

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **04.03.2024** THROUGH VIDEO CONFERENCING

**PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

APPLICATION NUMBER : IA/2191(CHE)/2023

PETITION NUMBER : CP/1254/IB/2018

NAME OF THE APPLICANT : Liquidator of M/s. Empee Power Company India Ltd.

NAME OF THE RESPONDENTS : Stakeholders Consultation Committee & Another

UNDER SECTION : Sec 60(5) of IBC, 2016

ORDER

Present: Shri. Avinash Krishnan Ravi, Ld. Counsel along with Shri. Jerin Asher Sojan for the Liquidator/Applicant.

None for the Stakeholders Consultation Committee.

None for the PF Department.

This application has been filed seeking the following reliefs:

- a. *Permit the Applicant herein to treat Rs.47,73,270/- payable as PF and Gratuity to Workmen, irrespective of whether they have filed their claims or not, as per the books of the Corporate Debtor, as being outside the liquidation estate of the Corporate Debtor which may be distributed directly to the concerned workmen in priority and consequently permit the Applicant herein to distribute the remaining sums realized in the liquidation estate of the Corporate Debtor to the various stakeholders of the Corporate Debtor, in accordance with Section 53 of the Insolvency and Bankruptcy Code, 2016; and*
- b. *Pass such other order or orders as this Hon'ble Tribunal may deem fit.*

As per the Affidavit of Service filed vide S.R. No.803 dated 15.02.2024, all the three Respondents were served on 01.12.2023.

This Tribunal vide order dated 02.02.2024, had directed the Applicant to serve copy of the application on the Respondents again.

Ld. Counsel for the Applicants submits at Bar that all the Respondents were again served on 16.02.2024.

Despite calls and case awaited till 3.15 P.M., none of the Respondents is present. Respondents are set as ex-parte.

Heard.

This application has been filed seeking permission to treat Rs.47,73,270/- payable as PF and Gratuity to the workmen, irrespective of whether they have filed their claims or not, as per the books of the Corporate Debtor, as being outside the liquidation estate of the Corporate Debtor which may be distributed directly to the concerned workmen in priority and consequently permit the Applicant herein to distribute the remaining sums realized in the liquidation estate of the Corporate Debtor to the various stakeholders of the Corporate Debtor, in accordance with Section 53 of the Insolvency and Bankruptcy Code, 2016.

The Corporate Debtor in the present case was admitted into CIRP vide an order 13.01.2019. Since no resolution plan came, liquidation order was passed on 21.02.2022. The Liquidator issued the public notice inviting the claims as detailed in para-1 of the application. About 29 workmen filed their claims for a sum of Rs.45,76,520/- out of which, claim for a sum of Rs.41,15,294/- were admitted. It is stated that the Liquidator sold the assets of the Corporate Debtor and realized Rs.15,13,10,000/- which are to be distributed inter se the various creditors and stakeholders of the Corporate Debtor. It is stated that as per Section 36(4)(a)(iii) of the IBC, monies due to any workman or employee from the Provident Fund, Pension Fund, or the Gratuity Fund are considered to be outside the purview of the liquidation estate of the Corporate Debtor. Therefore, monies, in so far as they relate to any PF dues, are beyond the liquidation estate, and accordingly, cannot be subject matter of distribution in terms of Section 53 of the IBC. Reference is made of the cases. ***“C.G. Vijyalakshmi and Ors. V. Kumar Rajan, RP, Hindustan Newsprint Limited, MANU/NL/0098/2023”***, ***“Jet Aircraft Maintenance Engineers Welfare Association v Ashish Chhawchharia RP of Jet Airways (India) Ltd, Company Appeal (AT) (Insolvency)Nos. 752, 643, 792, 801 915 of 2021, 361, 771 & 987 of 2022 (“Jet Airways)”***, ***“Assam Tea Employees Provident Fund Organizatiion, through an Authorized Representative vs Mr. Madhur Agarwal, Comp. App (AT) (Ins.) No.262/2022”***.

It is stated that the Hon’ble Supreme Court time and again has held that mere non filing of claim would not denude or deny the benefit of Section 36(4) of the IBC to the concerned department or the workmen

Considering the averments made and in view of the law laid down in the cases *supra*, we direct that the sum of Rs.47,73,270/- be treated as the amount outside the liquidation estate and be distributed to the workmen in priority. The remaining sums realized be distributed to the stakeholders in accordance with Section 53 of IBC, 2016.

Accordingly, IA/2191(CHE)/2023 is **disposed of**.

Sd/-

**VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)**

Sd/-

**SANJIV JAIN
MEMBER (JUDICIAL)**

vs