

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI**

**Company Appeal (AT) (Ins.) No. 1234 of 2019**

**IN THE MATTER OF:**

**1. FORT GLOSTER INDUSTRIES LIMITED**

(Cable Works) Sramik Karmachari Union  
(INTUC), having office at village:  
Fort Gloster, P.S. Bauria, District: Howrah  
Pin: 711310

**2. ABESH GHOSH,**

Secretary, Fort Gloster Industries Limited  
(Cable Works) Sramik Karmachari  
(INTUC) Residing at Village: Burikhali,  
P.O. Burikhali, P.S. Bauria, District:  
Howrah, Pin: 711310

**3. FORT GLOSTER INDUSTRIES LIMITED**

(Cable Works) Workers Union (TUCC)  
Having Office at Village: Fort Gloster,  
P.S. Bauria, District: Howrah,  
Pin: 711310

**4. TAPAS CHAKRABORTY,**

Secretary, Fort Gloster Industries Limited  
(Cable Works) Workers Union (TUCC)  
Residing at Village: Fort Gloster, Cable  
Colony, Fort Gloster, P.S. Bauria,  
District: Howrah, Pin: 711310

**5. GLOSTER CABLE EMPLOYEES UNION**

(CITU), Having office at Village:  
Fort Gloster, P.S. Bauria,

District: Howrah, Pin: 711310

**6. RAGHUNATH CHAKRABORTY,**

Secretary, Gloster Cable Employees Union  
(CITU), Residing at Village:

Fort Gloster Cable Colony, C Block,

P.S. Bauria, District: Howrah, Pin: 711310

**7. FORT GLOSTER INDUSTRIES LIMITED**

(Cable Works), Mazdoor Sangh, (BJP),

Having Office at Village: Fort Gloster,

P.S. Bauria, District: Howrah, Pin: 711310

**8. KRISHNA KUMAR SINHA,**

Secretary, Fort Gloster Industries Limited

(Cable Works), Mazdoor Sangh, (BJP),

Residing at A/19, Cable Colony,

Fort Gloster, P.S. Bauria, District: Howrah,

Pin: 711310

**9. GLOSTER CABLE CLERK ASSOCIATION**

Having Office at Village:

Fort Gloster, P.S. Bauria, District: Howrah,

Pin: 711310

**10. DHAYN GOPAL SANTRA,**

Secretary, Gloster Cable Clerk Association,

Residing at Village: Radhanagar, P.O.

Radhanagar, P.S. Bauria, District: Howrah,

Pin: 743101

**...Appellants**

**Versus**

**1. RESOLUTION PROFESSIONAL,**

Fort Gloster Industries Limited,

Having Its Office at: Sumedha Management

Solutions Pvt. Ltd., Ideal Plaza, 11/1,  
Sarat Bose Road, 04<sup>th</sup> Floor, South Block,  
Room No. 405, Kolkata – 700020,  
West Bengal and also at 8B, Middleton Street,  
6A, Geetanjali, Kolkata – 700071

**2. GLOSTER LIMITED,**

A Company Incorporated under the Companies Act,  
1956 and having its Registered Office At: 21, Strand  
Road, Kolkata – 700001, West Bengal.

**3. COMMITTEE OF CREDITORS,**

Fort Regasus Asset Reconstruction Pvt. Ltd.,  
507, Dalanal House, Nariman Point, Mumbai –  
400021

**4. HOOGHLY INFRASTRUCTURE PVT. LTD.,**

A company incorporated under the  
Companies Act, 1956 and having its  
Registered office at 24/1/1, Alipore Road,  
3<sup>rd</sup> Floor, Kolkata – 700027, West Bengal

**...Respondents**

**Present:**

**For Applicant:** Mr. Kunal Chatterji, Mr. Rohit Bansal, Mrs. Maitreyee Banerjee, Ms. Kshitis Singh, Advocates

**For Respondent:** Mr. Anand Varma & Mr. Ayush Gupta, for R-1.  
Mr. Dinkar Singh, Mr. Gagan Garg, Mr. Rohit Singh, for R-3/CoC.  
Mr. S.N. Mookherjee, Sr. Advocate with Mr. Shaunak Mitra, Mr. P.K. Jhunjhunwala, Mr. Anil Agarwalla, Ms. Neha Sharma, Advocates for R2

