

Through Videoconference

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I**

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IA No. 1862, 2125, 2248 & 2449/MB/2020
in
CP (IB) No.2205/MB/2019

1. IA No. 1862/MB/2020

National Aviators' Guild (NAG)

306, Pratik Avenue, Nehru Road,

Vile Parle East, Mumbai – 400 057.

... Applicant

V/s

1. Ashish Chhawchharia,

Resolution Professional for Jet Airways (India)

Ltd, Global One, 3rd Floor, 252 LBS Marg,

Kurla (West), Mumbai 400 070.

2. Committee of Creditors of Jet Airways (India) Ltd.

Mayfair Banquets, 254 – C, Dr. Annie Besant Road,

Shivaji Nagar, Worli, Mumbai 400 030.

... Respondents

Appearance:

For the Applicant:

Ms. Jane Cox, Advocate with Ms. Subha Nivedha,
Advocate

For Respondent 1:

Mr. Gaurav Joshi, Senior Advocate with Mr.
Rohan Rajadhyaksha, Mr. Dhirajkumar Totala,
Ms. Neeraja Balakrishnan, Mr. Nishant Upadhyay
and Mr. Hardik Jain, Advocates i/b AZB &
Partners.

For Respondent 2: Mr. Dhananjay Kumar, Advocate with Mr. Gautam Sundaresh, Mr. Ankush Mathkar and Ms. Annie Jain, Advocates i/b Cyril Amarchand Mangaldas.

2. IA No. 2125/MB/2020

Jet Aircraft Maintenance Engineers Welfare Association (JAMEWA)

A-101, Laxmi Palace Society,

Shahaji Raje Road, Near Thakkar Bakery,

Vile Parle (E), Mumbai – 400 057.

... Applicant

V/s

Ashish Chhawchharia,

Resolution Professional for Jet Airways (India)

Ltd, Siroya Centre, Sahar Airport Road,

Andheri (East), Mumbai 400 099.

... Respondent

Appearance:

For the Applicant: Mr. Sanjay Singhvi, Senior Advocate i/b Mr. Rahul Kamerkar, Advocate.

For Respondent: Mr. Gaurav Joshi, Senior Advocate with Mr. Rohan Rajadhyaksha, Mr. Dhirajkumar Totala, Ms. Neeraja Balakrishnan, Mr. Nishant Upadhyay and Mr. Hardik Jain, Advocates i/b AZB & Partners.

3. IA No. 2248/MB/2020

1. Bhartiya Kamgar Sena,

Prafullban Co. op. Hsg. Society,

R.K. Vaidya Road, Dadar (W),

Mumbai – 400 028.

2. Jet Airways Cabin Crew Association,
C/o Nidhi Chaphekar, B- 401,
Goodwill Housing Society, Opp.
Janakalyan Bank, J.B. Nagar,
Andheri (E), Mumbai – 400 059.

... Applicants

V/s

1. Ashish Chhawchharia,
Resolution Professional for Jet Airways (India) Ltd,
Global One, 252 LBS Marg,
Kurla (West), Mumbai 400 070.
2. Committee of Creditors of Jet Airways (India)
Ltd, Global One, 252 LBS Marg,
Kurla (West), Mumbai 400 070.

... Respondents

Appearance:

For the Applicants:	Mr. Rahul D. Oak, Advocate with Mr. Siddhesh Shetye, Advocate
For Respondent 1:	Mr. Gaurav Joshi, Senior Advocate with Mr. Rohan Rajadhyaksha, Mr. Dhirajkumar Totala, Ms. Neeraja Balakrishnan, Mr. Nishant Upadhyay and Mr. Hardik Jain, Advocates i/b AZB & Partners.
For Respondent 2:	Mr. Dhananjay Kumar, Advocate with Mr. Gautam Sundaresh, Mr. Ankush Mathkar and Ms. Annie Jain, Advocates i/b Cyril Amarchand Mangaldas.

