S.No.3

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
23-12-2022 AT **01:30 PM** THROUGH VIDEO CONFERENCE

IA (IBC) 607/2022 in CP(IB) No.369/10/HDB/2019
u/s. 10 of IBC, 2016.

IN THE MATTER OF:
Priyadarsini Ltd **…Petitioner**

C O R A M:-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SHRI. AJAY DAS MEHROTRA, HON'BLE MEMBER (TECHNICAL)

O R D E R

Order in IA No.607/2022 in CP IB No.369/10/HDB/2019 pronounced, recorded vide separate sheets.

In the result, the Application is allowed and disposed of.

SD
MEMBER (T)

SD
MEMBER (J)

Pavani

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

IA (IBC)/607/2022
In CP (IB) No. 369/10/HDB/2019

IN THE MATTER OF PRIYADARSINI LIMITED

Between:

Vemula Amarchand,
S/o V. Hanumantha Rao
H. No.4-8-105, PSML Colony
Sadasivpet, Medak District,
Telangana, 502291 **… Applicant**

And

Krishna Mohan Gollamudi
Resolution Professional for Priyadarsini Limited,
FF 26, Raghava Ratna Towers,
Chirag Ali Lane, Abids,
Hyderabad - 500 001

… Respondent/Liquidator

Date of Order: 23.12.2022

CORAM:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri. Ajai Das Mehrotra, Hon'ble Member (Technical)

PARTIES/COUNSELS PRESENT:

For the Applicants: G. Sai Prasen, Advocate
For the Respondent/Liquidator: Shabbeer Ahmed, Advocate

PER BENCH

1. This Application is filed by some of the workmen/employees through their authorized representative Vemula Amarchand (*Hereinafter referred as Applicant*) under Section 42 of the Insolvency and Bankruptcy Code, 2016 (*Hereinafter referred as IBC*) read with Rule 11 of NCLT Rules, 2016 seeking direction to the Liquidator (*Hereinafter referred as Respondent*) to accept the complete claim made by the Applicants and to release the salaries.

2. **The contentions put forth by the Applicants in its Application are:**

2.1. It is submitted that the most of the workmen of M/s Priyadarshini Spinning Mills have been working in the said establishment since 1980s and 1990s in various capacities including daily wage workers, salaried employees, technicians, supervisors, etc.

2.2. It is submitted that the M/s Priyadarshini Spinning Mills was incorporated on 14.05.1981 in the erstwhile state of Andhra Pradesh (now Telangana) with an authorized capital of Rs. 35,00,00,000. It is further submitted that the name of M/s Priyadarshini Spinning Mills was changed twice on 16.03.2021 to 'PSM Spinning Limited' and further on 16.10.2012 to 'Priyadarshini Limited' (*Hereinafter referred as Corporate Debtor*)

2.3. It is submitted that the Corporate Debtor was a manufacturer of Polyester/Viscose yarn and also engaged in dyeing of cotton yarn and set up its first manufacturing facility in Sadasivpet to manufacture polyester/viscose yarn with 8000 spindles and gradually expanded the capacity to 50,000 spindles. During 2007-2008, the Corporate Debtor set up another unit for manufacture of garments in Pashamylaram, at the outskirts of Hyderabad with a capacity to manufacture 10,000 shirts per

month. The Corporate Debtor has also set up a Yarn Dyeing facility in Sadasivpet with capacity of 10 TPD.

2.4. It is submitted that the Corporate Debtor had to sell the spinning facility at Ongole and the garment manufacturing facility at Pashamylaram in 2011 and 2012 respectively because of the proliferating debt by virtue of expansions undertaken by the Corporate Debtor. Consequently, the accounts for Corporate Debtor were classified as Non-Performing Assets by its bankers during the year 2012. Thereafter the Corporate Debtor managed to keep the business as a going concern till 01.07.2017 after which the Corporate Debtor suspended its operations.

2.5. It is submitted that after 01.07.2017, the Corporate Debtor has not allowed the workmen to enter the premises of the Corporate Debtor and has also stopped paying all kinds of emoluments to the workmen. It is pertinent to note that although cessation of work has taken place, the Corporate Debtor has not terminated or retrenched the services of the workmen.

2.6. It is further submitted that legally the workmen are said to be engaged by the Corporate Debtor until any specific termination took place and at the same time the workmen were always available for work even after 01.07.2017.

2.7. It is submitted that in year 2019 the Corporate Debtor filed an application under section 10 of the IBC before this Adjudicating Authority in CP (IB) No. 369/10/HDB/2019 wherein, this Adjudicating Authority admitted the Corporate Debtor into Corporate Insolvency Resolution Process (*Hereinafter referred as CIRP)* on 03.09.2019 and appointed Shri J. Manivannan as Interim Resolution Professional (*Hereinafter referred as IRP*).