**J U D G M E N T**

**Per: Justice Rakesh Kumar Jain:**

One Jayanta Kumar Panja, an ex-employee of Fort Gloster Industries Limited (Corporate Debtor) filed an application under Section 9 of the

Insolvency and Bankruptcy Code, 2016 (in short 'Code') for initiation of the Corporate Insolvency Resolution Process on account of default in payment of Rs.1,13,946/- towards his gratuity. The said application bearing CP (IB) No. 61/KB/2018 was admitted by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Kolkata) on 09.08.2018. Manish Jain was appointed as the Interim Resolution Professional (IRP) who was replaced by Bijay Murmuria as the Resolution Professional (RP) in the second meeting of Committee of Creditors (CoC) held on 04.12.2018.

2. The RP published form-G on 05.02.2019 in financial express (English) and in Aajkaal (Bengali) for the purpose of inviting Expression of Interests (EOIs) in which the last date for submission of EOIs was 20.02.2019. The RP received EOI from two Prospective Resolution Applicants (PRAs) on 20.02.2019 i.e. Prudent ARC Limited and Gloster Limited. In the meanwhile, M/s Hooghly Infrastructure Pvt. Ltd. also filed an application towards EOI. The said application was allowed by the Adjudicating Authority vide order dated 01.04.2019. Thereafter, two resolution plans from M/s Gloster Limited and M/s Hooghly Infrastructure Pvt. Ltd. were received by the RP till the last date of submission of resolution plan i.e. 06.04.2019 (17:00 PM). The RP received the forensic audit/due diligence report of the Corporate Debtor from the Auditor, namely, V. Singhi & Association, Chartered Accountants on 10.04.2019 in which it was stated that there was no preferential transactions, undervalued transactions, transaction defrauding creditors, extortionate credit transactions, fraudulent trading or wrongful trading. The RP apprised the members of the CoC in the 6<sup>th</sup> meeting about

the plans received from the PRAs. It was also brought to their notice that the resolution plan received from M/s Hooghly Infrastructure Pvt. Ltd. had certain inconsistencies in terms of the provisions of the Code. Both the Resolution Applicants submitted their updated resolution plan by 5:00 PM on 19.04.2019 and the corresponding hard copies by 12:00 noon on 20.04.2019. A certificate was given by Saumendra Kabiraj, Advocate that both the Resolution Applicants were eligible in terms of the provisions of Section 29A of the Code but Gloster Limited scored 51 in the terms of qualitative criteria and quantitative criteria of the evaluation matrix as against the score of 30 obtained by M/s Hooghly Infrastructure Pvt. Ltd. and thus, the members of the CoC unanimously declared Gloster Limited as H1 bidder for the Corporate Debtor. The resolution plan of the Gloster Limited, having been declared as H1 was put to vote through e-voting which was approved by 73.21% voting in which Pegasus Asset Reconstruction Pvt. Ltd., Punjab National Bank & Andhra Bank voted in favour of plan whereas Stressed Assets Stabilization Fund with 26.79% voting share voted against it.

3. The RP filed an application bearing CA (IB) No. 584/KB/2019 under Section 30(6) of the Code before the Adjudicating Authority for seeking approval of the resolution plan of the Fort Gloster Industries Ltd. (CD) submitted by SRA 'Gloster Limited' having been approved by the CoC by vote share of 73.21%.

