

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

IA No. 2943/2022

In

C.P. (IB) No. 1554/MB/2017

Under Section 60(5) of Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of
the National Company Law Tribunal Rules,
2016

Dnyanaba Namdeo Karande & Ors.

Having address at- 302/1A Ashar Esate,
Shree Nagar, Wagle Estate,
Thane – 400 604

.... Applicant

Versus

**Calyx Chemicals and Pharmaceuticals
Limited**

Having address at- Unit No. 110, Marwah's
Complex, Krishanlal Marg, Off Saki- Vihar
Road, Andheri (East), Mumbai- 400072

.... Respondent No. 1

Charu S. Desai

Resolution Professional of Calyx Chemicals
and Pharmaceuticals Limited

Having address at- 2602, Fairfield A Wing,
Lodha Luxuria, Majiwada,
Thane (West)- 400601

.... Respondent No. 2

In the matter of

State Bank of India

...Financial Creditor

Versus

**Calyx Chemicals & Pharmaceuticals
Limited**

...Corporate Debtor

Order Delivered on :- 19/01/2024

Coram:

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

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

Appearances:

For the Applicant : Adv. Devarajan Raman

For the Resolution Applicant : Adv. S. Bachhawat, Adv. Shrushti
Agnihotri i/b C Mahajan

ORDER

Per: - Anil Raj Chellan, Member (Technical)

1. This Interlocutory Application has been filed by the Applicant who is an ex-employee of Calyx Chemicals and Pharmaceuticals Limited ('the Corporate

Debtor’) on his behalf and on behalf of other three (3) ex-employees of the Corporate Debtor claiming gratuity dues as per the provisions of the payment of Gratuity Act, 1972 against the Corporate Debtor which has been taken over by the new management under a Resolution Plan approved by this Tribunal.

Facts of the Case:-

2. The Corporate Debtor was admitted to Corporate Resolution Insolvency Process (‘CIRP’) by an order of this Tribunal dated 06.02.2018 which culminated in the approval of a Resolution Plan submitted by a consortium of two companies namely M/s. Khilari Infrastructure Private Limited and M/s Topnotch Chemicals Private Limited (‘Successful Resolution Applicants’) on 16.01.2019. The case of the Applicant is that the Corporate Debtor, after approval of the Resolution Plan and takeover of management by the Successful Resolution Applicants, did not pay the dues of the Applicant and the other ex-employees (collectively ‘Claimants’) on the ground that the approved Resolution Plan does not provide for payment to ex-employees who were not on rolls at the time of initiation of CIRP. Hence, the present Petition.

Submissions of the Applicant:-

3. The Applicant has submitted that the Applicant and other ex-employees, whom he is representing submitted their claims with the Insolvency Resolution Professional (‘IRP’) but the status of their claims was not communicated. The claims of the Claimants are reflected in the list of creditors annexed to the Application (MA 1346 of 2018) filed by the RP to the Tribunal for approval of the Resolution Plan. However, the approved

Resolution Plan did not provide for payment of unpaid gratuity of the Claimants as informed by the Corporate Debtor vide its letter dated 17.03.2020.

4. The Applicant has submitted that pension and gratuity is neither a bounty nor a matter of grace, depending upon the sweet will of the employer. It is not ex-gratia payment but is a payment for part service rendered. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service.
5. In support of the claim for gratuity for the past service, the Applicant has relied upon various judgements of the Hon'ble Supreme Court.
6. The Applicant further submitted that there is no conflict between the provisions of the Code and the payment of Gratuity Act, 1972 and the Claimants are entitled to get gratuity even under the Resolution Plan approved under the Code.
7. The Applicant contended that though he requisitioned a copy of the approved Resolution Plan, the same was not provided by the Corporate Debtor and hence, he is not aware of the contents thereof.

Submissions of the Respondent No. 1, the Corporate Debtor, taken over by the Successful Resolution Applicant :-

8. The Corporate Debtor contended that the Applicant is not competent to file this Application on his behalf and on behalf of others 3 ex-employees of the Corporate Debtor and hence the Application is not maintainable.

