

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 14.03.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB) No.187/7/AMR/2019	IA(IBC)/12/2021	7 of IBC	IDBI Trusteeship Services Ltd Vs Panyam Cements and Mineral Industries Ltd

Counsel for Petitioner(s):

Ries

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Ries

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

IA(IBC)/12/2021 is allowed, vide separate orders.

raj

**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

**I.A.No.12 of 2021
IN
CP(IB) No.187/7/HDB/2019**

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

In the matter of
**M/s. PANYAM CEMENTS & MINERAL INDUSTRIES
LIMITED**

BETWEEN:

1. M.Prabhakar,
S/o.M.Samadanam, aged about 56 years,
Occ: Asst. Miller,
R/o. 9 -133, Bethamcherla, Cement Nagar,
Kurnool, Andhra Pradesh – 518206.
2. B.Kambaiah,
S/o.B.Lakshmana, aged about 57 years, Occ: MVD,
R/o. E 15-54, Bethamcherla, Cement Nagar,
Kurnook, Andhra Pradesh – 518206.
3. G.V.Subbanna @ G.Subbaiah,
S/o.G.Balanna, aged about 55 years,
R/o.E 15-74, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
4. A.Moses,
S/o.Bala Swamy, Aged about 53 years,
Occ: Loading Supervisor,
R/o.15-38, Bethamcherla,
Cement Nagar, Kurnook,
Andhra Pradesh – 518206.

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5. C.Naidu,
Aged about 54 years, Occ: MVD,
R/o.Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
6. G.Gnanesh,
C/o.Peturu, Aged about 57 years,
Occ: Coal Crusher Operator,
R/o.E 14-15 Ward, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
7. M.Deva Raju,
S/o.M.Syman, Aged about 50 years, Occ: Belt Jointer,
R/o.15-9, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
8. Diwakar,
S/o.P.Sudarshanam, Aged about 55 years,
Occ:Bauxite Crusher Operator,
R/o. 15-1, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
9. P.S. Jaffer Hussain,
S/o.Chinna Khasim, Aged about 53 years,
Occ: Charge Had Mechanical,
R/o.15-34 E Type, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
10. T.Naga Raju,
S/o.T.Nagaiah, Aged about 47 years, Occ: MVD, R/o.9-153,
Bethamcherla, Cement Nagar, Kurnool,
Andhra Pradesh – 518206.

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11. J.Hari Krishna,
Aged about 48 years, Occ: Crane Operator,
R/o. 28-15, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
12. B.Nagi Reddy,
S/o.B.Lingareddy, Aged about 50 years,
Occ: Charge Hand Process,
R/o. E 15-49, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
13. P.Chandra Sekhar,
S/o.PV.Subbanna, Aged about 47 years,
Occ: Helper, R/o.3-44,
Bethamcherla, Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
14. G.Bala Ranga Swamy,
S/o.Rangaiah, Aged about 52 years,
Occ: Electrician,
R/o. E 15- 17, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
15. K.Maddilety,
Aged about 50 years, Occ: Purchase Asst.,
R/o. Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.

Place

16. D.Kambaiah,
S/o.D.Daveedu, Aged about 52 years,
Occ: Belt Jointer,
R/o.E 15-3, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
17. K.John Babu,
S/o.K.Satyam, Aged about 46 years,
Occ: Coal Crusher Operator,
R/o.H.No.8-288, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
18. M.Soma Sekhar,
S/o.M.Anjaneyulu, Aged about 44 years,
Occ: Welder,
R/o. E 15-69, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
19. G.Naga Maddaiah,
S/o.G.Thimmaiah, Aged about 44 years, Occ: Fitter,
R/o.2-142, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
20. M.Subba Rayudu,
S/o.M.Samson, Aged about 46 years,
Occ: Loading Supervisor,
R/o. E 15-5E, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.

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21. S.Haneef,
S/o.Moulali, Aged about 43 years,
Occ: Miller,
R/o. 15- 58 E Type, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
22. P.S.Mahaboob Basha,
S/o.P.C.Kasim Saheb,
Aged about 52 years, Occ: Fitter,
R/o. 15 – 64 E Type, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
23. S.Bikku Saheb,
Aged about 44 years,
Occ: Bauxite Crusher Operator,
R/o. Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
24. Y.Sreenivasulu,
S/o.Y.Venkateswarlu,
Aged about 43 years, Occ: Asst. Tester/Gauger,
R/o. E 15-59, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
25. M.Narayana,
S/o. late M.Kondaiah,
Aged about 51 years,
Occ: Asst. Tester/Gauger,
R/o.15-125 E Type, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.