4. The present Appellants (10 in number) are various trade unions, suing through their office bearers filed CA (IB) No. 650/KB/2019 under Section

60(5) of the Code on 06.05.2019 in which they had prayed that a direction may be issued to ensure payment regarding gratuity and leave liability of left employee's (retired/resigned/death and vrs) up to 31.08.2018 which was attached as Annexure B with the application. It is alleged that though the RP was informed about the claim of the workers vide letter dated 11.03.2019 (Annexure A4) but he refused to respond to the letter. It is alleged that the Appellants are entitled to an amount of Rs. 60,22,33,718/- but amount admitted, as per the website of the Corporate Debtor, shows the claim of the workmen to the tune of Rs. 89,28,667/-. The Adjudicating Authority has found that the claims of 11 employees were received by the RP within the stipulated period which comes to 0.89 Crore and the RP also admitted the claims of the four workmen, who submitted their claims beyond 90 days, to the tune of Rs. 0.41 Crore and the resolution plan provided allocation of the entire amount to the said workmen. The claim of the four workmen which were submitted beyond 90 days was including the claim of one Apurba Ghorui to the tune of Rs. 0.22 Crore. It has also been observed that the total dues due to the workmen/employees, borne out from the financial statement and included in the information memorandum was Rs. 14.12 Crore out of which claim of 1.30 Crore was allocated by the Resolution Applicant in the plan and balance 12.78 Crore was recorded as unclaimed dues of the workmen. It has also come in the order that the Resolution Applicant also agreed to pay 20% of Rs. 12.78 Crore which is yet unclaimed. The Adjudicating Authority recorded a finding that the Resolution Applicant has taken care of their claim and also agreed to pay their dues as per Regulation 38(1) of the CIRP Regulations giving priority in payment over

financial creditors and ultimately did not find any substance in the application and the same was dismissed. Aggrieved against, the order of dismissal of their application dated 27.09.2019, the present appeal has been filed.

5. Counsel for the Appellants has referred to information memorandum issued on 22.09.2018 in which list of employees/workmen claims, as on 09.08.2018, has been shown in the column of gratuity liability in respect of retired workmen & employees to the tune of Rs. 11.19 Crore plus interest as may be payable under the Payment of Gratuity Act, which has not been given in the resolution plan. He has referred to a decision of this Tribunal in the matter of ***Jet Aircraft Maintenance Engineers Welfare Association Vs. Ashish Chhawchharia Resolution Professional of Jet Airways (India) Ltd. & Ors., Company Appeal (AT) (Insolvency) No. 752 of 2021,*** to contend that one of the question raised in that appeal was as to whether the workmen and employees are entitled to receive the payment of provident fund, gratuity and other retirement benefits in full since they are not part of the liquidation estate under Section 36(4)(b)(iii) of the Code. It has been held that “share of workmen dues have to be kept out of liquidation process and same shall have to be paid to the employees and workmen out of such provident fund, gratuity fund and pension fund, if any, available. Thus, it is clear that if any provident fund, gratuity fund and pension fund is available with the Corporate Debtor, the share of employees and workmen has to be paid from the said fund which has to be kept out of the liquidation process. Thus, if the claim of workmen/employees regarding payment of provident

fund, gratuity fund and pension fund can be satisfied from the fund maintained by the Corporate Debtor that has to be kept out of the liquidation and cannot be utilised for distribution amongst other stakeholders”

6. It is also submitted that similarly situated employees were discriminated in as much as claims of 11 employees has been satisfied by the RP and nothing has been kept in the plan for the present Appellants (employees who are mentioned in the list Annexure B).

7. On the other hand, Counsel for Respondent No. 2 (SRA) has submitted that the application of the Appellant has rightly been dismissed by the Adjudicating Authority observing that “unions come forward with an evasive claim. None of the objections seen substantiated with supporting materials”. In this regard, it is submitted that a procedure is prescribed in chapter IV ‘proof of claims’ of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short ‘Regulations’). He has referred to Regulation 9 of the Regulations pertaining to the claims by workmen/employees to contend that the claim by a workman or an employee of the Corporate Debtor has to be filed in Form-D appended with the schedule and where there are dues are of numerous workmen or employees of the Corporate Debtor the claim with proof may be filed through an authorised representative but in Form-E of the schedule. It is submitted that the said procedure has not been adopted by the Appellants who had allegedly sent the list (Annexure B) to the RP that too not through the authorised representative as prescribed in Regulation

