

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 214 of 2024

[Arising out of Order dated 19.01.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Allahabad Bench, Prayagraj), in C.P. (IB)
No.280/ALD/2018]

IN THE MATTER OF:

1. Sashi Kanta Jha

70, Golf Link, Lodhi Road,
Central Delhi, New Delhi – 110003

...Appellant No. 1

2. Acme Consultant Private Limited

21 A, Shakespeare Sarani,
2nd Floor, Kolkatta – 700017
Email: limitedconsultant@gmail.com

...Appellant No. 2

Versus

1. Devi Prasad

84/57, Zarib Chowki,
Kanpur Nagar, Uttar Pradesh.

...Respondent No. 1

2. Deepak Kumar Agarwal

(Resolution Professional)
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

...Respondent No. 2

3. Geo Jute Limited

**Formerly known as (Juggilal Kamlapath Jute
Mills Company Limited)**

84/49, Zarib Chauki, Kalpi Road,
Kanpur U.P. – 208012

...Respondent No. 3

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Anuj Tiwari, Ms. Kaanchi Ahuja and Mr. Vaibhav Vats, Advocates.

For Respondent : Ms. Malvika Trivedi, Sr. Advocate with Mr. Ankit Kohli, Advocates for R-1.

Mr. Govind Bhardwaj, Mr. Ashwarya C. Jha and Mr. Anuj Kumar, Advocates for R-2 (IRP).

Mr. Ashok Kumar Jain, Mr. Amit Kasera, Mr. Arjun Aggarwal and Mr. Aman Kumar, Advocates for Intervenor.

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal by a suspended director of the corporate debtor, M/s. Juggilal Kamlapat Jute Mills Company Limited (now Geo Jute Ltd.) has been filed challenging the order dated 19.01.2024 passed by the adjudicating authority (National Company Law, Tribunal, Allahabad Bench, Prayagraj), admitting a Section 9 application C.P. (IB) No.280(ALD)/2018 filed by Devi Prasad Respondent No. 1, herein.

2. There is a chequered history of litigation with respect to corporate debtor (hereinafter referred to as JK Jute Mills Company Ltd.).

3. We need to notice certain background facts leading to filing of Section 9 application by Respondent No. 1 against the corporate debtor:

- i. JK Jute Mills Company Limited having its registered office at Kanpur, Uttar Pradesh filed Reference No. 149/1994 before the Board of Industrial and Financial Reconstruction (BIFR) under the provisions of Sick Industrial Companies (Special Provisions Act) 1985. Though a scheme was initially sanctioned for reconstruction, BIFR, however, subsequently held the scheme to have failed and directed the company to be wound up.

- ii. Appeal was filed before the appellate authority for Industrial and Financial Reconstruction, which stayed the wind-up order, however, proceeding before the BIFR continued. During pendency of the proceeding, Sarda group took over the company and took over the management.
- iii. The Draft Representation Scheme before BIFR abated due to repeal of SICA with effect from 25.11.2016.
- iv. The management of the corporate debtor had executed sale deed of asset of one of the assets on 02.04.2013, (Katihar property). Sale of asset was without leave of the BIFR. A contempt petition was also filed against management and its officers where Hon'ble Supreme Court held that Company and its director guilty of having violated order dated 08.05.2014 passed by the Hon'ble Supreme Court and fine was also imposed.
- v. The Writ Petition (C) No.440/2017 was filed by the JK Jute Mazdoor Ekta Union before the Delhi High Court challenging Section 4(b) of Sick Industrial Companies (Special Provisions) Repeal Act, 2003, where it was also pleaded that provisions of Insolvency and Bankruptcy Code 2016, (for short the 'Code' or the 'IBC') do not provide for any factual remedies for implementing direction of Hon'ble Supreme Court in order dated 13.11.2014. In the Writ Petition, the order was passed by the Delhi High Court on 26.05.2017, directing the Company JK Jute Mills to preserve an amount of ₹2.5 crore.