2.8. It is submitted on 07.09.2019, the IRP in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, had issued a Public Announcement, calling the creditors to submit their proof of claims on or before 20.09.2019.

2.9. It is submitted that all the workmen submitted their claims including salary arrears, gratuity, earned leave with interest in Form 'D' before the IRP on 20.11.2019. The IRP had declined to admit the claims of the workmen considering the delay to file their claims. Aggrieved by the same, the workmen approached this Adjudicating Authority by filling IA No. 934 of 2020 in CP (IB) No. 369/10/HDB/2019, wherein this Adjudicating Authority had condoned the delay and directed the IRP to verify the claims of the workmen on 07.12.2020. Later, this Adjudicating Authority in CP (IB) No.369/10/HDB/2019 on 12.12.2019, had appointed Mr. Krishna Mohan Gollamudi as Resolution Professional (*Hereinafter referred as RP*)

2.10. It is submitted that the total claims of the workmen amount to Rs. 7,73,84,254 which encompasses their salary arrears, retrenchment compensation, gratuity and earned leaves. As such, every claim made by the workmen is a statutory due under umpteen provisions of Labour Laws and the Corporate Debtor is legally obligated to meet those claims. The said dues of workmen are also covered under Section 326 of the Companies Act, 2013. Despite that, the RP, unfathomably, rejected over 85% of the claims made by the workmen amounting to Rs. 6,77,29,461 sans any justification and admitted a paltry amount of Rs. 96,54,793.

2.11. It is submitted that the RP under Section 33 (2) and 34 (1) of IBC, has filed an application before this Adjudicating Authority seeking Liquidation of the Corporate Debtor by filing IA No. 1043 of 2020 in CP

(IB) No. 369/10/HBD/2019. This Adjudicating Authority has permitted the said request to Liquidate the Corporate Debtor and has appointed the RP Krishna Mohan Gollamudi as the Liquidator (*Hereinafter referred as Respondent*) on 26.04.2021. Further this Adjudicating Authority has lifted the moratorium under Section 14 of the IBC. But at the same time, this Adjudicating Authority has also directed that no suit or any other legal proceedings shall be initiated against the Corporate Debtor during the pendency of the Liquidation.

2.12. It is submitted that the Respondent under Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 made a public announcement on 30.04.2021, calling up the stakeholders to submit their claims or to update their claim submitted during the CIRP on or before 20.05.2021. The workmen duly submitted their claims before the Respondent within the stipulated time on 20.05.2021.

2.13. It is submitted that allegedly on 26.06.2021, the Respondent published the report regarding the acceptance/rejection of the claims made by various stakeholders, on the official website of the Corporate Debtor. In the said report, the Respondent has rejected most of the Bonafide claims made by the workmen. The workmen have claimed a total sum of Rs. 16,01,05,887. But the Respondent has only admitted a minuscule part of such claim, that is, Rs. 2,56,83,528. It is further submitted that the claims of the workmen are statutory dues that the Corporate Debtor is liable to pay under various Labour laws, which the Respondent has omitted to heed. It is further submitted that the actions of the Respondent in rejecting the majority of the Bonafide claims made by the workmen is irrational and illegal.

2.14. It is submitted that the Applicant is aware that there exist remedies as per the various Labour Acts for the payment of all dues such as retrenchment

compensation, gratuity, etc. But in view of the provisions of IBC the Applicant is constrained to approach this Adjudicating Authority for appropriate remedy.

2.15. It is submitted that the workmen were barred from performing the duties and entering the premises of the Corporate Debtor while also denied their monthly wages along with all increments from July, 2017, including salaries and other emoluments liable for payment to the workmen.

2.16. It is submitted that the Payment of Gratuity Act, 1972, The Industrial Dispute Act 1947 and other Labour Laws aim to protect the workmen from arbitrary and capricious actions of the employers. Therefore, the employer cannot, in any circumstances, whimsically jettison the workmen. The said abovementioned enactments prescribe a due procedure and impose a statutory obligation on the employer to formally terminate the workmen by settling their salary arrears, paying the gratuity and other sums payable.

2.17. It is submitted that the workmen claimed Gratuity as per the provisions of the Payment of Gratuity Act, 1972 (*Hereinafter referred as PG Act*). As such, PG Act mandates the employer to maintain a gratuity fund and to pay the requisite gratuity to a workman on termination of their services. It is further submitted that Section 4 of the PG Act stipulates that gratuity shall be payable to an employee who has rendered a continuous service of not less than 05 years. Further, Section 2A of the PG Act declares that cessation of work for no fault of an employee amounts to continuous service. Accordingly, 01.07.2017 cannot be treated as termination of services. Instead, this Adjudicating Authority in order dated 26.04.2021 in IA No. 1043/2020 and IA No. 513, 625, 731 in CP(IB) No. 369/10/HBD/2019 held that the said order shall be regarded as a deemed notice of discharge to the Applicants. Hence, the claim of the workmen in

respect of gratuity is a statutory right that they shall receive upon termination of services that is 26.04.2021. At this juncture, it is also important to note that the payment of gratuity does not fall under the ambit of the Liquidation Estate as per Section 36(4) of the IBC. Therefore, it becomes a sum to be paid with utmost priority dehors of the waterfall mechanism under Section 53 of the IBC.

