adjudicating Authority by means of an IA, which IA was*

not accepted and the salary was not computed after layoff period till initiation of insolvency. Aggrieved by which order, an appeal was filed, which appeal was also rejected. This Tribunal in Para 19 and 29 laid down following:

> *"19. From the facts of the above case, it is clear that the closure/lockout notice which was issued on 31.07.2017 much prior to initiation of the CIRP and the closure and lockout notice was nothing to do with the CIRP process. Challenge to the closure and lockout notice cannot be raised before the Adjudicating Authority who is not competent to adjudicate the said issue which arises out of the provision of the Uttar Pradesh Industrial Disputes Act, 1947. Hence, we are of the view that the Adjudicating Authority did not commit any error in not entertaining the challenge to the closure notice dated 31.07.2017.*
>
> *29. In view of the foregoing discussions, we are of the view that no error has been committed by the Adjudicating Authority in rejecting the IA No. 2545 of 2021 filed by the Appellant where Appellant has sought to challenge the closure dated 31.07.2017 and transfer order dated 20.06.2017. Insofar as the claims of the Appellant, the liquidator has accepted the claim. Non-verification of the claim subsequent to 31.07.2017 when the Pant Nagar factory remain closed cannot be interfered with by this Tribunal in the present Appeal. We, thus, do not find any merit in the Appeal. The Appeal is dismissed".*

37. In Era case (supra), by issuing notice dated 31.07.2017 lockout was declared by the CD in its Pant Nagar Unit and the employees of that unit were transferred to its Nagpur Unit. CIRP of the CD was initiated and appellant workmen union filed its claim including of the period of lockout and filed an IA also before the NCLT where, amongst other, one of the prayer was to declare the lockout notice illegal. The said IA was rejected by the tribunal. In the appeal filed before this Appellate Tribunal, after noticing various case laws on the subject i.e. ***Gujarat Urja Vikas Nigam Limited Versus Mr. Amit Gupta & Ors., Civil Appeal No. 9241 of 2019, M/s Embassy Property Developments Pvt. Ltd. vs. State of Karnataka, Civil***

Appeal No. 9170 of 2019 and Tata Consultancy Services Ltd. vs. Vishal Ghisulal Jain, Civil Appeal No. 3045 of 2020 decided by Hon'ble Supreme Court, it was held that lockout notice has nothing to do with the CIRP process and challenge to the closure and lock out notice cannot be raised before the Adjudicating Authority, which is not competent to adjudicate on the said issue which arises out of the provisions of the ID Act.

38. In Sunil Kumar Jain & Ors. vs. Sundaresh Bhatt & Ors. (2022) Vol 7 SCC 540, relied on by all the parties, Hon'ble Supreme Court in para no. 18, 19, 20, 23 & 25.1 opined as under:

> *"18. It cannot be disputed that as per Section 5(13) IBC, "insolvency resolution process costs" shall include any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern. It is also true that Section 20 IBC mandates that the interim resolution professional/resolution professional is to manage the operations of the corporate debtor as a going concern and in case during the CIRP the corporate debtor was a going concern, the wages/salaries of such workmen/employees who actually worked, shall be included in the CIRP costs and in case of liquidation of the corporate debtor, dues towards the wages and salaries of such workmen/employees who actually worked when the corporate debtor was a going concern during the CIRP, being a part of the CIRP costs are entitled to have the first priority and they have to be paid in full first as per Section 53(1)(a) IBC.*
>
> *19. Therefore, while considering the claims of the workmen/employees concerned towards the wages/salaries payable during CIRP, first of all it has to be established and proved that during CIRP, the corporate debtor was a going concern and that the workmen/employees concerned actually worked while the corporate debtor was a going concern during the CIRP. The wages and salaries of all other workmen/employees of the corporate debtor during the CIRP who actually have not worked and/or performed their duties when the corporate debtor was a going concern, shall not be included automatically in the CIRP costs. Only with respect to those workmen/employees who actually worked during CIRP when the corporate debtor was a going concern, their*

wages/salaries are to be included in the CIRP costs and they shall have the first priority over all other dues as per Section 53(1)(a) IBC. Any other dues towards wages and salaries of the employees/workmen of the corporate debtor shall have to be governed by Section 53(1)(b) and Section 53(1)(c) IBC, any other interpretation would lead to absurd consequences and violate the scheme of Section 53 read with Section 5(13) IBC. If any other interpretation, more particularly, the interpretation canvassed on behalf of the appellants is accepted, in that case, the wages/salaries of those workmen/employees who had not worked at all during CIRP shall have to be treated and/or included in the CIRP costs, which cannot be the intention of the legislature.