- vi. A Suit No.500/2017 was filed by company on 19.05.2017 filed by M/s. Geo Jute Limited seeking declaration and permanent injunction.
- vii. The Writ Petition filed by the JK Jute Mazdoor Ekta Union was decided on 06.12.2017. High Court extended the interim order in the Writ Petition for a period of 2 months so as to enable the workmen to approach the NCLT.
- viii. Before the disposal of the above Writ Petition, the JK Jute Mazdoor Morcha has filed Section 9 application being C.P. IB No.36(ALD)/2017 on 28.03.2017 seeking initiation of Corporate Insolvency Resolution Process (CIRP) proceedings against the company/corporate debtor.
- ix. The adjudicating authority vide its order dated 28.04.2017 dismissed Section 9 application holding that Section 9 application is not maintainable.
- x. An Appeal was also filed against the order dated 28.04.2017 before this Tribunal, which was also dismissed on 12.09.2017. Appellate Tribunal took the view that each worker may file a separate application before the NCLT. The order was challenged before the Hon'ble Supreme Court in Civil Appeal No. 20978/2017.
- xi. On 15.12.2017, corporate debtor filed a Suit No. 2506/2017 before the Civil Court seeking injunction against the workmen from representing their alleged dues in various forums till the suit is finally decided. Declaration was also sought that document submitted in the Draft Rehabilitation Scheme (DRS) by any parties is null and void.

- xii. The R-1 Devi Prasad sent a demand notice under Form-III dated 29.05.2018, claiming an outstanding amount of ₹5,24,132/-.
- xiii. Section 9 application was filed by respondent on which C.P. IB No.280/ALD/2018 was registered, notices were issued, reply was filed by corporate debtor to which rejoinder was filed.
- xiv. The Civil Appeal filed by JK Jute Mazdoor Morcha, was against the order of this Tribunal dated 12.09.2017, which was passed in appeal against the order dated 28.04.2017, rejecting Section 9 application by JK Jute Mazdoor Morcha. Hon'ble Supreme Court vide its order judgment dated 30.04.2019 has held that application under Section 9 by a Trade Union is maintainable. It was held that Trade Union can be an operational creditor. The order of this Tribunal dismissing the appeal was set aside and matter was remanded to the NCLAT who was to hear the appeal filed by JK Jute Mazdoor Morcha.
- xv. In the appeal which was filed by JK Jute Mazdoor Morcha and pending in this Tribunal being Comp. App. (AT) (Ins.) No. 82/2017, this Tribunal on 08.08.2019 directed to file an affidavit. Respondent Devi Prasad also filed an affidavit that the claim of the respondent be also considered while deciding the appeal. It was also stated in the affidavit by Respondent Devi Prasad that he has also filed C.P. (IB) No.280(ALD)/2018, which is pending.
- xvi. Appeal came to be dismissed by this Tribunal vide order dated 17.03.2023 in the matter of **'JK Jute Mills Mazdoor Morcha' Vs. 'Juggilal Kamlapat Jute Mills Company Ltd.'** in **Comp. App. (AT)**

(Ins.) No.82/2017. This Tribunal held that Section 9 application was premature since the Section 9 application was filed before expiry of 10 days of the delivery of demand notice.

- xvii. Against the order dated 17.03.2023, Civil Appeal No. 3163/2023 was filed which was also dismissed by the Hon'ble Supreme Court on 17.05.2024.
- xviii. Section 9 application which was filed by R-1 came to be heard by adjudicating authority and by impugned order dated 19.01.2024, adjudicating authority admitted Section 9 application holding that operational creditor has been able to prove the debt and default. It was also held that application filed by R-1 under Section 9 is well within time. Adjudicating authority appointed the Interim Resolution Professional (IRP) and declared the moratorium.
- xix. Aggrieved by the order passed by the adjudicating authority dated 19.01.2024, this appeal has been filed.
- xx. This Tribunal on 02.04.2024 passed an interim order, directing the IRP to continue in its place, receive claims and collate the claims, however, no further steps was to be taken till the next date. In this appeal, reply has been filed by R-1. Several intervention applications have been filed by the several workmen seeking intervention in the appeal. Intervenors have also referred to the separate Section 9 application filed before the adjudicating authority which were disposed by order dated 19.01.2024 passed by the adjudicating Authority. In view of order dated 19.01.2024 passed in Section 9 application filed by Devi Prasad

respondent herein. All applications filed by Section 9 were disposed of. By this common order dated 19.02.2024, 54 Section 9 applications were disposed of. Both operational creditors to the Section 9 application were disposed of in view of admission of Section 9 application filed by Devi Prasad has filed intervention applications in these appeals. Reply has been filed by R-1. Affidavit in a common reply of the appellant have been filed in the intervention application. Resolution Professional (RP) has also filed a reply in the appeal. Affidavit in the rejoinder has been filed by the appellant.