2.18. It is submitted that the workmen are claiming for their arrears in salary. Albeit the Corporate Debtor did not provide any work since July 2017, the Corporate Debtor was still existing until this Adjudicating Authority ordered to liquidate the Corporate Debtor that is on 26.04.2021. The said order is also a deemed notice of discharge to all the workmen. The workmen not working since July 2017 is no good reason for non-payment of salary and is untenable in the eyes of law, especially when the employer is unable to provide for work. Section 25B of the Industrial Disputes Act, 1947 (*Hereinafter referred as ID Act*) indicates that cessation of work which is not due to any fault on part of the workmen shall be said to be continuous service. Therefore, the workmen were in continuous service until 26.04.2021 and are legally claiming their salary arrears which the Corporate Debtor is statutorily obligated for payment. Hence, the Respondent cannot negate the same. The workmen have also claimed Earned Leave accruable to them at the rate of 100 days of daily wage in every calendar year had they been on the rolls of the Corporate Debtor. They have also claimed interest for the delayed release of payments from the date of cessation of their services.

2.19. It is submitted that even assuming that the suspension of work in 2017 would amount to termination of services of the workmen by the Corporate Debtor, the said termination would tantamount to retrenchment under the provisions of Section 2(O) (O) of the ID Act, Section 25F of the ID Act

provides for the procedure that an employer shall comply in case of retrenchment. The employer shall give one-month notice in writing indicating the reasons for retrenchment and the period of notice of expiry. It is submitted the workmen shall be paid in lieu of such notice for the period of notice. The said procedure has not been followed, making the Corporate Debtor liable for payment of retrenchment compensation along with the interest claimed. Therefore, the Respondent should consider the same.

2.20. It is submitted that as such, the workmen are only claiming the rightful dues and accruable claims within the meaning of 'workmen dues' under Section 326 of Companies Act, 2013 and are not seeking anything above beyond what is legally permissible.

2.21. It is submitted that the actions of the Respondent in rejecting most of the claims made by the Applicants is exfacie, illegal, arbitrary and bereft of any reasoning and therefore be set aside by this Adjudicating Authority

2.22. Hence this present application is filed challenging the actions of the Respondent in admitting only a minuscule share of the claims made by the Applicants without any justification or reasonings.

3. **The Contentions as put forth by the Respondent in its Counter are:**

3.1. It is submitted that the present Application has been filed on 31.05.2022 after a delay of 339 days from the date of the part rejection of the claim by the Respondent. It is further submitted that neither is there any reason forthcoming from the Applicant to justify the delay nor has the Applicant preferred any IA seeking for condonation of delay, which shows that the Applicant has approached this Adjudicating Authority after an abnormal delay and slumbered over its purported rights only to defeat the Liquidation process.

3.2. It is submitted that the Respondent has uploaded the report of the acceptance/rejection of the claims of the Creditors on the website of the Corporate Debtor on 26.06.2021. It is further submitted as against the rejection of claim, Section 42 of the IBC provides for a time period of 14 days upon receipt of such decision to the Creditor to file an Appeal to the Adjudicating Authority against the said decision of the Respondent.

3.3. It is submitted that the present Application has been filed challenging the action of the Respondent in partly disallowing the claim of the Applicant who is representing 93 other workmen. The Applicant made a claim of Rs. 16,01,05,887/- and an amount of Rs. 2,56,83,528/- was admitted and the balance amount of Rs. 13,44,22,358/- was not admitted for several reasons which is impugned in this present Application.

3.4. It is submitted that the Corporate Debtor was incorporated in the year 1981 and was involved in the business of manufacturing Polyester, Viscose Blended Yarn, and Dyeing of Cotton Yarn. The Corporate Debtor had its manufacturing facility at Sadasivpet, Sangareddy District, Telangana (*Hereinafter referred as Factory*) with an annual installed capacity of 50,000 spindles. It is submitted that the workmen represented through the Applicant were working at the Corporate Debtor's factory over several years. It is submitted that since the Corporate Debtor's financial condition severely deteriorated, the erstwhile management of the Corporate Debtor declared that the factory will not run with effect from 01.08.2017. This resulted in a representation dated 31.07.2017 submitted by the Corporate Debtor’s Employees Union to the Joint Commissioner of Labour, Ranga Reddy Zone, Hyderabad for taking necessary action under the ID Act.

