

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) No.280/ALD/2018

An application under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016

IN THE MATTER OF:

Devi Prasad

Aged about 68 years

Son of Late Sh. Kallu

Residence of: 84/57, Zarib Chowki,

Kanpur Nagar, U.P. **.....Operational Creditor/Petitioner**

Versus

M/s. Juggilal Kamlatpat Jute Mills Company Ltd.

(now Geo Jute Limited)

Through its Director

84/49, Zarib Chowki, Kalpi Road

Kanpur – 208012

Uttar Pradesh **...Corporate Debtor/Respondent**

Order pronounced on: 19th January, 2024

CORAM:

Sh. Praveen Gupta : Member (Judicial)

Sh. Ashish Verma : Member (Technical)

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Appearances-

Sh. Ankit Kohli, with Sh. Sagar : *For the Operational Creditor Mehrotra, Adv.*

Sh. Somesh Khare, Adv. : *For the Corporate Debtor*

ORDER

1. The instant application is filed on 25.06.2018 by Shri Devi Prasad herein after referred to as Applicant/Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the “I & B Code, 2016”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred as “the Rules”). The prayer made therein is to initiate Corporate Insolvency Resolution Process (hereinafter referred as ‘CIRP’) in respect of M/s Juggilal Kamlatpat Jute Mills Company Ltd. now renamed as “Geo Jute Limited” hereinafter referred to as Respondent/Corporate Debtor due to default in payment of gratuity amount as per Payment of Gratuity Act, 1972 and other wages/allowances constituting total outstanding amount of Rs.5,24,132/- (Rupees Five Lakhs Twenty Four Thousand One Hundred and Thirty Two only).

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2. Briefly stated facts of the present case as averred by the Applicant/Operational Creditor in its application filed in Form-5 containing part I, II, III, IV & V are that:-

i. The Petitioner worked with the Corporate Debtor in the capacity of Mazdoor from 01.01.1970 to April, 2009. The Petitioner filed a claim suit- P.G suit No. 250/2012 before the Ld. Controller Authority and Deputy Labour Commissioner under Payment of Gratuity Act, 1972 for recovery of the Gratuity Amount. An Award dated 26.02.2014 was passed wherein Corporate Debtor was directed to make the payment of Rs. 70,700 along with interest to the Petitioner. The total debt of Gratuity which is due and payable from 01.01.1970 to 30.04.2018 along with interest 18% p.a from 22.02.2014 to 30.04.2018 is Rs. 1,23,725/-

ii. In view of the Corporate Debtor not having sound financial status had earlier filed a case before the Board for Industrial and Financial Reconstruction (BIFR)- Case No. 149/1994 on 16.12.2014 under the Sick Industrial Companies Act (Special Provisions),1986.

iii. The former management of the Corporate Debtor executed workers arrangement with Workers Union in 1995 wherein 10%

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wages of the workers were deducted as 'Workers Deposit' for utilization toward the growth of the Jute Mill which will be repaid to the workers after 04 years along with interest. This workers arrangement expired in 1995 and renewed on 07.8.1999 with same terms and conditions. This working arrangement continued till 2003.

iv. The workmen collectively deposited approximately Rs. 3,97,00,000 (Rupees Three Crore Ninety Seven Lacs) under the MOUs of 1995 and 1999. In contrast, the Petitioner individually contributed approximately Rs. 14,850 from 1996 to 2000. It is stated that this sum of Rs. 14,850, along with an interest rate of 18% per annum from 15.07.2000, to 30.04.2018, amounts to Rs. 47,557. Consequently, a total of Rs. 62,407 remains outstanding and payable by the Corporate Debtor on this account also. This liability is well-documented in the Corporate Debtor's Balance Sheet, specifically under the "Worker's Deposit" category.

v. In addition to the amounts mentioned above, the Corporate Debtor also owes other statutory dues. These include Rs. 90,000 towards Provident Fund, Rs. 30,000 for Money Deposited in the Company's Society and Savings, Rs. 2,00,000 for unpaid wages

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spanning from 2003 to 2008 (the period during which the factory remained closed), and Rs. 18,000 for leave encashment. Furthermore, outstanding payments are also due and payable by the Corporate Debtor for items such as Pension, Bonus, Medical allowances, and Overtime.

vi. The fact is clearly evident from the Audited Balance Sheet of the Corporate Debtor as of 31.03.2012, This is reflected in Note 4, "*Other Long Term Liabilities*," where the 'Workers Deposit' of Rs. 3,97,00,000/- is recorded. This note is signed by the Directors of the Corporate Debtor. *Corporate Debtor's ABS as on 31.03.2012:-*

*i) **Note 4 (Other Long Term Liabilities) reflects an amount of Rs.23.06 crores towards Employees Gratuity Fund.** The amount of gratuity shown in the Books of Accounts has been calculated till F.Y. 2004 and thereafter the Corporate Debtor has not determined the future gratuity amount.*

ii) Auditors Report of 2012 at f(ii) shows that the company has not determined the total liability of future payment of gratuity to its employees.

iii) Note. 27 of said Annual Balance Sheet as on 31.03.2012 also shows that the Corporate Debtor has not made provisions in its accounts for leave encashment to its employees amounting to Rs.27.77 lakhs.

vii. It is stated that a Draft Rehabilitation Proposal was submitted before the BIFR during the proceedings. The said proposal was discussed in a joint meeting held on 18.01.2013

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conducted by the Operating Agency (IDBI Bank). Liability towards Worker's Deposit is acknowledged in the said DRP.

viii. It is further stated in the application that DRS safeguarded the employment and provided for payment of worker's dues. The present management of the Corporate Debtor opposed the DRS by manipulating the balance Sheet as on 31.12.2012.

ix. It is further stated that BIFR vide order dated 01.07.2013 directed State Bank of India to appoint an independent auditor for Special Investigative Audit and to file its report about the net worth position of the company as on 31.12.2012 with specific opinion regarding writing off accrued gratuity liability as per Accounting Standard and also come out with the exact liability position as on 31.12.2012 with regard to the worker's dues. The State Bank of India filed report on 04.09.2013 wherein certain manipulations were mentioned and net worth of the Company as on 31.12.2012 is negative by 33.31 crores.

x. It is further stated that the current management of the corporate debtor collusively initiated legal proceedings through the Shiv Shankar Trading Company before Ld. Kamrup Civil Court at Guwahati. They sought a declaration of a positive net worth as on

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December 31, 2012. An interim order was issued in this civil suit, injuncting the BIFR from proceedings ahead with the DRS. The order from the civil court was subsequently upheld by the Hon'ble Guwahati High Court on 06.01.2014. At this point, the JK Jute Mill Mazdoor Ekta Union, a trade union, filed Special Leave Petitions -SLP (C) Nos. 8610/2014 and 8611-12/2014 before the Hon'ble Supreme Court of India, challenging the decision of the Honorable Guwahati High Court. The Hon'ble Supreme Court vide judgment dated 13.11.2014 [reported in (2015) 1 SCC 298] was pleased to held as under:-

"31. Title Suit No.166 of 2013 pending on the file of the learned Civil Court at Kamrup, Guwahati is not maintainable insofar as it seeks declaration that the company was no longer a sick company.....Consequently the order of injunction passed by the Civil Court is set aside. We direct that the company i.e., J.K. Jute Mills Company Ltd. having its registered office at Kanpur U.P. continues to be under the jurisdiction of the BIFR. We leave it to the BIFR to satisfy itself and determine the issues whether the net worth of the company has turned positive or not... We direct the BIFR to complete this exercise within two months from date of receipt of this order. We have refrained from dealing with the matter concerning the merits or demerits of the claim that the net worth has turned positive nor have we dealt with the report made by the State Bank of India in its Special Investigative Audit..... as the matters in that behalf are still pending consideration before the authorities....."