9. The Resolution Plan submitted by M/s. Khilari Infrastructure Private Limited and M/s Topnotch Chemicals Private Limited was approved by this Tribunal vide its order dated 16.04.2019 and the Resolution Plan has been implemented. The Applicant cannot make this Application at this belated stage.
10. The Corporate Debtor further contended that this Tribunal has no jurisdiction to entertain the Application after approval of the Resolution Plan.
11. The Respondent No. 1/Corporate Debtor has also contended that the claims of the Claimants were not admitted during the CIRP, as claimed by the Applicant.
12. It was also contended that the decision of the Hon'ble NCLAT in the case of Mrs. C.G. Vijayalakshmi v. Shri Kumar Ranjan, RP Hindustan Newsprint Limited : (2023) ibclaw. in 123 NCLAT is not applicable in the present case for the reason that no distribution of resolution amount was done at the time of considering the said Petition. However, in the present case, distribution of resolution amount has already been done.
13. There was no appearance by or on behalf of Respondent No. 2, the Resolution Professional (RP).

Analysis and decision:-

14. The Applicant has filed this Application on his behalf and on behalf of 3 other ex-employees of the Corporate Debtor. The Corporate Debtor/Respondent No. 1, therefore, contended that the Application is not maintainable. It is observed that the Applicant has submitted an authorisation in the form of e-mail consent letter in favour of Applicant to engage an advocate on their behalf and submitted that he could not obtain proper engagement letters directly from them as they are presently staying in different parts of the country. We have considered the above contention but are of the view that the consents given by other employees and annexed to the Application can be treated as valid authorisation considering the nature of claim and, therefore, the Application is maintainable for all Claimants.
15. This takes us to the next contention of the Respondent No. 1 that the Application is belated and this Tribunal has no jurisdiction to entertain the present Application. It is observed that Regulation 39 (9) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') allow a creditor, who is aggrieved by non-implementation of a Resolution Plan to seek directions of this Tribunal. The above provision read with the inherent powers of NCLT u/s 60(5) of the Code confers jurisdiction on this Tribunal to entertain all applications relating to the implementation of Resolution Plan including the present Application.
16. The next contention of Respondent No. 1 is that the Applicant is seeking claim of gratuity dues which are not admitted. It is observed from the Resolution Plan approved by the Tribunal that the claims of all workmen are admitted by the RP, the Respondent No. 2 and acknowledged by the

Resolution Applicants, but categorised the claims/employees into two groups: employees not on pay roll as on 6th February, 2018 (admitted claim of Rs. 60.08 lakhs), and another group of employees who are on pay roll as on 06.02.2018 (admitted claim of Rs. 568.83 lakhs, thus aggregating Rs. 628.91 lakhs. The details of employees under each of the above categories of claims and the list of employees are enclosed with the Resolution Plan as Annexure 1. Thus, it is clear that the claims of Applicant/Claimants are admitted by Respondent No. 2 and acknowledged by the Successful Resolution Applicants.

17. The provision regarding pay-outs to Workmen and Employees contained in the approved Resolution Plan is as under:

3.1. The total liability of the Company towards Workmen and Employees as per the claim sheet above is INR 6.29 Crores (including Net Salary, Leave Encashment, Bonus, PT, PF, TDS and Gratuity) whereas, as per the provisional balance sheet of the Company as on March 31 2018, the estimated liability towards workmen and employees is INR 4.01 Crore.

3.2. Out of the INR 6.29 Crores, INR 1.16 Crores is Statutory Liability towards PF, PT and TDS and INR 2.56 Crores is towards Gratuity and INR 1.11 Crores towards Net Salary. Break up given below as given below:-

Liabilities Towards Workmen and Employees			
Sr. No.	Statue	Total Liabilities – as on CIRP Commencement Date (INR in Crores)	Share of Payment to be made (INR in Crores)
1	Employee and Workmen TDS**	0.38	0.38
2	Employee and Workmen PF**	0.74	0.74
3	Employee and Workmen Prof Tax**	0.04	0.04
	Total of Above	1.16	1.16*
4	Net Salary +Leave Encashment + Bonus*	2.57	1.11
5	Gratuity (Paid on accrual basis)**	2.56	2.56
	Total	6.29	4.83

Note

**:Net Salary + Leave Encashment + Bonus of all employees and workmen to the extent of amount allotted above shall be paid as per annexure 7. on discharge of relevant Workman or Employee from Employment or within 2 years from Closing Date, whichever is earlier.*