3.5. It is submitted that thereafter joint meetings were conducted to discuss the issue of closure of the Corporate Debtor's factory. During the meetings,

the Corporate Debtor submitted that the unit suffered a closure due to reasons beyond the control of the management and the productivity of the unit came down drastically due to heavy unauthorized absenteeism and also the fact that the electricity connection to the unit was disconnected by the Electricity Department for non-payment of FSA charges.

3.6. It is submitted that Conciliation meetings were held in the years 2017 and 2018 before the Conciliation Officer. At the joint meeting dated 11.01.2018 held between the management of the Corporate Debtor and the Corporate Debtor's Employees Union (Registration No. A-809) the management of the Corporate Debtor and the recognized union came to an understanding that they would agree to discuss the issues together and settle the matter. The Applicant was present at the said meeting and also signed the minutes of the meeting dated 11.01.2018. The minutes of the meeting dated 11.01.2018 were forwarded by the Deputy Commissioner of Labour, Sangareddy to the Joint Commissioner of Labour, Rangareddy zone on 24.05.2018. Copies of the minutes of the joint meeting dated 11.01.2018 along with the letter dated 24.05.2018 is enclosed with the Counter as Annexure-1.

3.7. It is submitted that thereafter on 13.03.2018, the Corporate Debtor issued a letter to the Deputy Commissioner of Labour stating that after the last meeting held in the Deputy Commissioner of Labour's office, the Corporate Debtor has settled the dues of more than 150 workers as per the understanding arrived between the Corporate Debtor and the Corporate Debtor's Employees Union and that it will not be possible for the Corporate Debtor's management to enhance the settlement amount anymore. A copy of the letter dated 13.03.2018 issued by the Corporate Debtor to the Deputy Commissioner of Labour is enclosed with the Counter as Annexure-2.

3.8. It is submitted that as part of the understanding arrived it was agreed between the management of the Corporate Debtor and the Corporate Debtor's Employees Union will only pay the terminal benefits of the workmen towards Gratuity, Earned Leave, Bonus, Lay Off and Ex-Gratia amount (*Hereinafter referred as settlement package*). Pursuant thereto, the Corporate Debtor has in total paid the terminal benefits of around 400 workmen as per the agreed settlement package. However, some of the workmen never came forward to receive the terminal payments and some of the workmen did not agree to the amounts under the settlement package.

3.9. It is submitted that in its claim dated 27.05.2021, the Applicant has claimed arrears of salary from Aug 2017 till the date of order of Liquidation and has also claimed other terminal benefits in the form of Gratuity, Retrenchment Compensation and Earned Leave. The arrears of salary were rejected by the Respondent on account of the fact that as per the settlement package, the services of the workmen were terminated w.e.f. 31.07.2017 i.e., the date of the closure of the factory and only terminal benefits were to be paid to the workers. A sample of the full and final settlement account of the one of the workers - Mr. A. Baswaraju (not forming part of the Applicants) is enclosed with the Counter as Annexure-3.

3.10. It is submitted that the Applicant cannot claim such salary arrears, in deviation of the understanding reached under the settlement package. Moreover, no operations were being carried out at the Corporate Debtor's factory and the Applicant was never engaged for any services whatsoever since the date of the closure of the factory in July 2017. In these circumstances, the claim of the Applicant towards salary arrears is unjustified and untenable. Furthermore, it has also come to the knowledge

of the Respondent that some of the workers who were amongst the workers who authorized the Applicant to represent them, have taken up alternative employment with other organizations, and the same workmen have submitted claims only to gain undue benefits from the Corporate Debtor which went into CIRP/Liquidation, which is unfair.

3.11. It is submitted that upon verification of the above and the data available, the Respondent has partly admitted the claims made by the Applicant in the following manner:

A. Gratuity: The gratuity amounts which were admitted, were arrived at, after considering the basic pay of the workmen/employees.
(Basic pay x Years of Service x 15/26)

B. Retrenchment Compensation: The retrenchment compensation amounts which were admitted, were calculated in line with the retrenchment compensation envisaged under Section 25-F (b) of the ID Act which stipulates that a workman can be retrenched only if the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service.

C. Earned Leave: The amounts towards Earned Leave were admitted on the basis of EL balance and the last drawn salary of each workman respectively. (Single Day’s Wage x EL days')

D. Interest: No basis was provided by the Applicant qua the interest amounts. On a best assessment judgment, the Respondent has provided for 8.5% compound interest for all the

workmen/employees who are represented through the Applicant uniformly.