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xi. It is further stated in the application that the Hon'ble Supreme Court vide order dated 08.05.2014 enjoined the Corporate Debtor for alienating/sale of the assets without permission. The Corporate Debtor on 2.7.2014 deliberately in order to siphon off the money, sold one of the prime assets/property located at Katihar, Bihar to its own associate/group company namely M/s. Thapar Herbs and Spices Pvt. Ltd. The Hon'ble Supreme Court of India vide judgment dated 18.11.2016 (reported in (2017) 1 SCC 599) held the staffs/directors/employees of Corporate Debtor guilty for violating of order dated 08.05.2014. Copy of the order dated 18.1.2016 has been annexed as **Annexure-N** with the Application.

xii. Furthermore, it is stated that proceedings under SICA stands abated after which Corporate debtor sold its valuable assets and created third party rights without even repaying the amount due to the operational creditor as well as to other workers in lieu of employment claims.

xiii. In the appeal filed by JK Jute Mill Mazdoor Morcha, Kanpur, before the Hon'ble National Company Law Appellate Tribunal (NCLAT), New Delhi, against the earlier order dated 28.04.2017

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passed by this tribunal on an application filed under section 9 by the JK Jute Mill Mazdoor Morcha, Operational Creditor filed an intervention application in Company Appeal (AT) (Insolvency) No.09 of 2017. The Hon'ble NCLAT vide judgment dated 12.09.2017, granted the operational creditors the right to assert claim in their individual capacity. Since March 7, 2014, the current management of the corporate debtor has ceased operations at the jute mill. They are employing this action as a means to exert pressure on the financially disadvantaged employees and workers, essentially using it as a coercive tool.

DETAILS OF AMOUNT DUE AND PAYABLE TO SHRI DEVI PRASAD BY THE CORPORATE DEBTOR I.E J.K. JUTE MILL COMPANY LIMITED

S. No	<u>ARREARS OF HEAD</u>	<u>PRINCIPLE AMOUNT</u>	<u>INTEREST</u>	<u>TOTAL</u>
1.	Towards Gratuity as per the award dated 26.2.2014 passed by Controller Authority, Payment of Gratuity Act, 1972 and Deputy Labour Commissioner, Kanpur Region, Kanpur in P.G. Suit No. 250/2012 from the period 1.1.1970 till 30.04.2018 plus interest @ 18% per annum for the period 26.02.2014 to 30.04.2018.	70700	53025	123725

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2.	10% wages deduction as per MOU of 1995 & 1999 from the Wages for the period 1996 to 2000 plus interest @ 18% per annum for the period 15.7.2000 to 30.4.2018.	14850	47557	62407
3.	Towards Provident Fund arrears plus interest @ 18% per annum	90000		
4.	Towards Money Deposited in Company's Society and Savings plus 18% interest per annum.	30000		
5.	Towards wages not paid from the period since the factory has closed i.e. 2003-2008 plus 18% per annum	200000		
6.	Towards Leave Encashment/Holiday arrears plus 18% interest per annum.	18000		
	TOTAL	423550	100582	524132

REPLY ON BEHALF OF THE RESPONDENT/ CORPORATE DEBTOR

3. The Corporate Debtor has filed reply vide dairy no. 690 dated 26.09.2018 wherein the followings submissions has been made:-

- i. The Respondent states that in the year 2004, the Company was governed by Singhanian group and due to massive siphoning off and bungling by the purchase department/managerial employees, it became a sick

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company leading to negative net worth. As per the old records of the Company, there is no unpaid gratuity due as claimed by the Petitioner in the application.

- ii. Respondent also states that Operational Creditor has colluded with the ex-employees of the Company by persuading them to record his alleged dues to be pending in his favour, which are actually neither due nor payable. The Company during the pendency of its reference before BIFR or reproducing the said records at subsequent stage did not have occasion to examine the alleged dues in detail. In fact, even the BIFR did not direct or authorize the payment of the dues of the Petitioner/Operational Creditor as the examination and authenticity of the alleged dues of any creditor including Petitioner herein was still to be examined by BIFR.
- iii. Respondent further states that MoU dated 07.08.1999 was not executed by the present management of the Company. Even the MoU dated 18.10.2008 and 28.01.2009 were not executed by the management of the Corporate Debtor.
- iv. Respondent further states that management of Geo Jute Ltd. filed an appeal before the Appellate Authority for

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Industrial and Financial Reconstruction (AAIFR) wherein stay was put on the Draft Rehabilitation Scheme. Company is not liable for any amount under the Sale of Goods Act, 1930 and Indian Contract Act, 1872.

- v. Respondent further states that alleged list of workers submitted before the BIFR as a part of DRS was only a compromise proposal for consideration by the BIFR which contemplated 60% payment of the principal amount without any interest therein in 12 yearly installments. This alleged list was only for the purpose of examination. The amount mentioned therein neither were admitted nor payable till they were examined as per law. The event to examine the said list never arose as after this Sick Industrial Companies (Special Provisions) Act, 1985 was repealed and BIFR was dissolved.
- vi. Respondent further States that the Petitioner's claim of being an employee of the Respondent or Corporate Debtor as stated in the current petition lacks supporting documentary evidence. The assertion that the Petitioner joined the Respondent as a Cleaning Mazdoor / Workman on 01.01.1970, remains unsubstantiated. On page 9 of the

Petition, it is mentioned that the Petitioner retired in 2009, whereas on page 10, it is stated that he retired on 01.08.2012. These contradictory statements raise doubts about the credibility of his claim regarding the alleged operational debt, its default date, and the accurate amount owed. The Petitioner has relied on these alleged retirement dates to calculate the outstanding dues.

- vii. Respondent further states that workmen/Labour Union adopted "go slow strategy" which eventually led to the temporary suspension of work by the Respondent or Corporate Debtor, starting from 08.03.2014, vide notice dated 07.03.2014. The aforementioned lockout notice was deemed illegal, pursuant to the provisions of Section 3(a) of the U.P. Industrial Disputes Act, 1947, by the Deputy Labor Commissioner in the Sarvodaya Nagar, Kanpur Region, Uttar Pradesh vide order dated 14.10. 2014. Copy of the notice dated 07.03.2014 issued by the Respondent/Corporate Debtor declaring temporary suspension of work has been annexed as **Annexure-A-1** with the Reply. However, the operation of the aforesaid order dated 14.10.2014 was stayed till the next date of

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hearing by the Hon'ble High Court of judicature at Allahabad, Lucknow Bench (hereinafter referred to as Hon'ble High Court) vide order dated 19.11.2014 passed in the matter of Juggilal Kamlatpat Jute Mills Co. Ltd., Through Director Vs. State of U.P., Thru Prin. Secy. Department of Labour & Ors. [Misc. Single / 7208 / 2014 (Kanpur City)]. This matter was last listed before the Hon'ble High Court on 24.8.2015 and vide the order dated 24.08.2015 the Hon'ble High Court was pleased to extend the operation of the stay orders till the next date of listing. It is pertinent to mention that the interim relief of stay order granted by the Hon'ble High Court is still in operation and as per the official website of the Hon'ble High Court, the matter is likely to be listed on 28.09.2018.

- viii. Respondent further states that the Petitioner was never employed with the Respondent /Corporate Debtor as per their record. The Petitioner has mentioned the amount of alleged operational debt as Rs. 5,24,132/- which also includes among other things, statutory arrears like provident fund, leave encashment, money deposited in Company Society and Savings Account, overtime and

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arrears wages. Thus, basis and quantification of the operational debt itself is not clear. Even if it is assumed for the sake of argument that the Petitioner was in alleged employment with the Respondent /Corporate Debtor from 01.02.1982, then also several years have elapsed since he ceased to be in employment but he has not made any effort to recover his dues by approaching appropriate legal forum. It is further submitted that this tribunal is not the appropriate forum for the Petitioner for seeking the relief. Petitioner is misusing the provisions of the IBC by filing this application.