4. We have heard learned sr. counsel, Mr. Abhijeet Sinha appearing for the appellant. Learned Senior counsel, Ms. Malvika Trivedi appearing for R-1. Learned counsel Govind Bhardwaj has appeared for IRP. We have also heard learned counsel appearing for the intervenors.

5. Learned sr. counsel Mr. Abhijit Sinha appearing for the appellant challenging the impugned order dated 19.01.2024, admitting Section 9 application submits that claim made by R-1 is not an operational debt. Counsel for the appellant has relied on the judgment of this Tribunal in the matter of **‘Kishore Kamlakar Lonkar’ Vs. ‘Hindustan Antibiotics Ltd.’** in **Comp. App. (AT) (Ins.) No.934/2021**. It is further submitted that petition filed by R-1 is hit by *res judicata*. R-1 having already pressed his claim as part of JK Jute Mazdoor Morcha in Comp. App. (AT) (Ins.) No. 82/2019, which has been dismissed by this Tribunal on 17.03.2023, application filed by R-1 was barred by *res judicata* and adjudicating Authority committed an error in admitting Section 9 application. It is submitted by the appellant that there

are pre-existing disputes between the parties, hence the application was liable to be rejected. Counsel for the appellant has referred to Suit No. 500/2017 filed in the Court of Civil Judge (Senior Division) Kanpur Nagar Uttar Pradesh and Suit No. 2506/2017 filed before Civil Judge Kanpur Nagar, Uttar Pradesh. It is submitted that both the suits are pending and suits having been filed before issuance of demand notice, there is a pre-existing dispute between the parties and the adjudicating authority erred in admitting Section 9 application. It is further submitted that intervention application is not maintainable, where claim is also barred by principle of *res judicata*. It is submitted that R-1 and other interveners have been set up by the previous management to create obstruction. It is submitted that the application filed by R-1 has to stand on its own strength and intervenors cannot give strength to the application filed by R-1. It is further submitted that corporate debtor was always desirous of making payment of gratuity amount due on R-1 and offer has also been made before the adjudicating authority by an I.A. enclosing a demand draft for an amount of ₹1,30,830/- which was erroneously taken by the adjudicating authority as admission of liability. Company petition is hit by Section 65. The RP even after interim order dated 02.02.2024 is writing to the promoters seeking records and has filed the progress report.

6. Learned counsel appearing for the R-1 Mrs Malvika Trivedi refuting the submissions of the appellant submits that payment of gratuity claim by the creditor constitute an operational debt for admission of Section 9 application. Judgment relied by the appellant in **‘Kishore Kamlakar Lonkar’ (Supra)** is distinguishable where the gratuity payment was entirely paid and issue was regarding LTC and Earned Leave Encashment. There is order passed by *Comp. App. (AT) (Ins.) No. 214 of 2024*

Labour Commissioner on 26.02.2014, awarding gratuity with 8% interest, the said claim was debt within meaning of Section 5(21) of the Code, which was sufficient to admit Section 9 application. It is submitted that there is no pre-existing dispute. Suit No. 500/2017, which has been filed by the corporate debtor seeking declaration against Union of India with the DRS or any other pleading before DRS by the company was only in order to compromise worker due and not an admission of debt. The said suit in no manner disputes the claim of gratuity which has been established by award dated 26.02.2024. It was admitted by the corporate debtor before the adjudicating authority that order dated 26.02.2024 was never challenged. Adjudicating authority has rightly held that suit only concern with DRS and operate on different field. Award by Labour Commissioner dated 26.02.2024 has become final and there are no pre-existing disputes between the parties regarding claim of gratuity amount. It is submitted that operational debt has been acknowledged and admitted by the corporate debtor. Learned counsel for the appellant has referred to the order of Delhi High Court dated 06.12.2017 where Writ Petition was disposed of with the consent of the corporate debtor, granting liberty to the workmen to invoke jurisdiction of NCLAT. The Civil Suit seeking to injunct workers was filed on 12.12.2017 and 15.12.2017, after the order of the Delhi High Court. Learned counsel for R-1 further submits that there is no question of applicability of *res judicata* since the proceeding which was initiated by the JK Jute Mazdoor Ekta Union came to be dismissed by this Tribunal on the ground that application was premature. No such issue was decided in that proceeding which may operate *res judicata* against the claim of R-1. It is submitted that the mill is closed from March 2014 and the insolvency