E. Further, to bring parity between the claims of the Applicant and such workmen/employee who were paid amounts under the settlement package, the Respondent also included amounts towards Bonus (2016-18), Lay Off and Ex-Gratia which were not claimed by the Applicant but were accorded to such workmen/employees under the settlement package. A detailed statement of the amounts admitted qua each of the workmen is enclosed with the Counter as Annexure-4. A full and final settlement statement of the workmen/employees represented through the Applicant which is prepared by the erstwhile management is enclosed with the Counter as Annexure-5.

3.12. It is submitted that the part rejection of the claim by the Respondent in the present case cannot be found fault with since the Respondent has scrutinized the material available on record and has arrived at his decision upon consideration of all material facts and relevant rules and regulations.

3.13. It is submitted that in the present case the CIRP of the Corporate Debtor commenced on 03.09.2019. Thereafter, an order of Liquidation was passed by this Adjudicating Authority on 26.04.2021. It is an admitted fact that after 01.07.2017 there was a closure of the factory. It is submitted that this was occasioned on account of the fact that the Corporate Debtor was faced with heavy financial losses apart from also facing disconnection of power supply due to non-payment of FSA charges to the Electricity Department. It is further submitted that even during the CIRP and Liquidation of the Corporate Debtor no operations were taking place

at the factory and no workmen were working at the Corporate Debtor's factory.

3.14. It is submitted that the workmen are not entitled to claim any wages/salaries for the period, prior to commencement of CIRP, during CIRP or Liquidation, as claimed by them, since during the above period

a) the Applicant and other workmen were never engaged in active duty at the factory

b) the Corporate Debtor was never a going concern during the entire CIRP or Liquidation period and

c) the Corporate Debtor's operations at the factory came to a standstill on 31.07.2017 itself which is an admitted fact.

3.15. It is submitted that the Hon'ble Supreme Court of India in **Sunil Kumar Jain and Ors v. Sundaresh Bhatt and Ors**[1], had an occasion to consider the fate of wages/salaries of workmen/employees during the CIRP period. The Hon'ble Supreme Court upon perusing the statutory scheme of the IBC, held as follows:

"9....Therefore, while considering the claims of the workmen/employees towards the wages/salaries payable during CIRP, first of all it has to be established and proved that during CIRP, the corporate debtor was a going concern and that the concerned workmen/employees actually worked while the corporate debtor was a going concern during the CIRP. The wages and salaries of all other workmen/employees of the Corporate Debtor during the CIRP who actually have not worked and/or performed their duties when the Corporate Debtor was a going concern, shall not be included automatically in the CIRP costs. Only with respect to those workmen/employees who actually worked during CIRP when the Corporate Debtor was a going concern, their wages/salaries are to be included in the CIRP costs and they shall have the first priority over all other dues as per Section 53(1)(a) of the IB Code. Any other dues

[1] Civil Appeal No. 5910 of 2019

towards wages and salaries of the employees/workmen of the corporate debtor shall have to be governed by Section 53(1)(b) and Section 53(1) (c) of the IB Code. Any other interpretation would lead to absurd consequences and violate the scheme of Section 53 r/w Section 5(13) of the IB Code. If any other interpretation, more particularly, the interpretation canvassed on behalf of the appellants is accepted, in that case, the wages/salaries of those workmen/employees who had not worked at all during CIRP shall have to be treated and/or included in the CIRP costs, which cannot be the intention of the legislature.

10. On a fair reading of Section 5(13) of the IB code which defines "insolvency resolution process costs", it is observed and held that the dues towards the wages/salaries of only those workmen/employees who actually worked during the CIRP are to be included in the CIRP costs. The rests of the claims towards the wages/salaries of the workmen/employees, as observed hereinabove, shall be governed by Sections 53(l)(b) & (c) of the IB Code.

11. In the present case, the RP/Liquidator has seriously disputed that during the CIRP, the Corporate Debtor was a going concern. It is seriously disputed that the respective appellants -workmen/employees employed at Dahej Yard and Mumbai Head Office actually worked during the CIRP. It is true that while submitting the claims towards CIRP costs, the RP has not submitted the claims towards the wages/salaries of the appellants, however, still the claims submitted/to be submitted by the appellants will have to be adjudicated upon and considered by the Liquidator and the Liquidator has to adjudicate and consider, (i) whether the Corporate Debtor was a going concern during the CIRP; (ii) how many workmen/employees actually worked during the CIRP while the Corporate Debtor was a going concern.

If on adjudication of the claims made by the respective workmen/employees, if it is established and proved that during CIRP, the Corporate Debtor was a going concern and the concerned workmen/employees actually worked during the CIRP when the Corporate Debtor was a going concern, the wages and salaries of such workmen/employees to be included in the CIRP costs as defined under Section 5(13) of the IB Code and they will have to be paid such wages/salaries as per Section 53(1)(a) of the IB Code as part of the CIRP costs in full before making any payment as per priorities mentioned in Section 53(1) of the IB code."