- ix. Respondent further states that The Employees' Provident Fund Organization, hereafter referred to as EPFO, has terminated the PF Trust of the Respondent or Corporate Debtor. It's important to note that the Respondent or Corporate Debtor lacks any authority over the bank accounts of the PF Trust. It is essential to clarify, without prejudice, that any worker's claims related to the Provident Fund (PF) should be directed to the EPFO and not to the Respondent or Corporate Debtor. Copy of the news report dated July 10, 2018, published on the website

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"livehindustan.com," along with its typed English translation annexed as **Annexure A-4 (Colly)** with the Reply.

x. With respect to part-IV of the application, the respondent has raised the following contentions in the application:-

a) The Application filed by the Petitioner to initiate Corporate Insolvency Resolution Process (hereinafter referred to as CIRP) under Section 9 of the Code read with Rule 6(1) of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is incomplete.

b) The Petitioner has failed to disclose the respective dates from which amounts cumulatively constituting the alleged operational debt fell due in Column 1 of Part IV (Particulars of Operational Debt) of Form 5 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 filed before this Hon'ble Adjudicating Authority.

c) The Petitioner has failed to disclose the respective dates of default of cumulative amounts constituting the alleged operational debt in Column 2 of Part IV (Particulars of Operational Debt) of Form 5 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 file before this Hon'ble Adjudicating Authority. Further, the "Annexure A" i.e. Computation sheet referred to in the aforesaid column and annexed on Page 25 of the Petition also does not disclose the respective dates of default of cumulative amounts constituting the alleged operational debt.

d) The Petitioner has failed to disclose appropriate and requisite information in Part V [Particulars of Operational Debt (Documents, Records and Evidence of Default)] of Form 5 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 filed before this Hon'ble Adjudicating Authority. The details mentioned in the Column 3 of Part V of the aforementioned Form 5 do not contain particulars of any order of court, tribunal or arbitral panel adjudicating default. It is further submitted that none

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of the documents mentioned in the aforesaid column and marked as Annexure disclose any date of default.

e) Further, the Petitioner has not provided details of the proposed Interim Resolution Professional as per Section 9(4) of the Code in Column 1 of Part III (Particulars of the Proposed Interim Resolution Professional) of Form 5 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

f) The Petitioner has failed to comply with provisions of the Section 9(3)(c) of Code which mandates that an operational creditor shall along with his application furnish a copy of the certificate from the financial institution maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the Corporate Debtor. It would not be out of context to mention here that Form 5 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 also requires that Operational Creditor should file copy of the relevant accounts from the banks/financial institutions maintaining accounts of the operational the operational creditor confirming that there is no payment of the relevant unpaid operational debt by the operational debtor, as Annex III along with the Application.

g) The Petitioner has also failed to provide any other proof confirming that there is no payment of any unpaid operational debt by the Corporate Debtor as per the provisions of the Section 9(3)(e) of Code. It is further submitted that copy of the bank statements annexed by the Petitioner as Annexure P along with the Application are not legible. Further, these statements have not been duly attested by the banker with which the alleged operational creditor holds the account.

- xi. Respondent further states that IBC specifically addresses a Demand Notice that pertains solely to the default in the payment of the contracted amount and does not include provisions for interest payments. The Petitioner has failed to provide the necessary documents or any contractual

agreement between the parties to substantiate their claim. Thus, the Petitioner is not eligible to demand interest since the IBC does not incorporate any provisions for interest payments.

- xii. *A civil suit bearing No. 2482/2017, titled as "Geo Jute Ltd vs. Indrajeet and Others," has been filed in the Hon'ble Court of Civil Judge (J.D), Kanpur Nagar, Uttar Pradesh. In this suit, the Respondent is seeking a declaration that the Draft Rehabilitation Scheme previously submitted to the erstwhile Board for Industrial and Financial Reconstruction (referred to as BIFR), along with any statements made before BIFR by the Corporate Debtor concerning alleged dues settled by the prior management, should be invalidated. The grounds for this request are based on allegations of fraudulent conduct by the former management, in which the present management of the Corporate Debtor was not involved. The Hon'ble Court has issued notices to all the defendants involved in this matter. Copy of the Plaintiff's complaint for Civil Suit No. 2482/2017 titled "Geo Jute Ltd vs. Indrajeet and Others,"*

which is currently pending before the Court of the Honorable Civil Judge (J.D), Kanpur Nagar, Uttar Pradesh.

- xiii. Respondent further states that another *Civil Suit No. 500/2017 titled as Geo Jute Ltd vs. UOI and Ors* has also been filed by the Respondent/ Corporate Debtor before the Hon'ble Court of Civil Judge (Senior Division) Kanpur Nagar, Uttar Pradesh. It is submitted that in this Suit, the DRS before BIFR is under challenge and Union of India has marked its appearance and accepted the Notice. The Hon'ble Appellate Tribunal vide its common judgement dated 07.05.2018 passed In the matters of *LAXMICHAND BANSIDHAR, FORBESGANJ VS. M/S. JUGGILAL KAMLAPAT JUTE MILLS COMPANY LIMITED (NOW KNOWN AS GEO JUTE LIMITED) [COMPANY APPEAL (AT) (INSOLVENCY) NO. 190 OF 2018]* and *GANPATI TRADERS, FORBESGANJ VS. M/S. JUGGILAL KAMLAPAT JUTE MILLS COMPANY LIMITED (NOW KNOWN AS GEO JUTE LIMITED) [COMPANY APPEAL (AT) (INSOLVENCY) NO. 191 OF 2018]* while dismissing the appeals filed against the present Respondent /Corporate Debtor had also recognized that pending Civil Suit No. 500/2017 titled as *Geo Jute Ltd Vs.*

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UOI and Ors involves some common issues. The relevant parts of the aforesaid common judgement are reproduced below:-

.....In absence of any record of debt and as there is a dispute as to whether any in debt is payable by the Respondents in favour of one or other Appellants, we hold that the Adjudicating Authority rightly rejected both the applications.

3. We have noticed that in one of the cases a Civil Suit No. 500/2017 is pending on some of the common issues,.....4. For the reasons aforesaid, we are not inclined to interfere with the impugned order(s). As these appeals are devoid of merit, they are accordingly dismissed. No cost.

Copy of the Complaint of Civil Suit No. 500/2017 titled as Geo Jute Ltd Vs. UOI and Ors., filed by the Company before the Court of Hon'ble Civil Judge (Senior Division) Kanpur Nagar, Uttar Pradesh and copy of the common judgement dated 07.05.2018 passed by the Hon'ble Appellate Tribunal in the Company Appeal (AT) (Insolvency) No. 190 of 2018 and Company Appeal (AT) (Insolvency) No. 191 of 2018 are being annexed as **Annexure A-7 (Colly.)** with the Reply.

xiv. Respondent further states that another Civil Suit No. 2506/2017 titled as *Geo Jute Ltd. vs. Mata Prasad & Ors.* is pending for adjudication before the Court of Hon'ble Civil (Junior

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Division) / F.T.C. Kanpur Nagar, Uttar Pradesh wherein the Respondent/Corporate Debtor has prayed for the following reliefs:

a) *To issue appropriate directions to the retired workers so as to preclude them from filing cases against the Respondent / Corporate Debtor in different legal forums till the suit is finally decided.*

b) *To declare any documents submitted in DRS by any party as null and void.*

c) *To declare that amount allegedly claimed by the Defendants from the Respondent/ Corporate Debtor is **not due and payable by the Respondent/ Corporate Debtor.***

Copy of the Complaint of the Civil Suit No. 2506/2017 titled as Geo Jute Ltd. Vs. Mata Prasad & Ors. is pending for adjudication before the Court of Hon'ble Civil (Junior Division) /F.T.C. Kanpur Nagar, Uttar Pradesh has been annexed with the Reply.

xv. Furthermore, Respondent states that the Petitioner is engaged in proxy litigation, acting on behalf of Mr. Ghanshyam Sarma. This petition seems to be driven by ulterior motives and lacks bona fides. The Petitioner was not a party to previous legal proceedings involving the Respondent or Corporate Debtor. Therefore, it is implausible for the Petitioner to possess insights into the legal cases concerning the Respondent or Corporate Debtor without the assistance of Mr. Ghanshyam Sarma. It is alleged that Mr. Ghanshyam Sarma's prior intentions have not

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been realized, and as a result, he is encouraging various individuals, including the Petitioner, to initiate baseless and unsubstantiated legal actions against the Respondent or Corporate Debtor. This activity seems to be aimed at disrupting the operations of the Respondent or Corporate Debtor and interfering with their regular business activities. Additionally, it is important to clarify that the current management of the Respondent or Corporate Debtor was not privy to any purported Memorandum of Understanding (MOU) or DRS.

xvi. Respondent states that the Hon'ble Supreme Court of India in the matter of *Ghanshyam Sarda Vs. Shiv Shankar Trading Company (MANU/SC/1029/2014)* vide order dated 13.11.2014 did not make any observation regarding merits or demerits of the claim that the net worth of Respondent /Corporate Debtor had turned positive. Similarly the Hon'ble Supreme Court of India in the said order also did not make any observation regarding the report made by State Bank of India in its Special Investigative Audit. These issues were merely left for consideration by the BIFR at appropriate stage. The relevant part of the order is reproduced below for reference:

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“.....