resolution process is the only hope of revival of the corporate debtor and getting a chance of employment by the workers. The corporate debtor has been obstructing all proceedings by workmen to deny the rightful claim of the workmen. Directors have alienated the assets of the corporate debtor and they have been held guilty of contempt by the Hon'ble Supreme Court. There are 54 company petitions which were filed under Section 9 by different workmen which were closed on 19.02.2024 in view of the order passed in the application filed by R-1. The facts clearly indicate that present is a fit case for initiation of CIRP against the corporate debtor.

7. Learned counsel for the IRP submits that after initiation of CIRP by order dated 19.01.2024 he undertook mandatory and statutory compliances, claims received till 02.02.2024, are aggregating to ₹180,23,67,779/- out of which ₹94,07,20,916/- have been filed by operational creditors.

8. Learned counsel for the intervenors also supported the impugned order and submitted that large number of Section 9 application having already been filed against the corporate debtor and on account of admission of Section 9 filed by Devi Prasad, all other applications have been disposed of. Corporate debtor is liable to make payment of rightful dues of the workmen. CIRP is liable to be continued. It is submitted that mill is closed from March 2014, and for revival of the mill, CIRP is the only hope. The promoters have been diverting the funds of the corporate debtor. Suit filed by the management are frivolous and to create a scrupulous, hypothetical and illusionary dispute.

9. We have considered the submissions of the counsel for the parties and perused the records.

10. We have noticed above that JK Jute Mill is laying closed from March 2024. The company was in BIFR from 1994 till 25.11.2016 on which date the provisions of SICA were repealed. BIFR had also passed an order directing for winding of the corporate debtor since sanctioned scheme had failed. There being stay by the Appellate Authority for Industrial and Financial Reconstruction, no steps could be taken regarding winding up, but the fact remains that corporate debtor continue to be the Sick Company till the provisions were repealed. The JK Jute Mazdoor Morcha had filed an application under Section 9 by giving a Section 8 notice on 14.03.2017 on behalf of roughly 3000 workers under Section 8 of the IBC for outstanding dues of the workers. The JK Jute Mazdoor Morcha filed Section 9 application which was dismissed by adjudicating authority on 28.04.2017, against which appeal was also dismissed by this Tribunal, and the matter was taken to the Hon'ble Supreme Court, where judgment dated 30.04.2019 was delivered by the Hon'ble Supreme Court in the matter of '**JK Jute Mills Mazdoor Morcha'** **Vs. 'Juggilal Kamlapat Jute Mills Company Ltd.'** reported in **(2019) 11 SCC 332**. Hon'ble Supreme Court held that Trade Union is also included within the definition of persons under Section 3(23) and union could also be an operational creditor. Hon'ble Supreme Court set aside the order of this Tribunal and remanded the matter to this Appellate Tribunal for hearing the appeal. In paragraph 17 of the judgment following was held:

***"17.** The Nclat, by the impugned judgment [Mazdoor Morcha v. Juggilal Kamlapat Jute Mills Co. Ltd., 2017 SCC OnLine NCLAT 257] , is not correct in refusing to go into whether the trade union would come within the definition of "person" under Section 3(23) of the Code. Equally, the Nclat is not correct in stating that a trade union would not be an operational creditor as no*

services are rendered by the trade union to the corporate debtor. What is clear is that the trade union represents its members who are workers, to whom dues may be owed by the employer, which are certainly debts owed for services rendered by each individual workman, who are collectively represented by the trade union. Equally, to state that for each workman there will be a separate cause of action, a separate claim, and a separate date of default would ignore the fact that a joint petition could be filed under Rule 6 read with Form 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, with authority from several workmen to one of them to file such petition on behalf of all. For all these reasons, we allow the appeal and set aside the judgment [Mazdoor Morcha v. Juggilal Kamlapat Jute Mills Co. Ltd., 2017 SCC OnLine NCLAT 257] of the Nclat. The matter is now remanded to the Nclat who will decide the appeal on merits expeditiously as this matter has been pending for quite some time. The appeal is allowed accordingly.”