20. On a fair reading of Section 5(13) IBC which defines "insolvency resolution process costs", it is observed and held that the dues towards the wages/salaries of only those workmen/employees who actually worked during the CIRP are to be included in the CIRP costs. The rest of the claims towards the wages/salaries of the workmen/employees, as observed hereinabove, shall be governed by Sections 53(1)(b) and (c) IBC.

23. Now so far as the submission on behalf of the appellants that as per Section 20 IBC and even as per the decisions of this Court in Swiss Ribbons and Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, the RP is under mandate to manage the operations of the corporate debtor as a going concern and therefore it is to be believed that during CIRP, the corporate debtor was a going concern. managed and/or operated as a going concern cannot be accepted. It is true that under Section 20 IBC, it is the duty of the RP to manage and run the operations of the corporate debtor as a going concern. However, the words used in Section 20 are "the interim resolution professional shall make every endeavour to ...manage the operations of the corporate debtor as a going concern". Therefore, even if it is found that the corporate debtor was not a going concern during the CIRP despite best efforts by the resolution professional, it cannot be presumed that still the corporate debtor was a going concern during the CIRP period. It depends on the facts of each case. In a given case, the corporate debtor may be a going concern and in a given case, the corporate debtor might not be a going concern. Therefore, submission on behalf of the appellants that as the RP is under mandate to manage the operations of the corporate debtor as a going concern under Section 20 IBC and therefore it is to be presumed that the RP managed the operations of the corporate debtor as a and therefore the *workmen/employees are entitled to their wages and salaries during the CIRP, as their wages/salaries to be included in the CIRP costs cannot be accepted. However, the wages and salaries of the workmen/employees of pre-CIRP period will have to be governed as per the priorities mentioned in Section 53(1) IBC.*

25.1 That the wages/salaries of the workmen/employees of the corporate debtor for the period during CIRP can be included in the CIRP costs provided it is established and proved that the interim resolution professional/resolution professional managed the operations of the corporate debtor as a going concern during the CIRP and that the workmen/employees concerned of the corporate debtor actually worked during the CIRP and in such an eventuality, the wages/salaries of those workmen/employees who actually worked during the CIRP period when the resolution professional managed the operations of the corporate debtor as a going concern, shall be paid treating it and/or considering it as part of CIRP costs and the same shall be payable in full first as per Section 53(1)(a) IBC".

39. The perusal of the above law would establish crystal clear that to substantiate claim of wages and salaries during CIRP it has to be first established and proved that during CIRP the CD was a going concern and secondly the workmen/employees have actually worked in that period and those who have not worked, their salaries would not be included in the CIRP costs.

40. Coming to the facts of the instant case the appellant workmen due to issuance of the layoff notice has not worked after issuance of this layoff notice and thus, in our considered opinion in view of the law mentioned therein before, they are/were not entitled for any dues, after the issuance of the layoff notice and except, what has been provided for them in the plan, if any, which has been approved by the CoC as well as by the adjudicating authority, they may not get anything.

41. It is also to be recalled that resolution plan once approved is bound on all the stakeholders and the appellants have not challenged the resolution plan approved by the adjudicating authority in the present appeal and it is transpired that the application filed by the appellant before the tribunal raising certain objections vis a vis resolution plan has also been withdrawn by them may be because resolution plan at that point of time was already approved. At the cost of repetition, it is highlighted that in the instant appeal the reliefs have been claimed/prayed with regard to the layoff notice dated 01.02.2020 and not with regard to the approval of the resolution plan by the adjudicating authority. Thus unless the resolution plan approved by the adjudicating authority is set aside by the adjudicating authority or any other superior forum the terms of the approved resolution plan are bound on all the stakeholders, including the appellant.

42. In view of above reasons and law, it is evident that the adjudicating authority was not having any jurisdiction to entertain challenge to layoff notice of date 01.02.2020 and secondly, for the reasons and legal position mentioned herein before the workmen of the appellant having not worked after the issuance of layoff notice are not entitled for any dues beyond the date of layoff notice. However, they will get if any provision has been made for them, in the resolution plan.

43. Resultantly, we do not find any illegality in the impugned order. The appeal therefore, lacks merit and is hereby **dismissed.**

44. There is no order as to costs. Pending IA's if any are also closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Indevar Pandey]
Member (Technical)

New Delhi.
16.09.2025.

sr