4. IA No. 2449/MB/2020

All India Jet Airways Officers and
Staff Association Through its President
Kiran Pawaskar,
L-Building, Kalpita Enclave,
Sahar Road, Andheri (E), Mumbai 400 069.

... Applicant

V/s

Ashish Chhawchharia,

Resolution Professional for Jet Airways (India)

Ltd, Global One, 3rd Floor, 252 LBS Marg,

Kurla (West), Mumbai 400 070.

... Respondent

Appearance:

For the Applicant: Ms. Aditi Hambarde, Advocate.

For Respondent: Mr. Gaurav Joshi, Senior Advocate with Mr. Rohan Rajadhyaksha, Mr. Dhirajkumar Totala, Ms. Neeraja Balakrishnan, Mr. Nishant Upadhyay and Mr. Hardik Jain, Advocates i/b AZB & Partners.

In the matter of:

CP (IB) No. 2205/MB/2019

State Bank of India

... **Petitioner**

V/s

Jet Airways (India) Limited.

... **Corporate Debtor**

Order dated: 22.02.2021

Coram:

Janab Mohammed Ajmal, Hon'ble Member (Judicial)

Shri V. Nallasenapathy, Hon'ble Member (Technical)

ORDER

Per: Janab Mohammad Ajmal, Member (Judicial)

All these Applications with analogous prayers have been heard together and shall abide by the orders pass hereunder:

2. Brief facts leading to the aforesaid Applications may be stated as follows.
State Bank of India, one of the Financial Creditors of Jet Airways,

(hereinafter referred to as the Corporate Debtor) moved a Petition namely Company Petition No. 2205 of 2019 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) seeking Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor for default in payment of financial debt. This Tribunal by order dated 20/06/2019 admitted the Company Petition and initiated the CIRP of the Corporate Debtor. The Respondent herein was appointed as the Resolution Professional (RP) of the Corporate Debtor and the CIRP went underway. The period of CIRP was extended up to 13/06/2020 by order dated 18/03/2020 in IA No. 918 of 2020.

3. Two Resolution Plans were placed before the Committee of Creditors (CoC) in its 17th meeting held on 03/10/2020. The Resolution Plan submitted by 'JALAN and FRITCH Consortium' received the approval of the CoC by 99.22% of votes on 17/10/2020 in its 17th meeting. The present Respondent as the Resolution Professional moved IA No. 2081 of 2020 in the first week of November, 2020 under Section 30(6) read with Section 31 of the Code for approval of the Resolution Plan and the same is pending consideration of the Bench.
4. Meanwhile the National Aviators' Guild (NAG), a Union representing the pilots of the Corporate Debtor on behalf of approximately 1045 pilots moved IA No. 1862 of 2020. The Maintenance Engineers of the Corporate Debtor under the umbrella of Jet Aircraft Maintenance Engineers' Welfare Association (JAMEWA) filed IA No. 2125 of 2020, Bhartiya Kamgar Sena (BKS) and Jet Airways Cabin Crew Association (JACCA) respectively representing 70% of the ground staff and the majority of the Cabin Crew of the Corporate Debtor filed IA No. 2248 of 2020; and All India Jet Airways Officers' and Staff Association (AIJAOSA) filed IA No. 2449 of 2020 seeking direction to the Respondent (RP) to furnish each of the Entities /

Applicants a full copy of the entire Resolution Plan approved by the CoC on 17/10/2020 and filed with the Tribunal in IA No. 2081 of 2020.