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26. P.Rama Subbaiah,
Aged about 44 years, Occ: Sales Asst.,
Occ: Sales Asst.,
R/o. 8 – 270 DRT Quarters,
Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
27. G.Sreenivasulu,
S/o.G.Balachenchaiah,
Aged about 50 years, Occ: Civil Supervisor,
R/o. E 15 – 20, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
28. M.V.Laxmi Reddy,
S/o.Ramireddy,
Aged about 32 years, Occ: Store Asst.,
R/o. 9 – 185-3, Gouri Street,
Bethamcherla, Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
29. D.Ch.Anjaneyulu,
S/o.Hanumanthu,
Aged about 52 years, Occ: Loading Supervisor,
R/o. Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
30. E.Ramanjaneyulu,
S/o.E.Madanna,
Aged about 41 years, Occ: Loading Supervisor,
R/o. Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.

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31. K.Dada Basha,
S/o.K.Abdul Rasheed,
Aged about 45 years, Occ: Asst. Fitter/Mechanic,
R/o.13-15E Type, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
32. S.Hussain Vali,
S/o.P.Mabu,
Aged about 40 years, Occ: Loading Supervisor,
R/o.15-23, Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.
33. S.Habib Basha,
S/o.S.Bademiah,
Aged about 21 years, Occ: Machinery Attendant,
R/o. Bethamcherla,
Cement Nagar, Kurnool,
Andhra Pradesh – 518206.

.... Applicants

AND

1. Panyam Cements and Mineral Industries Limited,
C-1, Industrial Estate, Nandyal,
Andhra Pradesh - 518502.

....Respondent/Corporate Debtor

2. Mr.Bhrugesh Rameshchandra Amin,
Resolution Professional of
Panyam Cements and Mineral Industries Limited,
BDO Restructuring Advisory LLP,
The Ruby-Level 9, NW Wing,
Senapati Bapat Marg, Dadar West,
Mumbai – 400028.

.... Respondent/ Resolution Professional

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Orders pronounced on:14.03.2022

Coram:

Justice Telaprolu Rajani, Member Judicial.

Parties/Counsels present:

For the Applicant : Ms.G.Bhupesh, Advocate

For the Respondent No.2 : Mr.T.G.Rajesh Kumar, Advocate

ORDER

1. This application is filed under Section 60(5) of the IBC seeking to declare the acts of the Resolution Professional (RP) in not paying the salaries of the Applicants for the period 15.05.2020 to November, 2020 as illegal and direct the RP to pay the total amount of Rs.76,56,448/- due to the Applicants towards the salaries for their services rendered during the above mentioned period.
2. The facts as stated in the Application are briefly as follows:

The Applicants are rendering services as workmen of the Corporate Debtor. The RP was appointed to take over the affairs of the Corporate Debtor. Vide order dated 14.05.2020 Section 7 of IBC application was admitted by this Tribunal. CIRP process is now being lead by the RP appointed by this Tribunal. The total salaries due to the Applicants till the month of May, 2020 amounted to

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Rs.2,84,78,023/-. The Applicants have filed their respective claims with the RP. Apart from the salaries, there are unpaid PF amounts for which the Applicants are taking appropriate steps. While things stood thus and while CIRP was in effect, the Applicants got entitled to monthly salaries totalling to an amount of Rs.76,56,448/-. The RP did not make the said payment inspite of repeated requests. The RP issued a letter dated 03.09.2020 to the General Secretary, Mr.Mahaboob Basha and proposed, that instead of a fixed monthly remuneration as per the current employment terms, the remuneration would be payable on the basis of number of days worked, upon the Resolution Professional's request, as and when required. The General Secretary addressed a letter dated 30.09.2020 to the Deputy Chief Labor Commissioner, Hyderabad requesting him to clear the panic situation among the workmen. It was also brought to his notice that the workmen are being forced to sign on consent papers consenting for non-payment of wages for non-working days. A letter was addressed to the RP on 14.10.2020 bringing to his notice about their plight. The Applicants herein are still on the roles as workmen of the Corporate Debtor. Due to stoppage in payment of salaries, the Applicants are facing numerous problems. Their accommodation and power supply at the quarters was also under threat after the CIRP process. However, at the assurance of the erstwhile promotor the Applicants are in a position to take shelter along with their families. Hence, this application.

Now

3. The Respondent Nos.1 &2 filed counters, wherein it is stated that in view of the lockdown declared due to the outbreak of Covid-19 pandemic, several difficulties were faced by the RP in taking control of the Corporate Debtor. The erstwhile management failed to formally communicate the status of the employment of the employees, workmen of the Corporate Debtor by the time he took over, the plant has remained closed for nearly a period of 2 years and required substantial repair works to make it operational again. Cash flow was not available due to the non-operation of the factory in order to fund the salaries of the employees, workmen. The RP made all reasonable efforts to correct the said irregularities. He conducted detailed analysis of the employee cost but due to lack of aggregate information from the erstwhile management, the cash flow stopped. The process became extremely tedious. Thereafter, in the CoC held on 30.07.2020 the RP appraised the CoC about the situation and about the services of the majority of the existing employees not being availed and about only few employees from Accounts, Technical and Administration assisting him. He informed the CoC that an amount was required to be computed to pay to those employees for their limited services along with other detailed working of CIRP costs. He also informed that he was in discussion with the representatives of the employees to enter into an agreement for no work-no pay. During the CoC held on August, 2020 the CoC approved the salary/wage payment of Rs.1,94,000/-. During the 9th CoC meeting on 05.11.2020 he once again appraised the CoC about