We direct the BIFR to complete this exercise within two months from date of receipt of this order. We have refrained from dealing with the matter concerning the merits or de merits of the claim that the net worth has turned positive nor have we dealt with the report made by the State Bank of India in its Special Investigative Audit. We leave these issues to be considered by the BIFR at an appropriate stage"

Copy of the order dated 13.11.2014 passed by the Hon'ble Supreme Court of India in the matter of *Ghanshyam Sarda vs. Shiv Shankar Trading Company (MANU/SC/1029/2014)* has been annexed as Annexure A-9 with the Reply.

xvii. Therefore, in view of the aforementioned facts and circumstances the present Petition should be dismissed.

COMMON REPLY FILED BY THE CORPORATE DEBTOR IN A GROUP OF PETITIONS FILED BY SIMILAR OPERATIONAL CREDITOR

4. Respondent/ Corporate Debtor has contended that this application filed under section 9 is not maintainable on the ground that non-payment of dues pertaining to service benefits/welfare is not permissible ground for initiating CIRP by filing application under section 9 of the IBC, 2016. For this purpose, the Corporate

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Debtor has placed reliance on *Kishore K. Lonkar v Hindustan Antibiotics Ltd. - Company Appeal (AT) (Ins.) No. 934 of 2021*.

5. It is also contended by the Respondent that claim (Principal Amount) of the Operational Creditor is less than the threshold limit of Rs. 1,00,000 for which they have assed interest to increase the said limit for purpose of filing present application under section 7 of the IBC,2016. The Corporate Debtor has placed reliance on the judgement passed by the Hon'ble NCLAT in the matter of *International Road Dynamics South Asia Pvt. Ltd. Vs Reliance Infrastructure Ltd.- CA (AT) (Ins) No. 72 of 2017* wherein it was held that separate claims cannot be clubbed together in one application under section 9 of the IBC, 2016.

6. Respondent contends that out of 52 applications filed, 30 applications with similar claims are pending before the Appellate Tribunal and 17 cases of similar claim are pending adjudication before the Civil Courts and remaining 05 applications have been set as time barred.

7. The claim submitted by the applicant falls under the category of pre-existing dispute which is hit by Section 8(2) r/w Section 9(5) (ii) (d) of the IBC, 2016. Demand notice annexed with the

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application is unlawful because Petitioner has not produced any contractual document in support of his demand. The present application filed by the operational creditor is incomplete as it lacks proof of documents of claim, Bank Certificate and documented evidence of insolvency petitioners as workmen of Corporate Debtor.

8. Respondent further contends that the Corporate Debtor on 12.12.2017 filed another *Civil Suit bearing no. 2482 of 2017 titled M/s Geo Jute Ltd. v. Sri IndraJeet and Ors.* seeking Declaration, Permanent and Perpetual Injunction, Mandatory Injunction, Damages and Compensation against the Workman who were threatening the Corporate Debtor with their unverified, frivolous and false workman dues. The Corporate Debtor in their Civil Suit bearing No. 2482 of 2017 sought the following reliefs:

- a. Injunct the workers from representing their alleged Dues in various forum till the Suit is finally decided;*
- b. Declare any document submitted in the DRS by any Party as null and Void.;*
- C. Declare that no amount is due and payable, if any, as allegedly claimed by the Defendants allegedly from the Plaintiff Company;*
- d. Award damages/compensation to the tune of Rs. 100000.00 Lacs;*

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A copy the Civil Suit bearing no. 2483 of 2017 titled Geo Jute Limited v. Sri Indra Jeet and Ors. has been annexed with the Reply.

9. Respondent further states that Insolvency Petitions No 36/2017 filed by alleged workers union on similar grounds was dismissed by this Ld. Adjudicating Authority vide its Judgement dated 28.04.2017. Another Proxy worker Union funded and created by Business Rival of Corporate Debtor filed a *Writ Petition No.440/2017 titled as JK JUTE MAZDOOR EKTA UNION VS UOI & ORS* seeking similar reliefs.

10. With respect to Pre-existing Dispute, Respondent contends that an Application under Section 9, IBC (CP IB No. 36/ALD/2017) was filed by JK Jute Mazdoor Morcha (trade union) and the same was dismissed on 28.04.2017 as being non- maintainable in light of the pre-existing dispute in light of the Civil Suit pending before Civil Judge, Kanpur Pursuant to the dismissal of the Section 9 the *Trade Union/ JK Jute Mazdoor Morcha filed an Appeal (CA(AT)(Ins) No. 82/2017)* challenging the dismissal of the Order of the NCLT in CP IB No. 36/ALD/2017. The Hon'ble Appellate tribunal vide Order dated 08.08.2019 had directed the Trade Union/ JK Jute

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Mazdoor Morcha to file an Affidavit, wherein the Trade Union had to mention whether the Appeal is on behalf of one of the employees or all the employees.

11. Thereafter, on 17.08.2019, 30 out of 52 Operational Creditors filed an Affidavit before the Hon'ble Appellate Tribunal stating that their Claim against the Corporate Debtor may be considered by this Hon'ble Appellate Tribunal.

REJOINDER ON BEHALF OF THE APPLICANT

12. In response to the reply filed by the Corporate Debtor, the Applicant has filed rejoinder in the instant matter wherein the following submissions has been made:-

i. Applicant states that operating agency i.e. IDBI suggested the Draft Rehabilitation Proposal (DRP) of the present management of the Corporate Debtor wherein it acknowledged its liability towards i.e. "Workers Dues". The relevant portion of said DRP is mentioned below:-

"14....

Workers / staffs have already executed a long term wage settlement and productivity agreement with the Management vide MOU signed on 18.10.2008. It is expected that the workers / staff and the company will honour their commitments.

...."

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ii. Applicants also states that the Corporate Debtor itself acknowledged the liabilities of the workers, including the current petitioner, and confirmed that a Memorandum of Understanding (MOU) was entered into in 2008 for their settlement. The company also issued retirement letters to the workers in accordance with the MOU-2008 executed with the Trade Unions and Workers. Consequently, the company cannot renounce its own commitment made in 2008.

iii. Applicants further states that the new MOU-2008 was formulated with the prior MOU-1999 in mind. Therefore, the Corporate Debtor is providing false information before this respected Adjudicating Authority by asserting that no MOU was ever executed. It is therefore respectfully submitted that the dues owed to the Operational Creditor are undisputed liabilities, which can be verified from the list of employees/workers provided by the Corporate Debtor to the Board for Industrial and Financial Reconstruction (BIFR). The workers are an integral part of the Debt Rehabilitation Proposal (DRP) submitted by the Corporate Debtor to the BIFR, which is part of the BIFR's official records. Applicant contend that the examination of the DRP by the BIFR does not imply that the BIFR would exclude the liability pertaining to the **CP (IB) No.280/ALD/2018**

workers. On the contrary, the BIFR would assess whether sufficient funds and revenue are allocated in the DRP to meet all its liabilities.

iv. Applicants further states that Corporate Debtor cannot deny its liability towards the workers dues after acknowledging the same in the DRP as the Doctrine of Estoppel has come into operation which prevents the Corporate Debtor from running away of its liabilities after accepting the same.

v. Applicant further states that being a former employee of the Corporate Debtor, it is essential to clarify that his services were rendered to the Corporate Debtor, not to the current management. Therefore, the responsibility for compensating him lies squarely with the Corporate Debtor. It is to be noted that the Corporate Debtor's management changed hands from the Singhania Group to the Sarda Group. However, this change in management does not alter the fact that applicant remained an employee of the Corporate Debtor, and the debts incurred by the Corporate Debtor persist. When the management transitioned to the Sarda Group, they assumed not only the assets but also the liabilities of the Corporate Debtor. All commitments and actions made by the previous

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management bind both the Corporate Debtor and the current management. It would be unprecedented for the present management to only inherit the assets while the debts disappear.

vi. Applicant further states that shortly after the Sarda Group took over the management of the Corporate Debtor on October 18, 2008, they entered into a Memorandum of Understanding (MOU) acknowledging their liability towards the workforce. Having willingly signed this MOU with the Trade Unions, supported by the workmen, the present management should not be permitted to evade their obligations under the same.

vii. Applicant further states that Juggilal Kamlapat Jute Mills Company Ltd. has changed its name to Geo Jute Ltd., but the Directors as well as persons control in the management are still the same. So there is no change of management.

viii. Applicant further states that the Corporate Debtor has filed frivolous suits as well as against the Trade Unions which are non-maintainable in law details of which are mentioned as under:-

(a) On 12.12.2017 filed Original Civil Suit No.2482/2017 before the Learned Civil Judge (Junior Division), Kanpur, UP seeking injunction against the workers from representing their alleged dues in various forum; declaring that any document submitted in the DRS by

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any party as null and void and also for declaring that no amount is due and payable against the workers.