9(2) of the Regulations. It is submitted that the application, available at pg. 204 of the record of this case dated 11.03.2019 is signed by various office bearers of the trade unions of the Appellants and not by any authorised representative. In this regard, reliance has been placed upon the decision of the Hon'ble Supreme Court in the case of **JK Jute Mill Mazdoor Morcha Vs. Juggilal Kamlapat Jute Mills Company Ltd. Through Its Directors, (2019) 11 SCC 332**, which talks of authority from several workmen to one of them to file such a petition on behalf of all. It is submitted that Form-D in the Regulations deals with the proof of claim by a workman or an employee 'individually' in which he would give a declaration to the effect that he relies upon documents as evidence of claim in Form-E, provided in the Regulations and in respect of the proof of claim submitted by authorised representative of the workmen and employees in which again a declaration has to be filed by each workman with the documents relied as evidence of claim. It is further submitted that claim with proof (was substituted by notification no. IBBI/2018-19/GN/REG031, dated 03.07.2018 w.e.f 04.07.2018 in order to avoid false claims. He has then referred to a decision of the Hon'ble Supreme Court in the case of **State Tax Officer (1) Vs. Rainbow Papers Limited, 2022 SCC Online SC 1162**, to contend that in the said case "claims were before the 05.10.2017 which was the last date for submission of claims and in the unamended provisions, the Appellant therein was not required to file any claim and was only required to substantiate the claim by production of such materials as might be called for." Whereas according to him after the amendment of 04.07.2018 the substitution is by way of 'claim with proof' which means that not only the

proof is required but lodging of the claim is a pre-requisite which is conspicuous by its absence in the present case. He has also submitted that neither Annexure A4 dated 11.03.2019 be considered as an authority in favour of authorised representative nor the list Annexure B was ever supplied by the Appellants to the RP who has said so in Para 7 of his affidavit filed before the Adjudicating Authority to the application filed by the Appellants. Para 7 is reproduced as under:-

*“7. With reference to the statements made in paragraph 3 of the said application I deny that the workers’ claim on diverse heads as received by the RP in course of the CIRP aggregates to a sum of Rs. 60,22,33,718/- as alleged or at all. I say that the basis for such claim appears to be a chart appearing as Annexure-B to the said application appearing at Pg. 12 thereof. I say that there is no basis to such claim or figures mentioned therein. In any event I say that no such claim was ever lodged before the RP in response to the invitation of claims made by the RP. I say that the purported head of claim in the table appearing in paragraph 3 of the said application is equally baseless. I say that no such claim was lodged before the RP at any point of time. I thus deny and dispute that a sum of Rs. 60,22,33,718/- can be said to be the sum which is now due and payable by the CD to any workers under any head as alleged or at all.”*

8. Counsel appearing on behalf of Respondent No. 1 has categorically stated that no such claim whatsoever was ever lodged like ‘Annexure B’ with him and the total claim received by him from the workmen was to the tune of Rs. 89,28,667/-. He also admitted a claim of Rs. 00.41 Crore though the same was submitted beyond the period of 90 days and thus the resolution plan provides for Rs. 3.90 Crore towards the payment of workmen dues. He has also submitted that the total dues of the workmen/employees as per the financial statements included in the resolution plan was Rs. 14.12 Crore out

of which a claim of Rs. 1.34 Crore was allocated being the amount admitted and actually claimed and the balance of Rs. 12.78 Crore was allocated as unclaimed dues but despite that the resolution plan provided for payment of 20% of Rs. 12.78 Crore in case any claim is raised. It is further submitted that Manish Jain was appointed as IRP on 09.08.2018 and on 11.08.2018 he published form-A inviting claims from the creditors of the Corporate Debtor fixing the last date for submission of claim as 24.08.2018 but only 11 workmen and employees filed their claim with the RP which was duly considered and admitted. It is further submitted that the dues claimed by the Appellants to the tune of Rs. 60,22,33,718/- is not in accordance with law, mandated in the Code, not accompanied by any documentary evidence to substantiate their purported claim. He has denied to have received the list Annexure B and also submitted that the letter Annexure A4 is not by an authorised representative and rather it is only a covering letter. He has further submitted that 11 workmen had submitted their application in the prescribed form-D but neither the workmen/employees (Appellants) submitted their claim with proof in form-D individually or through an authorised representative in Form-E as prescribed in Regulations.