5. The averments made in the Applications are identical. It would thus suffice to briefly state the grounds under which copies of the Resolution Plan is sought. It is submitted that the Corporate Debtor Airline was grounded on 18/04/2019 and about 230 pilots still remain on its rolls. The Applicants are unaware of the details of the Resolution Plan. It is contended by NAG that the Union being unaware of the details of the Resolution Plan needed to know what was provided there under for its members and employees. The Union thus on 19/10/2020 addressed a letter to the Respondent seeking a copy of the Resolution Plan. In or around October, 2020 the Applicants requested the Respondent to supply them a copy of the Resolution Plan and the Respondent by respective Emails dated 20/10/2020, 11/11/2020 and 28/10/2020 refused to supply the copy of the Resolution Plan on the ground of confidentiality. Applicant No. 2 in IA No. 2248 of 2020 however, did not get a response which essentially meant that the Respondent did not intend to supply the same. The Applicants are vitally concerned with the terms and conditions of the Resolution Plan. The same could not be considered confidential *vis-à-vis* the Applicants. The employees of the Corporate Debtor are its assets and are interested in its successful resolution. Any revival plan, for that matter, both in terms of employment and provision for outstanding wages / dues, is vital for their sustenance and mutual benefit. Some of the employees have lingered on the rolls of the Corporate Debtor despite the financial hardships and difficulty it entailed. The Applicants are entitled to know the basis under which the Corporate Debtor is being taken over as a going concern. The Applicants otherwise are secured creditors and would have a share in the sale proceeds in the event of the Corporate Debtor getting wound up. On the other hand, the Resolution Plan might also call for certain sacrifice from them. It is

therefore all the more necessary that the details of the Plan are shared with them. Anything contrary would be prejudicial and discriminatory. They are also entitled to be heard while the Resolution Plan is considered by this Tribunal. Even otherwise natural justice demands that the Applicants remain aware of the Plan and how it is going to take care of their interests or adversely affects them. The Applicants would be the most affected by the orders of this Authority approving or rejecting the Resolution Plan. Thus, it becomes imperative that the Applicants are made privy to the Resolution Plan before it is considered. The Applicants in IA Nos. 2248 of 2020 and 2449 of 2020 have also raised concerns over the deduction in their wages and entitlements. The Resolution Plan could not be held to be confidential as far as the employees of the Corporate Debtor are concerned. It is settled law that the interest of the Corporate Debtor is of utmost importance and should be scrupulously protected. The Authority has powers under the Code as well as under the NCLT Rules to direct dissemination of the Resolution Plan to the Applicants. Hence these Applications.

6. The following are the detailed prayers made by the respective Applicants.

1. IA No. 1862 of 2020:

- a. That this Hon'ble Tribunal be pleased to pass an Order directing the Resolution Professional to furnish the Applicant with a full copy of the entire Resolution Plan for the Corporate Debtor approved by the Committee of Creditors on 17/10/2020;*
- b. That this Hon'ble Tribunal be pleased to permit the Applicant to participate in the hearings and proceedings to be held by this Hon'ble Tribunal for approval (or otherwise) of the Resolution Plan for the Corporate Debtor approved by the Committee of Creditors on 17/10/2020, permit the Applicant to submit written submissions therein & grant the Applicant a hearing in the same;*

- c. That pending the hearing and final disposal of the Application, this Hon'ble Tribunal may be pleased to not pass any final order for approval (or otherwise) of the Resolution Plan approved by the Committee of Creditors on 17/10/2020, until the Applicant has been furnished with a copy of the said Resolution Plan and allowed to participate in and be heard in the said proceedings;*
- d. For costs of this Application;*
- e. Such other further reliefs that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case.*

2. IA No. 2125 of 2020:

- a. That this Hon'ble Tribunal be pleased to pass an Order directing the Resolution Professional to furnish the Applicant with a full copy of the entire Resolution Plan approved by the Committee of Creditors on 17/10/2020 And filed in this Honourable Tribunal on 05/11/2020;*
- b. That this Hon'ble Tribunal be pleased to permit the Applicant to participate in the hearings and proceedings to be held by this Hon'ble Tribunal for approval (or otherwise) of the Resolution Plan, and permit the Applicant to submit written submissions therein & grant the Applicant a hearing in the same;*
- c. That pending the hearing and final disposal of the Application, this Hon'ble Tribunal may be pleased to not pass any final order for approval (or otherwise) of the Resolution Plan, until the Applicant has been furnished with a copy of the said Resolution Plan and allowed to participate in and be heard in the said proceedings;*
- d. For costs of this Application;*
- e. Such other further reliefs that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case.*