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the number of employees who provided their consent to the non-work & non-pay arrangement by signing the consent letter. He also informed the CoC that in the event of any of the above employees not executing consent letter, CIRP costs may undergo change due to salary and wages due to the workers and employees. During the 10th CoC meeting held on 24.12.2020 he once again apprised the CoC that there was no change in the status of the number of employees who had provided their consent to no work-no pay arrangement. He also informed the CoC of the total retrenchment cost of the employees who were not available. He also informed about the remuneration due to the workers and employees who had not signed the consent letter and that it could have to be computed as CIRP costs and accordingly approved by the CoC. However, since the plant has been closed on since December, 2018, CoC was not in a position to bear the additional costs towards the employees. It is also stated that none of the employees or workmen of the Corporate Debtor were terminated during the CIRP. It is stated that it is beyond his authority to make payments to the Applicants without approval of the CoC. It is false that he is deliberately stalling the payments.

4. **Heard** the arguments of the Applicant's Counsel and the RP. It is an admitted fact that the present Applicants are not signatories to the no work & no pay agreement. It is also not disputed that the amount that is due towards salaries is Rs.76,56,448/-. The Counsel for the Applicant points out the judgment in CP (IB) No.187/7/AMR/2019 wherein, it is observed that as per the Successful Resolution Plan

Max

INR 4,47,28,219 is proposed to be earmarked for payment of the Insolvency Resolution Process cost. Any increase in CIRP costs up to INR 6,00,00,000/- shall be borne by the Resolution Applicant in addition to any payments undertaken to be made under Plan. In case there is an increase in CIRP cost on account of workmen and employees and in case the total CIRP costs becomes more than Rs.6,00,00,000/- then, the incremental amount beyond Rs.6,00,00,000/- shall be adjusted from the workmen and employee settlement amount, except the fixed amount of INR 1,22,23,019 to be paid to the workmen. In case there is an increase in CIRP cost on any account other than the workmen and employees such that total CIRP cost becomes more than INR 6,00,00,000 then the incremental amount up to INR 2,00,00,000 shall be adjusted from the amount payable to all the creditors in the same proportion as proposed by the Resolution Applicant in the financial proposal for the Creditors. It is also pointed out that in the said judgment it is observed that the workmen and employees are proposed to be paid INR 5,43,55,969, including amounts due for provident fund. The Counsel draws the attention of this Tribunal to the approved Resolution Plan, wherein under the CIRP costs it is stated as under;

- *The Resolution Applicant shall pay the CIRP cost at actuals, in priority to the payment of all debts of the CD.*
- *The Current estimate of the CIRP costs is INR 4,47,28,219 as of 15.05.2021.*

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- *It is hereby clarified that any increase in CIRP costs up to INR 6,00,00,000 shall be borne by the Resolution Applicant in addition to any payments undertaken to be made under this Resolution Plan.*
- *In case there is an increase in CIRP cost on account of workmen and employees such that total CIRP cost becomes more than INR 6,00,00,000, then incremental amount beyond INR 6,00,00,000 shall be adjusted from the workmen & Employee Settlement amount, except the fixed amount of INR 1,22,23,019 to be paid to the workmen.*
- *In case there is an increase in CIRP cost on any account other than the Workmen and Employees such that total CIRP cost becomes more than INR 6,00,00,000, then the incremental amount upto INR 2,00,00,000 shall be adjusted from the amount payable to all the Creditors in the same proportion as proposed by the Resolution Applicant in the above financial proposal for the Creditors.*
- *The Resolution Professional shall certify the amount of unpaid CIRP cost at the Plan Approval Date as well as the Transfer Date.*

On the basis of the approved Resolution Plan and the provision made for the CIRP costs the Counsel contends that the RP has to pay the salaries of the Applicants which amounts Rs.76,56,448/- and that it would not be an extra burden, since the

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same is provided for under the CIRP costs. He submits that even if the claim amount is paid it would not go beyond INR 6,00,00,000/- since, the estimated CIRP costs at that time were INR 4,47,28,219 only. Even if the CIRP costs go beyond INR 6,00,00,000/- a provision is made under the resolution plan. Hence, since the claim amount pertains to the workmen's salaries who have not signed on no work & no pay agreement and who continued to be on the roles and since provision is made for their salaries in the CIRP costs, the Petition is allowed.


**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

Swamy Naidu