3.16. It is submitted that in the present case, admittedly, the workmen were never deployed for work during the CIRP/Liquidation period at the factory and moreover, the Corporate Debtor too was never continuing as a going concern during the CIRP/Liquidation process. In such circumstances and upon consideration of the unequivocal position of law laid down by the Hon'ble Supreme Court of India in the above decision, the contention of the Applicant that the workmen are entitled to be paid their dues till 26.04.2021 (the date of liquidation order) is wholly untenable, and the decision of the Respondent to reject such claim cannot be found fault with. It is not out of place to also submit that in so far as the CIRP/Liquidation period is concerned, the provisions of the IBC will expressly override the provisions of the ID Act which are sought to be relied upon by the Applicants.

3.17. Hence the Respondent for the reasons stated above further prayed that this Adjudicating Authority may be pleased to dismiss the present Application with exemplary costs and pass such other order/orders as this Adjudicating Authority deems fit in the interests of justice.

4. **The Contention as put forth by the Applicants in its Rejoinder are:**

4.1. It is submitted that the Applicants filed an Interlocutory Application in IA 377/2022 in CP (IB) 369/HDD/2019 before this Adjudicating Authority praying for condonation of delay. The reasons for the delay are neither wanton nor illegal but for reasons beyond the control of the Applicant. Further, the reasons for partly disallowing the Claim of the workmen, as stipulated in Section 42 of the IBC, were never communicated by the Respondent. The Applicant being uneducated workmen of the Corporate Debtor were made aware of a proforma Tabular Sheet on the admission or dismissal of the individual claims on the website of the Corporate

Debtor. Further, in spite of the fact that the Applicant being part of the Facilitation Committee, the partly disallowed claim was never communicated to the Applicant and the essential condition of "Receipt" of rejection of claim as per Section 42 was never fulfilled by the Respondent. As such, in the absence of any reasoned proceedings being communicated to the Applicant, as stipulated under Section 42 of the IBC, the contention of the Respondent is liable to be disregarded.

4.2. It is submitted that the Corporate Debtor closed down its operations of manufacturing in the month of July 2017. Subsequently a joint meeting was held between the erstwhile management and the Corporate Debtor's Employees Union on 11.01.2018 with respect to the payments of workmen dues. In the said meeting, the union has raised the following demands:

a. For gratuity calculation service to be taken from day one entered into service.
b. If any one does not put in 40 days of working days in a year, even that period also to be taken in service for calculation of gratuity.
c. Salaries/wages from 01.08.2017 onwards shall be paid.
d. Compensation to be paid either foreclosure or retrenchment.

4.3. It is submitted that the management did not agree to the demands made by the Corporate Debtor's Employees Union and instead started to blame the workmen for closure of the Corporate Debtor. Therefore, the said meetings became nugatory as there was no consensus made out between the erstwhile management and the Corporate Debtor's Employees Union. Thereafter, the erstwhile management addressed a letter to the Deputy Commissioner of Labour, Sangareddy on 13.01.2018 stating that they

have made a settlement with more than 150 workmen. Further it was stated that the erstwhile management will not enhance the settlement amount with respect to other workmen. The Deputy Commissioner of Labour, Sangareddy forwarded the same to the Joint Commissioner of Labour, Rangareddy Circle vide letter dated 24.05.2018.

4.4. It is submitted that the Respondent in the reply to the present Application stated that the erstwhile management made settlement packages with the workmen that include terminal benefits including gratuity, and leave, bonus, layoff and ex-gratia amounts. Further, it was stated that the said settlement package was paid to around 400 workers and that it was only the workmen represented through the Applicant who declined to settle with the erstwhile management by not accepting the settlement package provided. In this regard, it is was further submitted that the erstwhile management only offered a minuscule share of the total dues that the workmen/applicants are rightfully entitled as per the Labour laws. Evidently, the said settlement package was made only by taking advantage of the impecunious position of the workmen with undue Influence. Just because some of the workmen agreed to take such minuscule sums vide settlement packages, the erstwhile management or the Respondent cannot force the Applicant herein to forgo their rightful claims. More so, when the said settlement package is not a settlement in terms of section 2(p) of the ID Act. Therefore, the settlement package offered by the erstwhile management, which is de hors the statutory provisions of the ID Act, offering only a pittance is not binding on the workmen represented through the Applicant and the same cannot come in their way to seek the rightful dues that they are entitled.

4.5. It is submitted that section 2A of the PG Act states that an employee shall be said to be in continuous service for a period if he has, for that period,

been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duties without leave, layoff, strike or a lockout or cessation of work not due to any fault of the employee. Therefore, the Respondent has committed a grave error in not counting the period from 01.07.2017 to 26.04.2021 for the purpose of gratuity as well.