3. IA No. 2248 of 2020:

- a. That this Hon'ble Tribunal be pleased to pass an Order directing the Resolution Professional to furnish the Applicant with a full copy of the entire Resolution Plan*

- approved by the Committee of Creditors on 17/10/2020
And filed in this Honourable Tribunal on 05/11/2020;*
- b. That in alternate, this Hon'ble Tribunal be pleased to pass an order directing the Resolution professional to furnish the Applicant with a relevant portion of the Resolution plan, which deals with the Employees of Corporate Debtor, approved by the Committee of Creditors on 17/10/2020
And filed in this Honourable Tribunal on 05/11/2020;*
- c. That pending the hearing and final disposal of the Application, this Hon'ble Tribunal may be pleased to not pass any final order for approval (or otherwise) of the Resolution plan, until the Applicant has been furnished with a copy of the said Resolution plan and allowed to participate in and be heard in the said proceedings;*
- d. That pending the hearing and final disposal of this Application, ad-interim/interim relief be granted in terms of prayer clause c) above;*
- e. Any other further order be passed in favour of the Applicants.*

4. IA No. 2449 of 2020:

- a. That this Hon'ble Tribunal be pleased to permit the Applicant to intervene in the Company Petition and all Applications filed therein;*
- b. Pass an Order directing the Resolution Professional to furnish the Applicant with a full copy of the entire Resolution Plan (including all supporting valuation and other reports prepared and submitted by Alvarez and Marsal) approved by the Committee of Creditors on 17/10/2020 and filed in this Hon'ble Tribunal on 05/11/2020;*
- c. The payments of the worker's gratuity and provident funds are due and payable to the members of the Applicant be deposited and / or secured by this Hon'ble Tribunal either by way of calling upon the consortium consisting of KalRock and Jalan and / or from the amounts pumped in by them;*

- d. That this Hon'ble Tribunal be pleased to permit the Applicant to participate in the hearings and proceedings to be held by this Hon'ble Tribunal for approval (or otherwise) of the Resolution Plan and permit the Applicant to submit written submissions therein and grant the Applicant a hearing in the same;*
- e. That pending the hearing and final disposal of the Application, this Hon'ble Tribunal may be pleased to not pass any final order for approval (or otherwise) of the Resolution Plan, until the Applicant has been furnished with a copy of the said Resolution Plan and allowed to participate in and be heard in the said proceedings;*
- f. Considering the possibilities of employees and former employees making a suitable offer for taking over and running the Company with the help of investors and the bank and making revised proposals in the interest of justice and fair play as employees are the best bet in the current situation to run the organisation compared to unknown entities which have masqueraded themselves in the garb of financial suitors;*
- g. For costs of this Application;*
- h. Such other further reliefs that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this Case."*

7. The Respondent (RP) has filed separate replies to each of the Applications in similar lines. It is contended that the Applications deserve to be dismissed at the threshold for non-joinder of the Successful Resolution Applicant as a party. The Respondent is duty bound to maintain and ensure the confidentiality of the Resolution Plan as provided under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (IP Regulations). The Code being a special legislation does not provide for participation of the Applicants, who necessarily are the Operational Creditors