9. We have heard Counsel for the parties and perused the record with their able assistance.

10. There is no dispute that information memorandum issued on 22.09.2018 by the RP shows the liability of the Corporate Debtor of an amount of Rs. 11.19 Crore plus interest as may be payable under the payment of gratuity act in respect of retired workmen and employees and

the said amount was determined as on 09.08.2018. However, the issue involved in this case is as to whether the employees/workmen whom the Appellants are representing as various office bearers of the trade unions had put up their claim with proof in order to recover the said amount as has been done by 11 other employees of the same Corporate Debtor who had filed their applications in accordance with Regulations?

11. It has been repeatedly held that IBC is a complete code in itself. Various Regulations have been made in terms of various provisions of the Code in which Regulations have also been made which came into force w.e.f. 01.12.2016. Chapter IV of the Regulations, dedicated to the proof of claims, of various class of creditors in which Regulation 9 is related to the claims of the workmen/employees. The said Regulation is reproduced as under:-

*“9. Claims by workmen and employees.*

*(1) A person claiming to be a workman or an employee of the corporate debtor shall submit [claim with proof] to the interim resolution professional in person, by post or by electronic means in Form D of the Schedule:*

*Provided that such person may submit supplementary documents or clarifications in support of the claim, on his own or if required by the interim resolution professional, before the constitution of the committee.*

*(2) Where there are dues to numerous workmen or employees of the corporate debtor, an authorised representative may submit one ‘claim with proof’ for all such dues on their behalf in Form E of the Schedule.*

*(3) The existence of dues to workmen or employees may be proved by them, individually or collectively on the basis of -*

*(a) records available with an information utility, if any; or*

*(b) other relevant documents, including -*

*(i) a proof of employment such as contract of employment for the period for which such workman or employee is claiming dues;*

*(ii) evidence of notice demanding payment of unpaid dues and any documentary or other proof that payment has not been made; or*

*(iii) an order of a court or tribunal that has adjudicated upon the non-payment of a dues, if any.”*

12. In so far as Regulation 9(1) is concerned, it pertains to the claim to be set up by a workman or an employee of the Corporate Debtor who is mandatorily required, because the word has been used ‘shall’, to submit ‘claim with proof’ (brought in by amendment dated 04.07.2018) to the IRP in person, by post or by electronic means in Form-D of the schedule. The proviso to this Regulation further says that such person may submit supplementary documents or clarifications in support of claim on his own or if required by the IRP, before the constitution of the committee. It would be appropriate to refer to Form D at this stage which is part of Regulation 9(1) of the Regulations and read as under:-

SCHEDULE  
FORM D

PROOF OF CLAIM BY A WORKMAN OR AN EMPLOYEE  
(Under Regulation 9 of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

[Date.....]

To  
The Interim Resolution Professional / Resolution Professional  
[Name of the Insolvency Resolution Professional / Resolution Professional]

[Address as set out in public announcement]

From

[Name and address of the workman / employee]

Subject: Submission of proof of claim.