(b) On 15.12.2017 filed Original Civil Suit No. 2506/2017 before the Learned Civil Judge (Junior Division), Kanpur, UP seeking injunction against the retired workers from representing their dues in various forum; declaring that any document submitted in the DRS by any party as null and void and also for declaring that no amount is due and payable against the workers. It is very painful when company is also demanding money from the poor workers in its frivolous suit towards damages/compensation.

(c) Earlier on 21.3.2017, the Corporate Debtor has also filed Original Civil Suit No. 249/2017 against Trade Unions to represent any workers and raising any demand against the Corporate Debtor.

ix. Applicant further states that that such frivolous litigations do not meet the criteria of demonstrating an 'existence of dispute' or a 'pending suit' under Section 8(2) (a) of the Insolvency and Bankruptcy Code, 2016. Allowing litigants, such as the Corporate Debtor, to file these meritless civil suits in order to artificially create an 'existence of dispute', would be a clear abuse of the provisions of the law (IB Code, 2016).

x. Applicant further states that the company's management is involved in a scheme to profit themselves by sourcing and supplying old and used jute bags from the open market to government departments, deceptively passing them off as new bags. This not only defrauds the government but also involves

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embezzlement of funds received from these government departments. Simultaneously, the company's workers are being denied their rightful wages. The Haryana State Agency has taken action by filing a F.I.R against the Director of JK Jute Mills Company Ltd., as well as Govind Sarda and his son Aditya Sarda, who are the current controlling figures in the company.

xi. Additionally, the management of JKJMCL has initiated the unauthorized sale and transfer of valuable company assets without the knowledge or consent of relevant parties. For instance, the land in Katihar has been sold to Thapar Herbs & Spices Ltd., and other assets have reportedly been transferred to five subsidiary companies. On 18.11.2016, the Hon'ble Supreme Court convicted the company's Directors, staff, and employees for Contempt of Court in connection with the illegal sale of JKJMCL's assets. The Jute Mill has remained inactive since March 2014, leaving the company's workers without employment and wages, pushing them to the brink of destitution. All the while, the company's management is engaging in illicit activities to amass profits.

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xii. The liability concerning workers' dues and gratuity owed to them was expunged from the manipulated Audited Balance Sheet as on 31.12.2012. This discrepancy was also brought to light by the Auditors in their Investigative Audit Report on 04.09.2013. Upon investigating the Board for Industrial and Financial Reconstruction (BIFR) website, I have learned that following the Supreme Court's directive, the BIFR conducted numerous hearings. The most recent hearing occurred on 27.07.2016, but the matter was deferred as partially heard. Parties were directed to present their arguments on the Special Investigative Audit (SIA) report, along with the balance sheet from December 31, 2012, onwards.

xiii. Subsequently, no further hearings took place before the BIFR. This was due to the Ministry of Finance issuing notifications SO 3568(E) and SO 3569(E) on November 25, 2016, setting December 1, 2016, as the effective date for the implementation of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, and notifying an amendment to Clause (b) of Section 4 of the SIC Repeal Act, effective December 1, 2016. Section 4(b) of the SIC Repeal Act, 2003, was amended by section 252 of the UP No. Insolvency and Bankruptcy Code, 2016. It is important to note that

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the BIFR did not make a final determination regarding the accurate financial standing or the unlawful sale of assets by the current management of the Corporate Debtor.

xiv. Applicant further states that the JK Jute Mill Mazdoor Ekta Union filed a Writ Petition (Civil) No. 440/2017 before the Delhi High Court. They contested the constitutionality of Section 4(b) of the SIC Repeal Act, 2003. Their contention was that this section failed to establish a proper mechanism for adjudicating the directives issued by the Supreme Court on 13.11.2014, and 18.11.2016. Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) stipulated that if an inquiry was ongoing, a scheme was being prepared or considered, or an approved scheme was being executed for an industrial company, then various actions like winding up, property seizure, or money recovery lawsuits against the company couldn't proceed without the consent of the Board or the Appellate Authority. This aligns with the precedent set by the Supreme Court in the case of Kashmiri Rice Industries in 2009 (7) SCC 521. Additionally, Section 26 of the SICA Act, 1985, barred civil courts from interfering in matters within the purview of the Board's authority under the Act. Section 22(5) of the SICA clearly states that the **CP (IB) No.280/ALD/2018**

period for which the reference was pending would not include in computing the period of limitation for enforcement of the right of the Operational Creditor. The relevant provision of the said act is mentioned is that "(5) *In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded.*"

xv. Applicant further states that *there was no dispute or suit pending or arbitration proceedings pending before such Demand Notice was issued by Trade Union under the provisions of IB Code, 2016 on 14.3.2017 and the day when the Demand Notice was served upon the Corporate debtor i.e. 21.3.2017; the corporate debtor filed an Original Civil Suit No. 249/2017 against all the Trade Union(s) of JKJMCL in the Court of Civil Judge, Kanpur through one Chandra Shekhar Verma, inter alia therein praying for declaration and injunction as under:*

".....

A. That a decree of declaration that defendants are not representing any workers of the plaintiff company and also declare that no amount is due and payable, if any allegedly claimed by the defendants on behalf of any worker/labourer;

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B. That a decree for permanent injunction be passed in favour of the plaintiff and against the defendants thereby the defendants assigns, member representatives, agents, associates, etc. Be restrained for claiming any amount whatsoever from the plaintiff company except the wages of work done during the running period of the Mill.”

xvi. The Applicant further states that JK Jute Mill Mazdoor Morcha had initiated an insolvency petition, Company Petition No. 36/ALD/2017, before this Adjudicating Authority. On April 28, 2017, this Adjudicating Authority dismissed the insolvency petition (No. 36/ALD/2017) citing the existence of a prior dispute. During the pendency of the Writ Petition (Civil) No. 440/2017 filed by JK Jute Mill Mazdoor Ekta Union before the Delhi High Court, the Corporate Debtor, on 05.05.2017, and 08.05.2017, entered into sale agreements transferring its fixed assets located in Gulab Bagh, Bihar, to M/s. Kurina Real Estate Pvt. Ltd. Additionally, on 15.05.2017, the corporate debtor entered into a lease agreement concerning its jute mill in Kanpur and a prime location bungalow in Kanpur with M/s. Skyscrapers Niwas Pvt. Ltd. This lease agreement was effective from 04.05.2017, and was set for a 27-year term at a nominal monthly rent of Rs. 75,000.

xvii. The Hon'ble Appellate Tribunal vide final order/judgment dated 12.9.2017 dismissed the Appeal filed by JK Jute Mill **CP (IB) No.280/ALD/2018**

Mazdoor Morcha, inter alia, on the ground that "Trade Union" do not fall within the meaning of "Operational Creditor" under Section 5(20) of the I&B Code, 2016 as no services has been rendered by the Trade Union to the Corporate Debtor. In the said order/judgment the Hon'ble Appellate Tribunal observed that *individual workmen who are members of different Trade Union have filed application seeking intervention in the appeal proceedings alleging that the Corporate Debtor inspite of repeated demands and reminders have failed to make payments of their legitimate dues.*

The relevant extract reads as under:-

"14. 19 Interveners have intervened who claim to be the members of different Trade Unions of Respondent/ 'corporate debtor', this apart, some of them are widow, successor of the deceased workers. According. to them, inspite of repeated demands and reminders the Jute Mill failed to make payment for realization of legitimate dues towards:

- (i) Wage Deduction @ 10% of wages p.m as per Mou*
- (ii) Overtime*
- (iii) Provident fund (iv) Gratuity*
- (v) Holiday Arrears*
- (vi) Money deposited in company's society and savings, and*
- (vii) Wage from the period since the factory has closed.*

It is stated that apart from that the minimum wages has also not been paid and total dues to the members of the

Interveners are more than Rs. 113.8 lacs. The details of period of lockout etc., has been shown.