11. It was after the remand by the Hon’ble Supreme Court, the matter was again heard by this Tribunal and it was by judgment of this Tribunal dated 17.03.2023, the appeal was dismissed. This Tribunal dismissed the appeal holding that Section 9 application by JK Jute Mazdoor Morcha was filed prematurely within 10 days of delivery of demand notice, hence the application was not maintainable. It is useful to extract the judgment of this Tribunal dismissing the appeal filed by JK Jute Mazdoor Morcha. It is useful to notice paragraph 18 of the judgment, which is as follows:

“18. Since, we have decided the aforesaid issues and found that the date of delivery was 21.03.2017 and the petition was filed on 28.03.2017, therefore, the said petition was totally premature because it is stipulated in Section 9 of the Code that the application under Section 9 could be filed only after the expiry of 10 days of the delivery of demand notice and not before the expiry of 10 days, therefore, the application filed by the Appellant, was premature and not maintainable and has rightly been dismissed by the Adjudicating Authority.”

12. Appellate Tribunal, thus dismissed the appeal filed by JK Jute Mazdoor Morcha as premature. No other issue was decided by this Tribunal against which order of Civil Appeal 3163/2023, was also dismissed by the Hon'ble Supreme Court on 17.05.2023.

13. It is also relevant to notice that in the said appeal being **Comp. App. (AT) (Ins.) No. 82 of 2017**, an affidavit was filed by Devi Prasad on which much reliance has also been placed by the appellant which shall be considered hereinafter. It was after the dismissal of the said appeal and judgment of the Hon'ble Supreme Court that Section 9 application filed by the R-1 came to be admitted on 19.01.2024. Adjudicating authority in the impugned order has framed three issues for consideration in paragraph 13, which are as follows:

"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.

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

14. The above three issues were answered by the adjudicating authority, holding that payment of gratuity is an operational debt and application cannot be dismissed on the ground of pre-existing dispute and application was well within time.

15. On the submissions made by counsel for the parties and materials on record, we need to consider and answer following questions for deciding this appeal:

- I. Whether the payment of gratuity claim by operational creditor constitute an operational debt within meaning of the IBC?
- II. Whether Section 9 application deserves rejection by the adjudicating authority on ground of pre-existing dispute on the absence of Suit No. 500/2017 (filed on 19.05.2017) and Suit No. 2506/2017 (filed on 15.12.2017)?
- III. Whether order passed in Section 9 Application filed by JK Jute Mazdoor Morcha shall operate *res judicata* against R-1, Devi Prasad, in view of the affidavit filed by Devi Prasad in said company appeal praying that claim of Devi Prasad be also considered in the said proceeding?

Now we proceed to consider the above questions.

Question No. I

16. Operational debt is defined under Section 5(21) of the IBC, which is as follows:

“5. In this Part, unless the context otherwise requires,—

(21) “**operational debt**” means a claim in respect of the provision of goods or services including employment or a debt in respect of the ⁵[payment] 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;”

17. Payment of gratuity along with interest claimed by the R-1 is on the basis of award dated 26.02.2014, which award had become final and was never questioned by the corporate debtor, which fact has been recorded by the adjudicating authority in the impugned order. In paragraph 22 of the order, following has been observed:

“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 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.”

18. The definition of operational debt also includes the claim in respect of services including employment. The workmen dues have been defined under Section 326 of the Companies Act 2013 (for short the ‘Act’). In explanation to Section 326, Clause (b) defines workmen dues which is as follows:

“326. Overriding preferential payments.–

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);

(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;

(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen’s Compensation Act, 1923 (19 of 1923), rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;

(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;

(c) “workmen’s portion”, in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen’s dues bears to the aggregate of the amount of workmen’s dues and the amount of the debts due to the secured creditors.”

19. All sums due to any workmen from the gratuity fund or any other fund for the welfare of the workmen is maintained by the company is specifically included in workman dues.