Madam/Sir,

[Name of the workman / employee], hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of [name of corporate debtor]. The details for the same are set out below:

PARTICULARS
1. NAME OF WORKMAN/ EMPLOYEE
2. PAN NUMBER, PASSPORT, THE IDENTITY CARD ISSUED BY THE ELECTION COMMISSION OF INDIA OR AADHAAR CARD OF WORKMAN / EMPLOYEE
3. ADDRESS AND EMAIL ADDRESS (IF ANY) OF WORKMAN / EMPLOYEE FOR CORRESPONDENCE
4. TOTAL AMOUNT OF CLAIM (INCLUDING ANY INTEREST AS AT THE INSOLVENCY COMMENCEMENT DATE)
5. DETAILS OF DOCUMENTS BY REFERENCE TO WHICH THE CLAIM CAN BE SUBSTANTIATED.
6. DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OR ORDER OF SUIT OR ARBITRATION PROCEEDINGS
7. DETAILS OF HOW AND WHEN CLAIM AROSE
8. DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE DEBTOR AND THE CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM
9. DETAILS OF THE BANK ACCOUNT TO WHICH THE AMOUNT OF THE CLAIM OR ANY PART THEREOF CAN BE TRANSFERRED PURSUANT TO A RESOLUTION PLAN
10. LIST OF DOCUMENTS ATTACHED TO THIS PROOF OF CLAIM IN ORDER TO PROVE THE EXISTENCE AND NON-PAYMENT OF CLAIM DUE TO THE OPERATIONAL CREDITOR
Signature of workman / employee or person authorised to act on his behalf [Please enclose the

authority if this is being submitted on behalf of an operational creditor]
Name in BLOCK LETTERS
Position with or in relation to creditor
Address of person signing

#### DECLARATION

I, [Name of claimant], currently residing at [insert address], do hereby declare and state as follows:-

1. [Name of corporate debtor], the corporate debtor was, at the insolvency commencement date, being the.....day of.....20....., actually indebted to me in the sum of Rs. [insert amount of claim].
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: [Please list the documents relied on as evidence of claim].
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.
4. In respect of the said sum or any part thereof, neither I, nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following:

[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set - off against the claim].

Date: .....

Place: .....

(Signature of the claimant)

#### VERIFICATION

I, [Name] the claimant hereinabove, do hereby verify that the contents of this proof of claim are true and correct to my knowledge and belief and no material fact has been concealed therefrom.

Verified at ... on this ..... day of ....., 20...

(Signature of claimant).]

13. It would be found in Form-D that the word used is 'proof of claim'. Which has now been substituted to 'claim with proof' by amendment dated 04.07.2018. This form has to be filled up and submitted to the IRP/RP by a workman or an employee who would not only set up his claim in the column of particulars but shall also attach documents as proof of claim (See column 10 of the particulars) and also make a declaration in this regard (See clause 2 of the declaration) and shall also verify the contents of the particulars in the declaration. Similarly, Form-E is regarding 'proof of claims' submitted by authorised representative of workman and an employee. Form-E is reproduced as under:-

SCHEDULE  
FORM E  
PROOF OF CLAIM SUBMITTED BY AUTHORISED  
REPRESENTATIVE OF WORKMEN AND EMPLOYEES  
(Under Regulation 9 of the Insolvency and Bankruptcy (Insolvency  
Resolution Process for Corporate Persons) Regulations, 2016)  
[Date.....]

To

The Interim Resolution Professional / Resolution Professional,  
[Name of the Insolvency Resolution Professional / Resolution  
Professional]

[Address as set out in public announcement]

From

[Name and address of the duly authorised representative of the  
workmen / employees]

Subject: Submission of proofs of claim.

Madam/Sir,

I, [name of authorised representative of the workmen / employees], currently residing at [address of authorised representative of the workmen / employees], on behalf of the workmen and employees employed by the above named corporate debtor and listed in Annexure A, solemnly affirm and say:

1. That the above named corporate debtor was, at the insolvency commencement date, being the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_, justly truly indebted to the several persons whose names, addresses, and descriptions appear in the Annexure A below in amounts severally set against their names in such Annexure A for wages, remuneration and other amounts due to them respectively as workmen or/ and employees in the employment of the corporate debtor in respect of services rendered by them respectively to the corporate debtor during such periods as are set out against their respective names in the said Annexure A.
2. That for which said sums or any part thereof, they have not, nor has any of them, had or received any manner of satisfaction or security whatsoever, save and except the following:

[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim.]

