

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 774 OF 2021

Under Rule 11 of *the* NCLT Rules, 2016.

Precision Fasteners Employees Union

...Applicant

V/s

Asset Reconstruction Company (India)
Limited

... Respondents

I.A. 785 OF 2021

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

Precision Fasteners Officers' Association

...Applicant

In the matter of

C.P.(IB) No.1339/MB/2017

Asset Reconstruction Company (India)
Limited

...Financial Creditor

V/s.

M/s Precision Fasteners Limited

... Corporate Debtor

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I.A. 774 OF 2021
I.A. 785 OF 2021

Order delivered on: 04/12/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Mr. Jane Cox Advocate

For the Respondent : Mr. Ankit Lohia Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The Interlocutory Application IA 774/2021 is filed in C.P. (IB) 1339/(MB)/2017 by Precision Fasteners Employees Union, a registered trade union ("Applicant"), bearing Registration No. 6831 representing all of the shop floor workmen of the Digha factory of M/s Precision Fasteners Ltd., ("Corporate Debtor" or "Respondent").
2. The Interlocutory Application IA 785/2021 is filed in C.P. (IB) 1339/(MB)/2017 by Precision Fasteners Officers Association, a registered trade union ("Applicant"), bearing Registration No. KA UA/Thane/500/94 representing all of the staff of the Digha factory of M/s Precision Fasteners Ltd., the Corporate Debtor/Respondent above named.
3. Both of these applications have identical facts, except that one is filed by the workers of the Corporate Debtor and other is filed by the Staff Employees of the Corporate Debtor, and the prayers are identical. Accordingly, both these applications are disposed of by way of this common order. The facts of IA 774/2021 are taken for the purpose of discussion and analysis.

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4. The Applicant states that pursuant to the advertisements issued in November 2018 for submissions of claims before the IRP the members of the Applicant union submitted their claims. By then the order of Liquidation had not been passed. By Order dt. 12/03/2018 this Hon'ble Tribunal was pleased to order that the Corporate debtor company be liquidated.

4.1. It is further stated that there was some wrong calculations and errors in the claims submitted earlier. The Applicant accordingly recalculated the claims of the member workmen and submitted the same to the Liquidator on 27.08.2020. The Applicant in fact states that the amounts now claimed are less than those earlier claimed. Along with the calculations, the Applicant submitted the details of the basis of the claims and how they have been calculated with supporting documents.

4.2. In these circumstances the Applicant humbly submits that in the interest of justice require that the liquidator recalculate/re-adjudicate the claims of the member workmen as per the fresh claim dated 27.08.2020. The Applicant submits that no adverse prejudice would be caused to the Respondents if the same is allowed-indeed the amount claimed is lesser than before.

5. We have heard learned Counsel and perused the material on record.

5.1. It is undisputed fact that, on 01.11.2007, the Debtor Company and the Applicant Union reached an amicable settlement (under the provisions of the Industrial Disputes Act, 1947), before the Conciliation Officer, thus making it a Settlement u/s. 18(3) of the Act. By an Award dt. 24.11.2010 passed in Reference (IT). No. 22/2005, the Industrial Tribunal, Thane, was pleased to take the Settlement on record and dispose of the Reference in terms of the Settlement, with express directions to the Company to implement the terms of the Settlement.

5.1.1. By this Settlement, it was agreed that all of the employees of the factory would resign from their services on a VRS Scheme

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which included payment of gratuity along with other dues in full and final settlement of their dues. The principal gratuity amount was calculated as per the Payment of Gratuity Act, 1972, up till 30.9.2006. The Settlement expressly provided that the money due to the employees would be paid into an Escrow account and then paid over to the employees within 30 days of the sanctioning of a BIFR Scheme, which would include this settlement. Clause 15 of the settlement expressly provided that in the event that the Scheme is not sanctioned by the BIFR within 7 months from the date of the Agreement and/or payment is not made into the Escrow account within 35 days thereunder, then the Settlement shall stand set aside and will be void; and that in such a case the Union and the Company would have the same rights and liabilities as if the Settlement had not been entered into and would be at liberty to pursue their respective rights and remedies as available to them in law.

5.1.2. The Applicant has further stated that the BIFR Scheme was sanctioned on 16.10.2008. However, in spite of the express direction and Award of the Industrial Tribunal to the Debtor Company to implement the settlement, the money due as per the Settlement was never paid to the workmen. On 1.03.2011, the BIFR sanctioned Scheme was declared as "failed" by the BIFR, which was upheld by the AAIFR. Though this Order was challenged by the Corporate Debtor before the Hon'ble Delhi High Court, who was pleased to hold vide Order dated 16.5.2017 that the SICA, 1985, itself had since been repealed and disposed of the Petition accordingly.

5.1.3. In terms of the provisions contained in the repealed SICA, 1985, the outcome in the present case would have been an order for winding up of the Corporate Debtor company, however, on account of Code coming into force, the Corporate

Debtor was admitted into CIRP process, and later into the Liquidation process after the efforts for its resolution failed.

- 5.2. It is also undisputed that none of employee/workmen had actually worked during the CIRP period or period prior to commencement of CIRP after the said settlement with the Union.
- 5.3. We find that dispute in the present application pertain to period upto which the Applicant's members shall be entitled to their salary/wages dues alongwith allowances. It is undisputed fact that the Applicant's members had filed their claim basis settlement agreement dated 1.11.2007 considering cessation of their employment on 30.09.2006, and the same was admitted by the Liquidator.
- 5.4. It is undisputed fact that Kalwa unit was not working prior to settlement agreement and that lead to arriving at settlement contemplating retirement of such workers from the employment. It is not applicant's case that the corporate debtor had funds available with it and failed to pay. It is undisputed fact that the Corporate Debtor was under financial distress which took it to the BIFR for scheme of rehabilitation as well as to winding up in terms of the provisions of Companies Act, 2013/1956. Accordingly, it can not be said that the settlement agreement has lost its relevance, more so when the workmen themselves chose to lodge a claim on the basis of such settlement agreement.
- 5.5. In terms of present application, the Applicant union has sought to seek direction for modification/redetermination of its member's claim for the period till the date of order of liquidation. We find that in the case of ***Sunil Kumar Jain Versus Sundaresh Bhatt {Civil Appeal No.5910 of 2019}***, the Hon'ble Supreme Court, vide Order 19.04.2022, held that " *that the wages/salaries of the workmen/employees of the Corporate Debtor for the period during CIRP can be included in the CIRP costs provided it is established and proved that the Interim Resolution Professional/Resolution Professional managed the operations of the*

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corporate debtor as a going concern during the CIRP and that the concerned workmen/employees of the corporate debtor actually worked during the CIRP and in such an eventuality, the wages/salaries of those workmen/employees who actually worked during the CIRP period when the resolution professional managed the operations of the corporate debtor as a going concern, shall be paid treating it and/or considering it as part of CIRP costs and the same shall be payable in full first as per Section 53(1)(a) of the IB Code.”

- 5.6. On the facts and circumstances of the case, we are of considered view that the employment of the Applicant’s members ceased on 30.9.2006 in terms of settlement agreement and they cannot claim revision of dues already admitted by the Liquidation. Further such dues shall be considered as other dues payable to Workmen and Employees and shall be dealt with in accordance with section 53(1) (c) of the Code for the purpose of its distribution out of liquidation proceeds in terms of ratio of decision in case of Sunil Kumar Jain (Supra).
6. In view of the foregoing, IA 774/2021 and IA 785/2021 are disposed of as dismissed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

V.G. Bisht
Member (Judicial)