However, it does not mean that an application under Section 9 of I&B Code is not maintainable at the instance of an individual employee/workman who has rendered services to the 'corporate debtor' and if there is debt and default such individual workman/ employee can prefer an application under Section 9 giving details of debt and date of default but it should not be less than one lakh rupees in view of Section 4 of the I&B Code. In such cases if corporate insolvency resolution process is started against the corporate debtor, it is always open to the other creditors, including workmen/ employees, their legal heirs to file claim before the Insolvency Resolution Professional once notice is published in the newspaper under Section 15 of the I&B Code and/or prior to completion of insolvency resolution process. This observation we are making so that in such case the 'corporate debtor' cannot take plea that earlier the application moved by workers' association/Trade Union in respect of such workmen/ employee/ legal heirs of deceased employees under Section 9 and the appeal under Section 61 have been rejected.....”

xviii. It becomes clear from the judgment dated 12.9.2017 passed by the Hon'ble Appellate Tribunal that an application under Section 9 of I&B Code is maintainable at the instance of an individual employee/workmen who has rendered services to the Corporate Debtor and whose legitimate dues have not been paid by the corporate debtor.

FINDINGS AND ORDER

13. We have perused the materials submitted on record and heard the Ld. Counsels for both the parties. The operational Creditor has sought initiation of CIRP against the Corporate Debtor based on the dues mentioned in Part-IV of the this Application which are :- Gratuity, 10% Wages Deduction as per MoU of 1995 and 1999 from 1996 to 2000 along with 18% interest p.a. Provident Fund, Money deposited in the Company's Society and Savings, Wages from the period since the factory has been closed i.e. 2003-2008 plus 18%p.a and Towards Leave Encashment/Holiday Arrears plus 18% interest p.a. which amounts to Rs. 5,24,132. The issues for consideration before us are:-

i. Whether the payment of gratuity claimed by the petitioners will constitute operational debt for admission of this application under section 9 of the IBC, 2016.

ii. Whether there is any pre-existing dispute before the issuance of demand notice on 21.03.2017 as specified under section 9 of the IBC, 2016.

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iii. Whether the present application filed under Section of 9 IBC, 2016 is barred by limitation.

14. The first issue for consideration before us is that whether the payment of gratuity claimed by the petitioners will constitute operational debt for admissibility of this application under section 9 of the IBC, 2016.

15. For the purpose of examining this issue, it is necessary to recall the definition of “operation creditor”, “operational debt” and what constitutes “workmen dues”.

(20) "Operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;

16. It is also important to take note of certain definitions given under the Companies Act, for examining the scope of “Workmen Due.” Section 3(36) of the Code states that the term ‘workmen’ shall have the same meaning as provided under Section 2(s) of the Industrial Disputes Act, 1947. For the purpose of the Code, the term

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‘workmen dues’ has to be interpreted in terms of explanation to Section 326 of the Companies Act, 2013.

“.....

Section 326: Overriding preferential payments.

326. (1) *In the winding up of a company under this Act, the following debts shall be paid in priority to all other debts:—*

(a) *workmen’s dues; and*

(b) *where a secured creditor has realised a secured asset, so much of the debts due to such secured creditor as could not be realised by him or the amount of the workmen’s portion in his security (if payable under the law), whichever is less, pari passu with the workmen’s dues:*

Provided that in case of the winding up of a company, the sums referred to in sub-clauses (i) and (ii) of clause (b) of the Explanation, which are payable for a period of two years preceding the winding up order or such other period as may be prescribed, shall be paid in priority to all other debts (including debts due to secured creditors), within a period of thirty days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.

(2) *The debts payable under the proviso to sub-section (1) shall be paid in full before any payment is made to secured creditors and thereafter debts payable under that sub-section shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.*

Explanation.—For the purposes of this section, and section 327—

(a) **“workmen”**, in relation to a company, means the employees of the company, being workmen within the meaning of clause (s) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947);

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(b) “**workmen’s dues**”, in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:—

(i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947 (14 of 1947);

(ii) all accrued holiday remuneration becoming payable to any workman or, in the case of his death, to any other person in his right on the termination of his employment before or by the effect of the winding up order or resolution;

.....

(iv) all sums due to any workman from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the workmen, maintained by the company;

.....”

17. The Hon’ble NCLAT in the matter of **Kishore K. Lonkar Vs. Hindustan Antibiotics Ltd.(2022) ibclaw.in 339 NCLAT** made certain observations with regard to workmen dues in para 9 of its judgement which are stated as under:-

“.....

9.....Employees and workmen do constitute a major part of the stakeholders. The term ‘employee’ in general parlance refers to a person, who is hired by the employer to perform a particular job and is entitled to a specific wage or salary. Section 3(36) of the Code states that the term ‘workmen’ shall have the same meaning as provided under Section 2(s) of the Industrial Disputes Act,

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1947. For the purpose of the Code, the term 'workmen dues' has to be interpreted in terms of explanation to Section 326 of the Companies Act, 2013. As per the definition incorporated therein, the dues would cover wages and salary, accrued holiday remuneration, workmen compensation, and all sums due from Provident Fund, Pension, Gratuity Fund or any other fund for the welfare of the workmen, maintained by the employer. Generally speaking, the 'Claims' of the workmen/employees may be classified as 'service claims' which arise during the terms of employment, in lieu of service rendered by the employee, salary, wages, bonus, dues etc., and 'welfare claims' which arise after cessation of employment, like 'Gratuity', 'Leave Encashment', Superannuation Dues, Workmen Compensation for closure of the entity which all depend on the tenure of the employment. Subsequent to the Company going into the Insolvency, all such claims may be submitted in Form D under Regulation 9 of the (Insolvency and Bankruptcy) CIRP Regulations, 2016. But seeking to initiate CIRP on the ground that 'LTC' and 'EL Encashment' has not been paid, which fall within the ambit of service benefits/welfare benefits cannot be said to be the intent and objective of the Code.

.....”

18. The Operational Creditor, who is a former employee of the Corporate Debtor and retired from the factory in the year 2009 after serving for 40 years does come within the meaning of workmen as defined under section 3(36) of the Code, 2016 and is entitled for all the workmen dues which forms the part of service as stated in explanation under section 326 of the Companies Act, 2013. In order to avail this right and all the entitlements of his

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service Operational Creditor proceeded with filing this application under section 9 before this tribunal wherein the total amount of debt claimed by the Operational Creditor is Rs. 5,24,132. Out of the total said amount applicant had also claimed gratuity of Rs. 70,700 with 8% interest p.a. from 26.02.2014 to 30.04.2018 which constitutes a total sum of Rs. 1,23,725 as per the award passed by the competent authority which has remained unchallenged and constitutes a welfare “claim” as per the above judgement. Further as per the award passed by the competent forum for release of gratuity, the said amount becomes a legally enforceable right to claim and non-payment thereof constitutes a valid default within the meaning of IBC.

19. The Corporate Debtor failed in repayment of the said gratuity amount as stated earlier, thus, this amount of Gratuity was challenged by the Operational Creditor before the concerned Statutory Authority seeking the payment of gratuity amount of Rs. 72000 with 15% interest. The Ld. Assistant Labour Commissioner vide order dated 26.02.2014 passed an award holding that Respondent is liable to make a payment of Rs. 70,200 with interest @ 8% p.a. from the date of filing of the application dated 24.01.2013 till the date of making payment.

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20. The whole amount for the payment of gratuity has been crystalized including that of an interest as it(interest) is an integral part of the Award passed by the Competent Authority. Is thus unequivocally clear that the amount of interest so awarded becomes an integral part of the gratuity amount as a whole. It is because of this reason that Operational Creditor in Part-IV of the instant application has sought a sum of Rs. 1,23,725 which is in itself is above the threshold limit of Rs. 1 Lakh.