of the Corporate Debtor, in the deliberations of the CoC. The members of the CoC could only be made aware of the contents of the Resolution Plan which they are statutorily obliged to vote on. The Code doesn't envisage sharing of the Resolution Plan with the Operational Creditors nor all the Creditors deserve to be heard during the process of the approval of Resolution Plan. The Code has adequate measures and mechanisms to protect the interest of the Operational Creditors and other Stakeholders. The Adjudicating Authority would also consider the Plan in the light of the provisions contained in the Code so that the interest of all the stakeholders is addressed and taken care of. The CIRP Regulations provide that each of the claimants including Operational Creditors would be informed of the decisions of the Adjudicating Authority and the principle or formula for payment of debts under the Plan. The intervention of the Applicants is neither contemplated under the Code nor can be entertained by the Tribunal. The filing of the Applications is an attempt to derail the process of Insolvency Resolution and interrupt the approval of the Resolution Plan. The Applications if allowed would jeopardise the revival of the Corporate Debtor given the unique sector in which the Corporate Debtor operated.

8. It is further contended that as it is the aviation sector is under great stress owing to the Covid-19 pandemic. The delay in approval of the Plan would result in mounting CIRP costs and may ultimately prove to be detrimental to the interest of all the stakeholders including the Applicants. The Applications therefore deserve to be dismissed with costs.
9. It is asserted by the Applicants that the approval or otherwise of the Resolution Plan would entail some civil consequences for them. Therefore, the Applicants who are affected thereby i.e., they have a right to be heard in the matter. For the said purpose they are entitled to a copy of the Resolution

Plan which would enable them to place their views / opinions on the Resolution Plan. In this connection reference is made to *K. I. Shephard v. Union of India: (1987) 4 SCC 431*. It was held therein that exclusion of employees from hearing during the scheme of amalgamation of banks had brought about prejudice and adverse civil consequences to them. The rival contention that due to the limited time of moratorium period an opportunity of hearing could not be given was rejected by the Hon'ble Court. The post-decisional hearing would not be adequate to meet the ends of justice. In *H. L. Trehan and others v. Union of India: (1989) 1 SCC 764*, the employees of Caltex Oil Refinery (India) Ltd. had challenged the legality and validity of the order on the basis of which their terms and conditions of services had been substantially altered, causing prejudice. The Hon'ble Court struck down the circular on the principle that an opportunity of being heard was not given before altering the terms and conditions of service. It is contended that in the present case the Resolution Plan is likely to alter the terms and conditions of the service and perquisites of the Applicants. The power to alter service conditions must follow due process of law. Thus, the employees could not be deprived of the right of being heard. The Hon'ble Court in *Sahara India (Firm) Lucknow v. CCIT C-I and Anr: (2008) 14 SCC 151*, referred to *Canara Bank v. K. Awasthy: (2005) 6 SCC 321* where it has been held that the expression civil consequences encompassed the infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affect citizens in his civil life.

10. The Applicants also referred to the observations in *Olga Tellis v. Bombay Municipal Corporation: (1985) 3 SCC 545* where it was held that there will be a presumption of right of hearing, unless there is strong reason for not giving such a hearing. In *Dr. Binapani Dei (AIR 1967 SC 1269)* it was

observed that where by reason of a statutory authority civil consequences ensue, the principles of natural justice are required to be followed and even if no express provision is laid down in this behalf, compliance with the principles of natural justice would be implicit. Reference is also made to *National Textile Union v. P. R. Ramakrishnan: (1983) 1 SCC 228*. The controversy in that case was whether the workers were entitled to be heard in a winding up Petition. The Hon'ble Court discussing various principles of natural justice and constitutional mandate held that the workers were entitled to appear and being heard in a Petition for winding up.