20. Learned counsel for the appellant has relied on the judgment of this Tribunal in **‘Kishore K. Lonkar’ Vs. ‘Hindustan Antibiotics Ltd.’** reported in **2022 SCC OnLine SC NCLAT 287** to submit that this Tribunal held that welfare dues do not constitute and cannot be treated to be service benefits due and payable. When we look into the above judgment of this Tribunal in the above case, the principal amount of gratuity was already paid to the employee which has been noticed in paragraph 5 of the judgment, which is as follows:

“5. Learned Sr. Counsel Mr. D. Ray Choudhuri argued that as per Section 14 of the Payment of Gratuity Act, 1972, the Gratuity disputes would be decided by the Regional Labour Commissioner. It is submitted that the Appellant had approached the Commissioner and obtained an Order for payment of Gratuity. On 17/02/2022, the principal amount of the Gratuity was already paid to the Appellant and the question of whether interest is to be paid or not, is to be decided by the Regional Labour Commissioner and that this Tribunal does not have jurisdiction to entertain such disputes.”

21. The claim which was pressed before this Tribunal was on the ground of LTC and Earned Leave and Encashment. This Tribunal held that “for seeking to initiate CIRP on the ground of LTC and EL Encashment has not been paid, which fall within the ambit of welfare benefit cannot be said to be the intent and objective of the code”. Thus, this Tribunal noticing the fact that gratuity amount was paid and question of interest could not be gone into in Section 9 proceeding has affirmed the order of the adjudicating authority rejecting Section 9 application. It is useful to notice paragraph 9 and 10 of the judgment, which is as follows:

“9. The aforementioned Section includes any ‘Claim’ in respect of the provision of Goods and Services

including 'employment'. It is not the case of the Appellant that the amounts claimed are due towards any emoluments/salary for the services rendered by him to the 'Corporate Debtor', while he was in service. Though 'service benefits' like 'LTC' accrue, on account of the service rendered during the period of employment, the scope and objective of the Code is simply not just for recovery of 'dues' but Resolution of the Companies meant for 'maximisation of the value of assets', to promote entrepreneurship, availability of credit and balance all interest of the stakeholders. 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, 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.

10. We are also conscious of the fact that the Principal Gratuity amount was paid to the Appellant on 17/02/2022 and deciding the question of interest is not within the domain of IBC. Hence, this Tribunal is of the considered view that there is no illegality or infirmity in the well-considered Order of the

Adjudicating Authority. Therefore, this Appeal fails and is accordingly dismissed. No Order as to costs.”

22. The above judgment is clearly distinguishable from the facts of the present case. We, thus are of the view that claim of gratuity with interest was fully included in operational debt and application under Section 9 was fully maintainable.

Question No. II

23. Now we come to Question No. II. The appellant has vehemently submitted that the suit having already filed by the corporate debtor being Suit No. 500/2017 and another Suit No. 2506/2017, there being pre-existing dispute and Section 9 application deserves to be rejected on this ground. Suit No. 500/2017 was filed by the corporate debtor, which was suit filed against the Union of India. The prayers in the suit are as follows:

“a. To declare that any Draft Rehabilitation Scheme filed by the Plaintiff Company and/or its present Management and/or any other person before Board for Industrial and Financial Reconstruction in case No. 149 of 1994 (on any other ancillary or incidental proceedings arising from or in connection with the said case including Appeals, Writs, Revisions, Reviews etc.) shall not be construed as an admission and/or offer against any creditor or any party including by the Plaintiff Company and/or by its present Management or by its Past Management;

b. To declare that the financial statements of the Plaintiff Company is cast on the basis of any potential and even disputed claims and the Plaintiff Company has the right to contest such claims on its merits and the financial statement or records created by the staffs and employees of the erstwhile management itself cannot be treated as an admission by the Plaintiff Company or the present Management of the Plaintiff Company;

c. To injunct any person or creditor or alleged worker from raising a claim against the Plaintiff Company

and/or its present Management based on the pleadings filed before Board for Industrial and Financial Reconstruction in case No. 149 of 1994 on any other ancillary or incidental proceedings arising from or in connection with the said case including Appeals, Writs, Revisions, Reviews etc.;

d. To injunct any person or creditor as per Annexure A or alleged worker from raising a claim against the Plaintiff company and/or its present Management based on the financial statements of the Plaintiff Company issued in the past by the erstwhile management or the Plaintiff Company;”

24. Suit No. 500/2017 was filed on May, 2017. The said suit cannot be said to be raising any dispute regarding the claim of the workmen. The prayer was with regard to compromise proposal by the corporate debtor, which was claimed that should not be treated any admission of the claim against the company or management. The said suit cannot constitute any pre-existing dispute with regard to claim of the workmen. The next suit which has been relied by the appellant is Suit No. 2506/2017. The date of filing of the said suit is relevant which is 15.12.2017, why the said date is relevant is noticed hereinafter.