***: The Statutory Liabilities towards the Workmen and Employees will be paid in full*

*3.3 The Resolution Applicant proposes to pay an upfront sum of INR 1.16 Crores, ("**Workmen Payment**") within 30 days from the Closing Date. towards PF, PT & TDS. Gratuity (currently provisioned for INR 2.56 Crores) will be paid as and when due, in accordance with the Applicable Law. Also, Net Salary, Leave Encashment, Bonus of all employees and workmen to the extent of INR 1.11 Crores shall be paid **as per Annexure 7**, on discharge of relevant Workman or Employee from Employment or within 2 years from Closing Date, whichever is earlier. The aforesaid amounts will be full and final amount and one time settlement of all workmen and employees dues as on Insolvency Commencement Date. While the Resolution Applicant is not aware of the liquidation value of the Company, for the purpose of this Resolution Plan, the underlying assumption of the Resolution Applicant is that the liquidation value due to the Operational Creditors (Workmen and Employees) in accordance with the liquidation waterfall under the Code is far less than the sum agreed to be paid to the Workmen and Employees hereinabove. Further, as per Regulation 38(1) of the CIRP Regulations, the amount due to the Operational Creditors are being given priority in payment over the Financial Creditors.*

3.4 This Workmen Payment shall also include liability of the Company arising from payment of Provident Fund contribution and ESI contribution and any other liability of the Company, whether contractual, statutory or otherwise. towards its workmen, staff, employees and any other person working with the Company on its pay roll. The Workmen Payment shall be paid from the OCD Consideration, to be infused by the Resolution Applicant.

*3.5 List of exact payment to Workmen and Employees is annexed hereto **as Annexure 7** till CIRP commencement date, and it shall constitute a full and final settlement of all workmen and employee dues (including pertaining to payment of salary, bonus, leave encashment, terminal benefits, statutory contributions and any other statutory liability) for the period prior to the CIRP commencement date. Except for Workmen and Employee Payment, the Company and the Resolution Applicant shall not be in any manner whatsoever at any point, present or future, be directly or indirectly responsible or liable for any claims with respect to workmen dues which relate to a period prior to CIRP commencement date. All balance dues, whether in past, present or future other than what is provided for in the clause 3.3 above, pertaining to the workmen and employee of the Company, for the period prior to the CIRP commencement date, shall stand settled in the manner set out above.*

3.6 In consideration of Workmen and Employee Payment, all the litigations/ proceedings by employees/ workmen or before any labour department for non-payment of any dues/ contribution or any other moneys shall be withdrawn and stand dismissed accordingly and the Company shall no longer be required to make any payments in relation to such litigations/proceedings.

3.7 In case any stock options or warrants or rights to Equity Shares have been granted to workmen/ employees pursuant to any employee stock option plan/ policy of the Company, such options/ warrants/ rights, whether vested or unvested, exercised or un-exercised shall stand revoked with no claims or liabilities against the Company or the Resolution Applicant.

While sub-clauses 3.1 and 3.2 state that full admitted liabilities to the employees would be paid by the Resolution Applicants, sub clauses 3.3 to 3.5 give an impression that payment to workmen and employees is limited to those whose names appear in Annexure 7 i.e., the employees and workmen who were on the rolls as on 06.02.2018. It is pertinent to observe that there is no specific provision with respect to non-payment of admitted claims to the employees and workmen including the Applicants who were on the payroll before 06.02.2018.

18. The Respondent No. 1 has failed to substantiate that the Applicants are not entitled for any payment under the Resolution Plan. The provisions of the Code also do not allow differential treatment of employees whose claims have been admitted on the basis of Insolvency Commencement Date. Further, we are of the considered view that the decision of the Hon'ble NCLAT in *Hindustan Newsprint Limited (Supra)* that gratuity is to be paid in full as per the provisions of payment of Gratuity Act, 1972 is applicable in this case. The implementation of the Resolution Plan and distribution of resolution amount to various stakeholders will not make any difference as regards the application of the above ratio laid down by the Hon'ble Supreme Court in *Jet Aircraft Maintenance Engineers Welfare Association* and followed by the Hon'ble NCLAT in *Hindustan Newsprint Limited (Supra)*.

19. Based on the above discussion, we are of the view that the Application claiming gratuity dues as per the provisions of the Payment of Gratuity Act, 1972 against the Corporate Debtor/Respondent No. 1 to the extent of admitted claims deserves to be paid.
20. **IA No. 2943/2022 is, therefore, allowed.**

Sd/-

**ANIL RAJ CHELLAN
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**