11. It is submitted by the Respondent (RP) that the IP Regulations mandate the Resolution Professional to ensure and maintain confidentiality of the information relating to the Insolvency Resolution Process. The Resolution Plan is a confidential document containing sensitive information. It could only be presented to the CoC. The parties / entities in these Applications being not members of the CoC, would thus be not entitled to the copy of the Resolution Plan nor would be eligible to a peek into it.
12. The RP is required to give notice of each CoC meeting to the members of the Committee and the Authorised Representatives referred to in sub-Section 6 of Section 21, members of the suspended Board of Directors / partners, Operational Creditors or their representatives if the amount of their aggregate dues is not less than 10% of the debt. The creditors who are not part of the CoC are only entitled to be informed, within 15 days of the order of the Adjudicating Authority approving the Plan, of the principle or formula for the payment of their debt under the Resolution Plan. The Applicants do not come within the parameters of the persons entitled to peruse a Resolution Plan or being privy to it before the Adjudicating Authority approves the same. In this connection reference is made to *Innoventive Industries v. ICICI Bank (2018)*

I SCC 407, wherein Hon'ble Apex Court held that the Code in itself is a complete legislation. Thus, rights of the Applicants have to be worked out within the limits provided thereunder. Reference is also made to the decision of this Tribunal in *Mr. Anil N. Surwade and others v. Mr. Prashant Jain* (IA No. 1033 of 2020 in C.P. (IB) No. 1799 of 2018 decided on 28/09/2020) which has also been confirmed by the Hon'ble NCLAT. In *Kotak Mahindra v. Parekh Aluminex*, (MA No. 1259 of 2018 in CP No. 1262 of 2017) decided on 08.01.2019, this Tribunal held that allowing workmen to be heard at the stage of the approval of the Resolution Plan would tantamount to violation of the Code. In *PHI Learning Private Limited v. Bhavi Shreyans Shah* this Tribunal held that Applicant's claim as an Operational Creditor being less than 10% of the total debt of the Corporate Debtor, the Applicant was not entitled to receive a copy of the Resolution Plan. It is accordingly contended that judicial discipline required that the Tribunal follows the judgment pronounced by coordinate benches on the same subject. The judgments relied upon by the Applicants do not have any bearing on the facts and issue in the present *lis*. *K. I. Shephard* (*supra*) relates to provision under Section 45 of the Banking Regulations Act. Therein the Nationalised Banks and the RBI were held to be 'State' under Article 14 of the Constitution. In the instant case the Resolution of the Corporate Debtor is being made by a private entity. The principle in *K. I. Shephard* (*supra*) would thus not be applicable. Same is the case with *H. L. Trehan* (*supra*). The case of *Sahara India* (*supra*) revolved around the entitlement of the assesses being heard before the assessing officer. The RP and the CoC would not be regarded as entities whose actions would be subject to the same scrutiny as the 'State'. The Company Court, under the Companies Act, 1956, enjoyed discretion in an order for winding up. Conversely, the Tribunal would not be held to be clothed with such jurisdiction when statutory conditions are in place and do not envisage any deviation there from. Besides rules of precedence require that ratio of each

case has to be understood and considered on the facts and circumstances of each case. Reference is made to in *Roger Shashoua & Ors v. Mukesh Sharma & Ors.*: (2017) 14 SCC 722, the Hon'ble Court therein has observed as follows:

“the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts”.

13. There is no gainsaying that principles of law decided in a particular case depend heavily on the facts and circumstances of that particular case. Thus, the principle decided in a case would not have universal application. Each case has to be considered on the basis of the factual matrix relating thereto and law on the subject. In *Mr. Anil N. Surwade* (supra) a Bench of this Tribunal, of which one of us was a Member, in a similar matter where some of the employees of the Corporate Debtor sought copy of the Resolution Plan observed as follows:

“Admittedly the Applicants have been the employees of the Corporate Debtor. They have not been the Members of the Board of Directors of the Company. Their involvement in the Insolvency Resolution Process of the Corporate Debtor is limited to the satisfaction of their claims with regard to the entitlement from the Corporate Debtor. They certainly cannot have any role in the Insolvency Resolution Process nor can they have any involvement in the meeting or deliberation of the CoC.”

The Hon'ble NCLAT in CA (AT) (Insolvency) No. 1006 of 2020 confirmed the order. The Hon'ble Apex Court in *Sub Inspector Rooplal v. Lieutenant Governor*: (2000) 1 SCC 644 while dealing with the issue of overruling of earlier judgment of the Coordinate Bench of a Tribunal observed as follows.