25. We have noticed above that the JK Jute Mazdoor Morcha has filed the Writ Petition in the Delhi High Court being Writ Petition 440/2017, which Writ Petition was filed by JK Jute Mazdoor Morcha after their application under Section 9, was rejected on 28.03.2017. In the said Writ Petition, Delhi High Court directed by interim order 26.05.2017 to preserve an amount of ₹2.5 crore by the company to take over the dues of the workmen. The Writ Petition came to be finally decided on 06.12.2017, where learned counsel for the company (corporate debtor) has submitted and both the counsels have agreed that workmen of JK Jute Mill could be operational creditor and they

are entitled to invoke jurisdiction of NCLT under Sections 6, 8 & 9. It is useful to notice paragraphs 3 & 7 of the judgment which is as follows:

“3. Learned counsels agree that the workmen of M/s J.K. Jute Mills Company Limited/Respondent No. 3 would be 'operational creditors' as defined in Section 5 (20) of the Code. It is also agreed that they are entitled to invoke the jurisdiction of the NCLT under Sections 6, 8 and 9 of the Code.

7. In view of our above observations and the consensus on the ambit and power of the NCLT under the Code, learned Senior counsel for the petitioner submits that the workmen would invoke the jurisdiction of the NCLT under Sections 6, 8 and 9 of the Code and would move applications under Sections 47 and 49 of the Code for appropriate relief and directions before the NCLT. It is obvious that the application so filed would be dealt with in accordance with the provisions of the Code.”

26. Thus on 06.12.2017, the counsel for the company (corporate debtor) categorically submitted before the Delhi High Court that workmen can invoke their jurisdiction under Sections 8 & 9 and the Suit No. 2506/2017 was filed on 15.12.2017 immediately thereafter, when the High Court has permitted with the consent of the company/corporate debtor to initiate proceeding under Sections 8 & 9. The filing of suit on 15.12.2017 cannot be said to be *bona fide* nor that can be treated to be pre-existing dispute with regard to the claim of workmen. It is useful to notice the prayers made in the Suit No. 2506/2017. In suit number 2506/2017, following reliefs were prayed for:

“a. Injunct; the Retired 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 Lac;

e. Pass such other or further orders as this Hon'ble Court deem fit and proper in the facts and circumstances of the case and in the interest of justice."

27. Along with the suit, a list of retired workmen was annexed in which the R-1 Devi Prasad was also mentioned as serial number 425. When the company before the Delhi High Court agreed that workers can file their claim under Sections 8 & 9 and 06.12.2017, on which stand the Writ Petition was disposed of, filing of suit of 15.12.2017, restraining the workmen regarding their dues is *mala fide* on part of the company/corporate debtor and cannot be termed to be raising a dispute regarding the claim. There is one more reason due to which the plea of pre-existing dispute raised by the appellant has to be rejected.

28. We have noticed that JK Jute Mazdoor Ekta Union has filed Section 9 application after giving a notice under Section 8, which application was for claiming outstanding dues of 3000 workers. Notice under Section 8 before filing the Section 9 application by JK Jute Mazdoor Ekta Union was given on 14.03.2017, which has been noticed by the Hon'ble Supreme Court in its judgment of JK Jute Mazdoor Morcha. It is useful to notice paragraph 2 of the judgment, which is as follows:

"2. On 14-3-2017, the appellant issued a demand notice on behalf of roughly 3000 workers under Section 8 of the Code for outstanding dues of workers. This was replied to by Respondent 1 on 31-3-2017. The National Company Law Tribunal ("NCLT"), on 28-4-2017 [Mazdoor Morcha v. Juggilal Kamlapat Jute Mills Co. Ltd., 2017 SCC OnLine NCLT 1317] , after describing all the antecedent facts including suits that have been filed by Respondent 1 and referring to pending writ petitions in the High Court of Delhi,

ultimately held that a trade union not being covered as an operational creditor, the petition would have to be dismissed. By the impugned order dated 12-9-2017 [Mazdoor Morcha v. Juggilal Kamlapat Jute Mills Co. Ltd., 2017 SCC OnLine NCLAT 257] , the National Company Law Appellate Tribunal (“Nclat”) did likewise and dismissed the appeal filed by the appellant before us, stating that each worker may file an individual application before NCLT.”