4.6. It is submitted that the Respondent erroneously calculated the salaries, retrenchment and other benefits of the workmen represented through the Applicant. The Respondent ought to have calculated the above-mentioned benefits of such workmen represented through the Applicant by duly taking the date of order of Liquidation that is 26.04.2021 into account instead of 01.07.2017 as the last date of service. Thereby, the wages, gratuity of such workmen represented would have significantly increased in the said period from 01.07.2017 to 26.04.2021 and the interest component would also have augmented.

4.7. It is submitted that the Respondent fallaciously calculated the average pay for the purpose of retrenchment by taking the average pay of such workmen represented through Applicant as on 01.07.2017 whereas he ought to have taken the individual pay of the workmen as on 26.04.2021 since the retrenchment occurred by virtue of orders passed by this Adjudicating Authority vide orders dated 26.04.2021 and by the said period, the average pay of the workmen would have significantly increased. It is also pertinent to mention herein that the PG Act thrusts a responsibility upon the Employer to pay interest over delayed payment of gratuity and such workmen are liable to receive the same.

4.8. It is submitted that section 25-B of ID Act states that a workman shall be said to be in continuous service, for a period if he is, for that period, in uninterrupted service, including service, which may be interrupted on

account of sickness or authorised leave or an accident or a strike which is not legal, or a lockout or a cessation of work which is not due to any fault on the part of the workmen. Although the Corporate Debtor closed down its operations in July 2017, the erstwhile management did not take any steps to terminate the services of the workmen in terms of provisions of the ID Act. Mere cessation of work by the employer itself does not, by itself, amount to termination of employment unless the employer makes the requisite compliances within the mandate/procedures contemplated under provisions of ID Act. Admittedly, there was no 'one month prior notice' for retrenchment or lockout or closure of the establishment at the time the work was suspended in the month of July/August 2017 in accordance with the conditions specified in Act. In absence of the abovementioned procedure, it is evident that the relationship between the erstwhile management and the workmen/employees continued to be in existence until the Corporate Debtor was ultimately closed by virtue of Liquidation order passed by this Adjudicating Authority vide order dated 26.04.2021.

4.9. It is submitted that in the said order dated 26.04.2021 this Adjudicating Authority held that "This order shall be deemed to be a notice of discharge to the Officers, Employees, Workmen of the Corporate Debtor". Therefore, in such circumstances, the Respondent cannot deny payment of wages to the workmen since there was no legal/official termination of services of the workmen until the services of the workmen were officially discharged vide orders dated 26.04.2021.

4.10. It is submitted that the Hon'ble Supreme Court of India in said case of **Sunil Kumar Jain and Ors v. Sundaresh Bhatt and Ors**[2], held that the wages/salaries of the workmen/employees of the Corporate Debtor for the

[2] Supra Note 1.

period of CIRP can be included in the CIRP cost, provided that it is established and proved that the IRP/RP managed to run the operations of the Corporate Debtor as a going concern during CIRP and that the concerned workmen/employee actually worked during CIRP. In such cases, their wages shall be paid firstly, by treating the same as a part of CIRP cost under section 53(l)(a). Further, the Court goes on to state that in other circumstances, when the workmen/employee does not actually work during CIRP, their claims shall be governed by section 53 (1) (b) and 53 (1) (c). Conspicuously, the Hon'ble Supreme Court held that the workmen/employees who do not work during CIRP are also covered under Section 53 but under different provisions that is 53(1) (b) and (c). Therefore, the averments made by the Respondent that the workmen who do not actually work during CIRP cannot claim wages for the said period is erroneous. Hence, the interpretation of the said judgement made by the Respondent is misleading, perverse and misconceived

4.11. It is submitted that the Hon'ble Supreme Court in the above mentioned judgement **Sunil Kumar Jain and Ors v. Sundaresh Bhatt and Ors**[3] states as follows

> *14 ii). Considering Section 36(4) IBC and when the provident fund, gratuity fund and pension fund are kept out of the liquidation estate assets, the share of the workmen's dues shall be kept outside the liquidation process and the workmen/employees concerned shall have to be paid the same out of such provident fund, gratuity fund and pension fund, if any. available and the Liquidator shall not have any claim over such funds.*

Therefore, the Respondent cannot object to the full payments of provident fund, gratuity and pension fund to the Applicant by duly considering

[3] Supra Note 1

26,04.2021 as the last date of service, since by virtue of section 36 (4) of IBC, the said funds are intentionally kept outside the ambit of liquidation estate.

5. In light of the pleadings as above the following point emerges for consideration by this Adjudicating Authority

6. **Whether the Applicant Workmen are entitled for wages till the date of Liquidation Order?**

7. We have heard Shri. G. Sai Prasen learned Counsel for the Applicant and Shri. Shabbeer Ahmed Learned Counsel for the Respondent and perused the record.