“12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents....

13. We are indeed sorry to note the attitude of the Tribunal in this case which, after noticing the earlier judgment of a Coordinate Bench and after noticing the judgment of this Court, has still thought it fit to proceed to take a view totally contrary to the view taken in the earlier judgment thereby creating a judicial uncertainty in regard to the declaration of law involved in this case....”

14. Thus, we have to see if under the facts and circumstances of the present case, we would agree to the observations made by the earlier Bench or otherwise. The Applicants before us are the employees of the Corporate Debtor. Their interest in the Resolution of the Corporate Debtor revolves around the payment / recovery of their dues such as remuneration / wages, other perquisites including terminal benefits, if any.
15. Regulation 9 of the CIRP Regulations lays down the procedure for the workmen and employees to submit their claims before the IRP. IRP / RP is then to verify and determine the amount of the claim. The workers and employees thus are operational creditors. They are not members of the CoC of the Corporate Debtor. Regulation 22 of the IP Regulations mandates that an Insolvency Professional must ensure that the confidentiality of the information relating to insolvency resolution process, liquidation or

bankruptcy process is maintained at all times. The exception to this disclosure can only be made to the relevant parties as required under the CIRP Regulations or the Code or for any other law for the time being in force. Therefore, reluctance and refusal of the Respondent in sharing the copy of the Resolution Plan with the Applicants cannot be faulted.

16. The citations relied on by the Applicants relate to principles of natural justice and *audi alteram partem*. Recourse to principles of natural justice and *audi alteram partem* can be taken when the provisions made in a statute fall short of the requirement. The Code as already indicated in the Judgment of the Hon'ble Apex Court is a complete Code in itself. The constitutional validity of the Code has also been upheld by the Hon'ble Apex Court in *Swiss Ribbons v. Union of India* (2019) 4 SCC 17.
17. The Adjudicating Authority as opposed to a Common Law Forum or Constitutional Courts has to act within the parameters of the Statute under which it functions. The Authority could not, in our considered opinion, digress from the express provisions of the Statute and act in the manner not provided there under or sanctioned by the Statute. The Hon'ble Court in *Swiss Ribbons* (*supra*) *inter alia* commented upon the object of the Code in the following words.

“As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors. Unless such reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When,

therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme workers are paid, the creditors in the long run will be repaid in full, and shareholders/ investors are able to maximize their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.”

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“It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor’s assets from further dilution, and also protects all its creditors and workers by seeing that the resolution

process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.”

Therefore, it would not be appropriate or permissible for this Authority to do anything otherwise than what is expressly provided under the Code. Section 30 of the Code provides detailed procedure for submission of the Resolution Plan to the Resolution Professional, presentation of the Plan to the CoC for its approval and approval of the Plan by the CoC by a vote of not less than 66% of the voting share after considering its feasibility and viability, the manner of distribution proposed which would take into account the order of priority among creditors as laid down in sub-section 1 of Section 53 including priority and value of the security interest of Secured Creditors. The Committee shall also examine the viability or otherwise of the Plan in terms of the conditions provided under Section 30. Upon its approval by the CoC the Resolution Plan would have to be submitted to the Adjudicating Authority for its satisfaction and approval.

18. In view of such express provisions in relation to the Resolution Plan it is clear that the statutory mandate requires that the Resolution Plan can only be presented to the CoC for its approval and presented before the Adjudicating Authority for its satisfaction in approving the same. The Code or the Regulations there under do not contemplate presentation or supply of the Resolution Plan or a copy thereof to any other body or entity. As already indicated in Surwade (*supra*) that the involvement of the employees who essentially are the Operational Creditors of the Corporate Debtor is limited to the satisfaction of their claims and personal entitlements. Workmen of the Corporate Debtor who stand on a different footing than other employees under Section 53 may have a prerogative in satisfaction of their claims under Section 53, but they certainly do not have any other privilege beyond that. To

say that workmen being *at par* with the secured creditors are also entitled to privileges of a member of CoC would be fallacious and would go against the grain of the intent and purpose of the Code. The decisions referred to by the Applicants would thus not be made applicable to the facts and circumstances of the case. We are in respectful agreement with the view taken in *Surwade (supra)*.