29. The notice under Section 8 regarding claims of all 3000 workmen was given on 14.03.2017 on basis of which the Section 9 application was filed by workmen on 20.03.2017, which came to be dismissed on 28.04.2017 by the NCLT. Even Suit No. 500/2017 was filed much after the said date, i.e., on 19.05.2017. Notice on behalf of the claim of workmen on behalf of the by JK Jute Mazdoor Morcha was given much before filing of the Suit Nos. 500/2017 and 2506/2017. The plea of the appellant that there was pre-existing dispute with respect to claim of the workmen deserves to be rejected. The plea raised is wholly frivolous and moonshine defense.

Question No. III

30. The submission which has been made by the appellant is that the application under Section 9 filed by the JK Jute Mazdoor Morcha having been dismissed in which R-1 has also filed an affidavit stating that his claim also be considered in Comp. App. (AT) (Ins.) No.82/2017 by the dismissal of Section 9 application, appeal as well as appeal by Hon’ble Supreme Court, the claim of R-1 is barred by principle of *res judicata*. We may notice the affidavit which was filed by Devi Prasad, copy of which has been filed by Annexure A – 7 to the appeal. In the affidavit which was filed by Devi Prasad in Comp. App. (AT) (Ins.) No.82/2017, all facts and claims regarding R-1 has been stated in the affidavit and in paragraph 13 of the affidavit, following was pleaded:

Comp. App. (AT) (Ins.) No. 214 of 2024

*“13. I say that while adjudicating the instant appeal, this Hon’ble Appellate Tribunal may consider the claim of the deponent herein against the Corporate Debtor. I say that the deponent in view of the undisputed claim has already filed Insolvency petition before NCLT, Allahabad bearing C.P. (IB)/280/ALD/2018. Copy of the demand notice and Insolvency Petition (Form-5) are annexed herewith and marked as **ANNEXURE- E.**”*

31. What was stated by R-1 that his claim may also be adjudicated in the appeal and he authorises JK Jute Mazdoor Morcha to represent his case. We have noticed the judgment of this Tribunal in JK Jute Mazdoor Morcha. Judgment of this Tribunal dated 17.03.2023, where this Tribunal dismissed the appeal filed by JK Jute Mazdoor Morcha holding that application filed under Section 9 by JK Jute Mazdoor Morcha was premature since it was filed within 10 days from delivery of demand notice. Date of delivery was held on 21.03.2017 and petition was filed on 28.03.2017, hence it was held as premature. The order passed by the adjudicating authority rejecting Section 9 application by JK Jute Mazdoor Morcha shall be merged with order dated 17.03.2023 of this Tribunal, where the only finding returned was that the application was premature. The said order was also affirmed by the Hon’ble Supreme Court on 17.05.2023. In the appeal, no such issue was decided on basis of which the appellant can contend that claim of R-1 is barred by *res judicata*. We, thus reject the submission of the appellant that claim of the R-1 was barred by *res judicata*.

32. The facts have been noticed above that JK Jute Mills is closed from March 2014. The company was under the SICA from 1994 to 25.11.2015. The claims which have been filed in the CIRP of the corporate debtor as has

been submitted by IRP in its reply is about ₹180 crore and claim of about ₹94 crore is those of operational creditors only.

33. In view of the facts of the present case, the resolution of the corporate debtor is imminent and we fully endorse the view of the adjudicating authority admitting Section 9 application. In view of the forgoing discussions, we do not find any merit in any of the submissions of the appellant.

34. The Appeal is dismissed. Interim order stands vacated. While dismissing the appeal, we exclude the period from 02.02.2024, till date of passing of this order from the CIRP of the corporate debtor.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

30th April, 2025

himanshu