21. We therefore, hold that the present application is maintainable in view of aforesaid award entitling the Operational Creditor towards the payment of gratuity. Needless to mention that the Corporate Debtor has acquiesced to the total amount of default of Rs. 1,23,725 of gratuity and has shown his willingness to pay this amount of gratuity out of the total sum of default therefore, admission of default being there is accepted and thus default is evident without any shadow of doubt.

22. It may be noted that the minimum amount of default as has been prescribed under Section 4 of the Code has a purpose and object. The object is that unless there is a minimum amount of default, no person should be permitted to initiate CIRP. The

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threshold limit for initiating CIRP in this case is in terms of the order dated 26.02.2014 passed by the Asst. Labour Commissioner which is decretal amount of Rs. 70,700 along with interest @8% p.a. till date of filing application before the Asst. Labour Commissioner i.e. 24.01.2013. The total decretal amount is 1,23,725. This decretal amount is adjudicated by the Labour Court as a legally payable claim crystallized and payable in law, the same would constitute a 'debt' which remained unpaid by the Corporate Debtor. The decretal amount awarded by the Civil Court, Kanpur Nagar in respect of gratuity along with 8% till the date of filing of Petition which constitutes a sum of Rs. 1,23,725 is above the threshold limit of Rs. 1.0 Lakh as specified under Section 4 of the IBC,2016.

23. The next issue for consideration is whether there is any pre-existing dispute before the issuance of demand notice on 21.03.2017 as specified under section 9 of the IBC, 2016.

24. The Corporate Debtor in their submissions has contended that there is a pre-existing dispute with reference to the issue raised in the present matter which is still pending before the Hon'ble Court of Civil Judge, Kanpur, U.P which is titled as M/s

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Geo Jute Limited versus Sri Mata Prasad s/o Ram Lagari & Ors. – Original Suit No. 2506 of 2017 wherein Plaintiff (M/s Geo Jute Ltd.) has sought permanent injunction to *Injunct; the Retired workers from representing their alleged Dues in various forum till the Suit is finally decided, Declare any document submitted in the DRS by any Party as null and Void and Declare that no amount is due and payable, if any, as allegedly claimed by the Defendants allegedly from the Plaintiff Company.* In this civil suit, Operational Creditor i.e. Devi Prasad has been arrayed as Defendant No. 425. This matter is still pending adjudication before the Civil Court, Kanpur Nagar.

25. In reply to the present application, Corporate Debtor has contended that another civil suit titled as *M/s Geo Jute Limited versus Sri Indra Jeet s/o Awadh Narain & Ors. – Original Suit No. 2482 of 2017* has been filed before the Hon'ble Court of Civil Judge, Kanpur, Uttar Pradesh wherein respondent has sought similar relief.

26. The Applicant in its Rejoinder and written submissions has contended that all these civil litigations filed by the Corporate Debtor are frivolous litigations and management of the Company

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is engaged in alienating the assets of the company. The averments made by the Corporate Debtor in the suit is with respect to DRS. Therefore, it does not fall within the criteria of existence of dispute as stated under Section 8 of the I&B Code,2016.

27. We have considered the submissions of Corporate Debtor as well as Operational Creditor and are of the considered opinion that civil suit filed by the Corporate debtor for seeking injunction from the Ld. Civil Judge, (JD), Civil Court, Kanpur Nagar is against the employees who are seeking claims arising out of Draft Rehabilitation Scheme (DRS). We find that so far as the nature of civil suit is concerned with the DRS and therefore, operates on a different field as against the specific category of claims and default raised by the Applicant in the present application which is arising out of award passed by the Ld. Assistant Labour Commissioner acting under the Payment of Gratuity Act, 1972 as well from the retired statutory dues which is not the subject matter of the dispute in civil suit which is only confined to DRS.

28. The Amount of Gratuity which is liable to be paid by the Corporate Debtor as per the award is Rs. 1,23,725 which is a debt as defined under section 5(21) of the I&B C,2016. **The Corporate**

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Debtor has clearly made statement before this Adjudicating Authority on the date of hearing i.e. on 20.12.2023 that the award passed by the Ld. Assistant Labour Commissioner is not challenged so far. Moreover, the Corporate Debtor is willing to pay the part amount as per the award.

29. It is to be noted that all these civil litigations are filed by the Corporate Debtor pertains to seeking injunction against the retired workers from claiming any alleged dues and from filing any documents in the DRS but here the matter pertains to payment of total amount of gratuity as determined by Assistant Labour Commissioner vide award dated 26.02.2014 of Rs. 1,23,725 which is admittedly not disputed. This tribunal vide an order dated 07.12.2023 sought clarification from the Corporate Debtor with respect to any appeal preferred by the Corporate debtor against the Award dated 26.02.2014 by the Assistant Labour Commissioner, Kanpur. The relevant part of the **order dated 07.12.2023** is stated as under: -

“....

1. This matter was earlier reserved after hearing the arguments on behalf of both the parties. However, while going through the record, it is noticed that the present petition has been filed under Section 9 based upon the award passed by the Assistant Labour Commissioner,

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Kanpur Nagar, thereby granting payments with regard to gratuity etc. be made to the petitioner by the Corporate Debtor alongwith interest.

2. The Corporate Debtor has relied upon a civil suit filed by it against more than 100 of its employees restraining the employees from seeking any relief under rehabilitation scheme.

3. In view of the above, it is to be clarified by the Corporate Debtor, if there is any disputes/challenge laid by it with regard to the award passed by the Assistant Labour Commissioner, which is the foundation of the present petition filed under Section 9.

4. Notice be issued to the Respondent/ Corporate Debtor through the learned counsel who has already been representing in the matter. Ld. Counsel representing the Operational Creditor also undertakes to supply the copy of this order to the Ld. Counsel representing the Corporate Debtor....”

30. This tribunal vide order dated 20.12.2023 recorded the statement of the Ld. Counsel of the Corporate Debtor who submitted that the award dated 26.02.2014 passed by the Assistant Labour Commissioner, Kanpur has not been challenged before in any Court of law. The relevant part of the order dated 20.12.2023 is stated as under: -

“.....

1. This petition U/s 9 has been filed for raising default under various heads like gratuity, leave encashment, deposits of the employees, PF etc.

2. The matter was earlier reserved after hearing the arguments on behalf of learned counsels representing both the parties, and after going through the record, it was noticed that the present petition has been filed U/s

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9 of IBC interalia based upon the award passed by the Assistant Labour Commissioner and as per para no.3 of the order dated 07.12.2023 of this Tribunal, the Corporate Debtor was required to clarify, if there is any disputes/challenge laid by it with regard to the award passed by the Assistant Labour Commissioner.

3. Ld. Counsel representing the Corporate Debtor on instructions states that the award passed by the Assistant Labour Commissioner has not been challenged in any Court of law so far.

4. The Ld. Counsel for the Corporate Debtor states that the Corporate Debtor is willing to pay the part amount due as per the award. On the contrary, Ld. Counsel representing the Operational Creditor on instructions states that the said amount offered is not acceptable to him, which is only a part payment towards the entire claim made in the petition, and therefore he rejects the payment and prays for his application filed U/s 9 to be heard on merits.

5. This statement made on behalf of the Operational Creditor to pursue the petition U/s 9 has also been recorded in the order dated 19.12.2023 passed by this Tribunal.

.....”

31. The claim in this petition arises on account of non-payment of Gratuity, Provident Fund, leave encashment and deposits made by petitioner, which means due/debt for the services rendered. In the aforesaid order, the respondent admitted to pay the gratuity amount of Rs. 70,200 along with 8% interest awarded by the Assistant Labour Commissioner /- to the Applicant. Further, the clarification provided by the Corporate Debtor is taken on record v.o.d. 20.12.2023 that the award passed by the Assistant Labour **CP (IB) No.280/ALD/2018**

Commissioner has not been under challenge. In view of this, the award attains finality as the time period for filing an appeal has already expired which has not been exercised by the Corporate Debtor. Therefore, there is no pre-existing dispute in the context of the present default as mentioned in Part-IV of the Application. The total sum of debt mentioned in Part-IV of the Section 9 application is Rs. 5,24,132. This is above the threshold amount. It is settled position that at the time of admission of application, there is no need to determine the exact due amount payable by the corporate debtor. In this regard the Hon'ble NCLAT in ***Nandamuri Meenalatha vs M/s. Quality Steels and Wire Products Company Appeal (AT) (CH) (INS.) No. 11 of 2023 04.07.2023*** had observed as follows:

"...80. It must be borne in mind that an 'Exact Sum of Claim' of an 'Operational Creditor' is not relevant for an 'Admission' of an Application. Of course, during the course of Corporate Insolvency Resolution Process, the exact Claim Amount, can be determined, by an Interim Resolution Professional / Resolution Professional', and in the instant case, Parties are free to approach the 'Interim Resolution Professional'/ 'Resolution Professional, in the course of Corporate Insolvency Resolution Process'...."