8. The Learned Counsel for Applicant submitted that since 01.07.2017 the erstwhile management did not allow the Applicant Workmen to enter the premises, besides salary was not paid. This cessation of work/termination does not amount to retrenchment procedure as contemplated under Section 25F of the ID Act. The Learned Counsel further submitted that by virtue of the Liquidation Order passed on 26.04.2021 by this Adjudicating Authority it was held that said order shall be regarded as deemed notice of discharge to the Applicant Workmen as such the date of discharge shall be 26.04.2021 and not 01.07.2017, as held by the Liquidator. Further relying on the provisions of ID Act and PF Act, Learned Counsel contended that the Applicant Workmen were in continuous service and the termination of Applicant Workmen was to be effected from the date of Liquidation Order that is 26.04.2021 and not from the date of cessation of service that is 01.07.2017

9. The Learned Counsel for Respondent submitted that a settlement had been entered between the Erstwhile Management of the Corporate Debtor and the Applicant Workmen, regarding payment towards Gratuity,

Earned Leave (EL), Bonus, Lay Off and Ex-Gratia amount as per Section 18(1) and 19 of the ID Act read with Rule 60(4) of the Telangana Industrial Disputes Rules, 1958. The Learned Counsel further submitted that some workmen did not come forward to receive the terminal payments or agreed to accept the amounts under the above settlement and the same workmen have approached this Adjudicating Authority. Learned Counsel further contended that no operations were carried out since the closure of the factory on 1st July 2017 and as per the settlement, date of closure was 31.07.2017. Based on the said settlement the Respondent partly accepted the claim filed by the Applicant Workmen.

10. We have carefully perused the record placed before us by both sides. From the record of Annexures forming part of the Counter, we found that the Applicant herein has not signed on the Full and Final Settlement, Form-H (Memorandum of Settlement under Section (Section 18 (1) and 19 of ID Act read with Section 2(p) and rules made thereunder) and Joint Letter as mandated under Rule 60(4) of the Telangana Industrial Disputes Rules, 1958.Therefore, in the absence of record of acceptance of settlement by the Applicant it can't be said that above settlement was binding on the Applicant herein. Therefore, when once it is found that, there is no settlement or accord reached between the Applicant and Suspended Management regarding Payment of the legitimate claims of the Applicant the closure date which was arrived at only by consent cannot be reckoned for the purpose of Settlement of the dues of the Applicant herein. Hence the Applicant is deemed to be in employment under the suspended management during the CIRP period.

11. The Hon'ble Supreme Court of India, in **Sunil Kumar Jain and Ors v. Sundaresh Bhatt and Ors**[4] wherein in para 9,10, 14 (ii) it was observed

[4] Supra Note 1

with regard to workmen who worked when the Corporate Debtor was a going concern and Liquidation Estate

Para 9

"...Only with respect to those workmen/employees who actually worked during CIRP when the Corporate Debtor was a going concern, their wages/salaries are to be included in the CIRP costs and they shall have the first priority over all other dues as per Section 53(1)(a) of the IB Code. Any other dues towards wages and salaries of the employees/workmen of the corporate debtor shall have to be governed by Section 53(1)(b) and Section 53(1) (c) of the IB Code.

Any other interpretation would lead to absurd consequences and violate the scheme of Section 53 r/w Section 5(13) of the IB Code. If any other interpretation, more particularly, the interpretation canvassed on behalf of the appellants is accepted, in that case, the wages/salaries of those workmen/employees who had not worked at all during CIRP shall have to be treated and/or included in the CIRP costs, which cannot be the intention of the legislature."

Para 10

"On a fair reading of Section 5(13) of the IB code which defines "insolvency resolution process costs", it is observed and held that the dues towards the wages/salaries of only those workmen/employees who actually worked during the CIRP are to be included in the CIRP costs. The rests of the claims towards the wages/salaries of the workmen/employees, as observed hereinabove, shall be governed by Sections 53(1)(b) & (c) of the IB Code."

Para 14 ii)

"Considering Section 36(4) of the IB code and when the provident fund, gratuity fund and pension fund are kept out of the liquidation estate assets, the share of the workmen dues shall be kept outside the liquidation process and the concerned workmen/employees shall have to be paid the same out of such provident fund, gratuity fund and pension fund, if any, available and the Liquidator shall not have any claim over such funds."

12. Therefore, in view of our discussion above the Applicant is deemed to be in employment till the date Liquidation and therefore the Applicant is entitled for his wage and other benefits till the date of Liquidation Order. Hence, we direct the Liquidator to distribute the sum payable to the Applicant Workmen as per our Order, in accordance with Section 53 (1) (a) of IBC. This Interlocutory Application is therefore allowed and disposed of.

Sd/- Sd/-

AJAI DAS MEHROTRA **DR VENKATA RAMAKRISHNA BADRINATH NANDULA**

MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**

Rohit (LRA)