19. The Applicants are but Operational Creditors. The Hon'ble Apex Court in *Swiss Ribbons (supra)* delved in to the genesis of the Code and the role of Operational Creditors. It *inter alia* observed as under.

“The Joint Parliamentary Committee Report of April, 2016 [Joint Parliamentary Committee Report] on the Insolvency and Bankruptcy Code also agreed with these observations but modified Section 24 so as to permit operational creditors to be present at the meetings of the committee of creditors, albeit without voting rights, if operational creditors aggregate to 10% or more of the total debts owed by the corporate debtor.

The Joint Parliamentary Committee Report also opined as follows:

21. Role of Operational Creditors - Clause 24 Some of the stakeholders in the memorandum/ views furnished before the Committee were of the opinion that whereas operation creditor has right to make application for initiation of corporate insolvency resolution process, operational creditors like workmen, employees, suppliers have not been given any representation in the committee of creditors which is pivotal in whole resolution process. In this regard, one of the stakeholders has suggested that committee of creditors may contain operational creditors as well, with some thresholds.

In this context, while appreciating that the operational creditors are important stakeholders in a company, the Committee took note of the rationale of not including operational creditors in the committee of creditors as indicated in notes on Clause 21

appended with the Bill which states as under: The committee has to be composed of members who have the capability to assess the commercial viability of the corporate debtor and who are willing to modify the terms of the debt contracts in negotiations between the creditors and the corporate debtor. Operational creditors are typically not able to decide on matters relating to commercial viability of the corporate debtor, nor are they typically willing to take the risk of restructuring their debts in order to make the corporate debtor a going concern. Similarly, financial creditors who are also operational creditors will be given representation on the committee of creditors only to the extent of their financial debts. Nevertheless, in order to ensure that the financial creditors do not treat the operational creditors unfairly, any resolution plan must ensure that the operational creditors receive an amount not less than the liquidation value of their debt (assuming the corporate debtor were to be liquidated).

All decisions of the Committee shall be taken by a vote of not less than seventy-five per cent of the voting share. In the event there are no financial creditors for a corporate debtor, the composition and decision-making processes of the corporate debtor shall be specified by the Insolvency and Bankruptcy Board. The Committee shall also have the power to call for information from the resolution professional. The Committee after due deliberations are of the view that, if not voting rights, operational creditors at least should have presence in the committee of creditors to present their views/concerns on important issues considered at the meetings so that their views/concerns are taken into account by the committee of creditors while finalizing the resolution plan. (emphasis supplied)."

20. The observation of the Hon'ble Court would indicate that the role of the Operational Creditors in the Resolution Process is very limited and is essentially confined to the satisfaction of their claims. Taking the facts of the case at hand and the law as it stands today into consideration we are of the humble view that the Applicants cannot be found entitled to a copy of the Resolution Plan or any portion thereof. They would also not be eligible to be

heard or intervene during the process of consideration of the Resolution Plan by this Authority. The payments as to their wages and gratuity and other terminal benefits shall be in accordance with the law and in terms of the Resolution Plan guided by the provisions under the Code. Applicants accordingly are not entitled to any relief in the present Applications. Hence ordered.

ORDER

The Applications bearing IA No. 1862 of 2020, IA No. 2125 of 2020, IA No. 2248 of 2020 and IA No. 2449 of 2020, be and the same are rejected on contest. There would however be no order as to cost.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Janab Mohammed Ajmal
Member (Judicial)