32. In view of the aforesaid discussion, we find that an operational debt above the threshold limit of Rs.1 Lakh and the same is due and payable by the Corporate Debtor. Hence, the first

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two mandatory conditions regarding the existence of 'Debt' above the pecuniary threshold limit and its 'default' are answered in the affirmative.

33. The next issue for consideration is whether the Operational Debt has been acknowledged and admitted by the Corporate Debtor.

34. The Corporate Debtor has admitted liability towards the workmen dues in its balance Sheet as on 31.03.2012 under the head Other Current Liabilities "Liabilities to Staff" of Rs. 17601. It is clearly stated in the Auditors Report dated 31.03.2012 that
.....In respect of statutory dues:

..... According to the records of the Company, undisputed dues of provident fund and of employees state insurance for the year has been regularly deposited with the appropriate authorities. However, the undisputed arrear amounts payable in respect of provident fund, employees state insurance and sales tax dues aggregating to Rs. 325.20 lacs were outstanding as at 31.03.2012 for a period of more than six months from the date of becoming payable.

35. It is also stated in the Auditor's Report that attention is invited on Trustee Employees Gratuity Fund aggregating to Rs. 2306.22 (cr) which is being classified under Deferred Liabilities instead of Current liabilities. No dispute has been raised by the

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corporate debtor even with respect to the admitted liability, as reflected in the balance sheet

36. Upon pursuing the Application, it can be seen that the Operational Creditor has attached a Workers' Deposit Receipt issued by the Corporate Debtor. This receipt indicates that the Operational Creditor deposited a specific amount with the Corporate Debtor from 1995 to 2000 which is duly signed by the authorized representative of the Corporate Debtor and is annexed as Annexure-C of the Application.

37. In the instant case, the Corporate Debtor has not disputed the existence of aforesaid Liabilities in their written submissions as well as in their arguments. Therefore, in light of the aforesaid decision, we are of the considered opinion that the default has admittedly occurred. In the present case, however, the Corporate Debtor has admitted the default/liability in an unequivocal terms by offering to pay the amount thereby clearly admitted the default. The present application therefore, filed under section 9 of the IBC,2016 for initiating CIRP deserves to be admitted for initiation CIRP against the Corporate Debtor i.e. M/s JK Jute Mills Company Ltd. (Geo Jute Limited).

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38. The last issue for consideration before us is that whether the present application filed under Section 9 of IBC, 2016 is barred by limitation.

39. The issue of limitation period in the instant matter has also been raised by the Corporate Debtor. The Operational Creditor has contended that Corporate Debtor was covered by the section 22(1) and 22(5) of the SIC (Repeal) Act, 2005 by virtue of which enforcement of right, privilege, obligation or liability remained suspended. Section 22(5) states that *where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof 32 [and no suit for the recovery of money or for the* **CP (IB) No.280/ALD/2018**

enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company] shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

40. The Hon'ble Supreme Court in the matter of **Ghanshyam Sarada v. Shiv Shankar Trading Co., (2015) 1 SCC 298** held that proceedings against an industrial company is subject to the approval of BIFR.

“.....

32. *Insofar as the recovery of money is concerned, the matter is completely covered by Section 22(1) of the Act. The language employed in Section 22(1) of the Act refers to the entirety of the period beginning from the inquiry under Section 16 till the implementation of sanctioned scheme for revival. Section 22(1) bars any suit for recovery of money or for the enforcement of any security against the industrial company without the express consent of the Board. Reference in Section 22(1) is to “an industrial company” and not to “the sick industrial company” as found in latter sub-sections of the same section. This also throws light that the bar is during the period contemplated in said Section 22(1). Such bar is period-specific and sub-section (5) of Section 22 entitles exclusion of such period while computing limitation. During the entirety of that period the Act grants protection to the company and leaves it to the discretion of BIFR whether to permit filing and maintaining of suit or other proceedings. In the present case BIFR was considering Draft Rehabilitation Scheme which is a stage under Section 18(3) and is completely covered by the period*

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under Section 22 of the Act. The suit in the instant case as framed for recovery of money filed without the consent of BIFR was not competent and maintainable.

.....”

41. The proceedings before the BIFR got completed on 01.12.2016. Thereafter, demand notice was issued by the operational creditor on 29.05.2018 and this application was filed on 25.06.2018. Therefore, this application is well within the period of limitation.

42. Taking into account the provisions of Section 9 of the I & B Code, 2016, we find that the application made under sub-section (1) of Section 9 along with documents and fees as mentioned in its sub-section (2) is complete. The payment of the unpaid operational debt has not been made, which is well above the threshold limit of Rs.1 lakh. The petition u/s 9 is filed on 25.06.2018, hence, petition is found to have been filed well within the limitation period. In terms of section 9(3) of I & B Code 2016, the Operational Creditor has issued a demand notice given to the corporate debtor for payment of dues. Therefore, after finding that all the conditions for admission of application under Section 9(5)(i) of the I & B Code 2016 against the Corporate Debtor, has been fulfilled and there being no pre-existing dispute as regards to the payment of the

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operational debt, we find this application fit for admission under Section 9(5) of the I & B Code, 2016 for starting CIRP against the Corporate Debtor i.e. M/s Juggilal Kamlatpat Jute Mills Company Ltd. (now Geo Jute Limited)

43. The Operational Creditor has not proposed the name of any IRP in the present application. Hence, this Adjudicating Authority appoints Mr. Deepak Kumar Agarwal, having Registration No. IBBI/IPA-002/IP-N00584/2017-2018/11778, R/o, B-27, Sector-47, Gautam Buddha Nagar, Uttar Pradesh, 201301, Email- dkagarwal.ip@gmail.com. The verification of the said IRP has been carried out by Law Research Associate of this Tribunal, Ms. Ankita Sharma, and it is found that there is no proceeding pending against the IRP. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 22.11.2024.

44. Accordingly, this application is admitted u/s 9(5) of I & B Code, 2016 under the following terms and conditions:-

- i. The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process

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against the Corporate Debtor i.e. M/s Juggilal Kamlatpat Jute Mills Company Ltd. is hereby admitted.

- ii.** We hereby declare a moratorium u/s 14 and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii.** This Adjudicating Authority hereby appoints Mr. Deepak Kumar Agarwal as IRP as discussed in para 43 above.
- iv.** The IRP shall cause a public announcement of the initiation of the Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- v.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following: -
 - a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; Transferring, encumbering,

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alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

b) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

c) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

vi. The supply of essential goods or services rendered to the Corporate Debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.

vii. The provisions of sub-section (1) of Section 14 of I & B Code, 2016 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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- viii.** The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee.
- ix.** The Committee of the Creditors shall appoint a Resolution Professional as per section 22 of I & B Code, 2016. A monthly progress report shall be filled by the Resolution Professional providing the details of work done in respect of completing the CIRP within the time line as prescribed under the provision of section 12 of the I & B Code, 2016.
- x.** The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution process.
- xi.** However, at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of

Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

xii. The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant in accordance with I & B Code, 2016 read with the relevant rules & regulation framed thereunder.

xiii. The Operational Creditor/Applicant is directed to initially deposit Rs.1,00,000/- (One Lakh Only) with the IRP appointed hereinabove. IRP can claim the fees and preliminary expenses as per approval/decision by the CoC after its constitution.

45. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the IRP and the jurisdictional Registrar of Companies by Speed Post as well as through email.

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46. List the matter on 19.02.2024 for filing of the first monthly progress report.

47. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

48. Ordered Accordingly

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

Date:-19th January, 2024