Deponent

#### ANNEXURE

##### 1. Details of Employees/ Workmen

S NO.	NAME OF EMPLOYEE/ WORKMAN	IDENTIFICATION NUMBER (PAN NUMBER, PASSPORT OR AADHAAR CARD)	TOTAL AMOUNT DUE (RS.)	PERIOD OVER WHICH AMOUNT DUE
1.				
2.				
3.				
4.				

2. Particulars of how debt was incurred by the corporate debtor, including particulars of any dispute as well as the record of pendency of suit or arbitration proceedings (if any).

3. Particulars of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim.

ATTACHMENTS:

[Documents relied as evidence as proof of debt and as proofs of non-payment of debt.]

[DECLARATION]

I, [Name of claimant], currently residing at [insert address], do hereby declare and state as follows:-

1. [Name of corporate debtor], the corporate debtor was, at the insolvency commencement date, being the.....day of.....20....., actually indebted to me in the sum of Rs. [insert amount of claim].
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: [Please list the documents relied on as evidence of claim].
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.
4. In respect of the said sum or any part thereof, neither I, nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following:

[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set - off against the claim].

Date: .....

Place: .....

.....  
(Signature of the claimant)

VERIFICATION

I, [Name] the claimant hereinabove, do hereby verify that the contents of this proof of claim are true and correct to my knowledge and belief and no material fact has been concealed therefrom.

Verified at ... on this ..... day of ....., 20...

.....  
 (Signature of the claimant)]

14. A close reading of Regulation 9(2) of the Regulations says that where there are dues to be paid to the workmen or employees of the Corporate Debtor, they may collectively choose an authorised representative to submit their claim with proof but in Form-E of the Schedule. The word used in Regulation 9(2) of the Regulations is 'may' as against 'shall' in Regulation 9(1) of the Regulations which means that Regulation 9(2) of the Regulations is provided more as a matter of convenience for the workmen or employees but still demands a declaration in respect of claim with proof and verification of the Form 'Particulars' mentioned therein.

15. In the present case, firstly, there is no such claims set up by the workmen/employees individually in terms of Regulation 9(1) of the Regulations by resorting to form-D as is evident from Annexure B appended with the application i.e. CA (IB) No. 650/KB/2019. Besides, it has been the positive case of Respondent that even this list was never received by the RP because it has been mentioned in the letter dated 11.03.2019 (Annexure A4) that the said list shall be sent by the office bearers of the Appellants by registered post but no evidence is brought on record in this regard that the list was ever sent by registered post to the RP who has categorically denied it by way of an affidavit filed before the Adjudicating Authority. Evidently, there is a total non-compliance of Regulation 9(1) of the Regulations. Similarly, there is non-compliance of Regulation 9(2) of the Regulations as well because Annexure A4 dated 11.03.2019 in no manner an authority given to the 'authorised representative' rather it is more of a covering letter

by the office bearers of the trade unions of the workmen and the clerks association. Therefore, even the provisions of Regulation 9(2) of the Regulations has not been complied with. As against this, it has come on record that the RP has satisfied the claim of all those 11 employees who had filed their application in Form-D in terms of Regulation 9(1) of the Regulations and has even taken into consideration the claims of four workmen who had submitted it beyond the period of 90 days. It has also come on record that a provision has been made to the extent 20% of total amount of Rs. 12.78 Crore in order to satisfy any amount in future which is yet to be claimed but it cannot be said that the amount which has been admitted has not been paid or made a provision in the resolution plan by the RP/SRA.

16. Thus, in view of the aforesaid facts and circumstances and discussion, we do not find any illegality in the order by which the application CA (IB) No. 650/KB/2019 has been dismissed and hence, the present appeal has been dismissed. No costs.

**[Justice Rakesh Kumar Jain]**  
**Member (Judicial)**

**[Mr. Naresh Salecha]**  
**Member (Technical)**

**New Delhi**

**15<sup>th</sup> March, 2023**

*Sheetal*