



Sl. No. 4

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Virtual Hearing)

PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)
: SHRI SANJAY PURI – MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 03.04.2024 AT 01:00 P.M.

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
CP(IB)/78/7/AMR/2020	Admitted	7 of IBC	Raghav Bhartia Vs Circar Jute Mills Pvt Ltd
	IA(IBC)/329/2023	U/s 30(6) & 31(1) of IBC, 2016	Kurapati Singarayya Chowdary, RP of M/s. Circar Jute Mills Private Limited.

ORDER

IA(IBC)/329/2023:

Mr. Narendra Naik & Mr. Varun Ambati, Ld. Counsels for the CoC, Ms. Mummaneni Vazra Lakshmi, Ld. Counsel for the Applicant/RP present. Mr. Kurrapati Singarayya Chowdary, Ld. RP present in person. Orders pronounced. IA(IBC)/329/2023 is dismissed as disposed of and recorded vide separate sheets.

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH

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IA (IBC)/329/2023
IN
CP (IB)/78/7/AMR/2020

Under Section 30(6) and 31(1) of Insolvency and Bankruptcy Code, 2016
Read with Regulation 39 (4) of Insolvency and Bankruptcy Board of India
(Insolvency Resolution for Corporate Persons) Regulations, 2016.

And

In the matter of
M/s. CIRCAR JUTE MILLS PRIVATE LIMITED

BETWEEN:

Mr. Kurapati Singarayya Chowdary
Resolution Professional for
M/s. Circar Jute Mills Private Limited
Flat No.104, Kavuri Supreme Enclave,
Kavuri Hills, Madhapur,
Hyderabad -500033

... Applicant/Resolution Professional

Orders pronounced on : 03.04.2024

CORAM:

SHRI RAJEEV BHARDWAJ, MEMBER (JUDICIAL)
SHRI SANJAY PURI, MEMBER (TECHNICAL)

Counsels on record:

For Applicant/RP : Ms. Mummaneni Vazra Lakshmi, Advocate

For CoC : Mr. Narendra Naik & Mr. Varun Ambati, Advocates

Per : Sanjay Puri, Member (Technical)


ORDER

1. This application is filed by the Resolution Professional (in short the RP) in respect of M/s. Circar Jute Mills Private Limited (the Corporate Debtor) under Section 30(6) & 31(1) of Insolvency and Bankruptcy Code, 2016 Read with Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016 seeking approval of the Resolution Plan submitted by Shri Gaurang

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Bhartia and Smt. Manju Bhartia, which has been approved by COC with 100% voting rights; and also seeking to discharge or provide immunity from all the liabilities/ disputes/ proceedings/ penalties/ suits/ attachments/ cases whether filed against the Corporate Debtor whether accounted or unaccounted, known or unknown, crystalized or not on payment of the agreed consideration by Resolution Applicant.

2. This Tribunal, vide its order¹ dated 04.04.2022 in CP (IB) No.78/7/AMR/2020 had admitted the Company Petition and initiated CIRP² against the Corporate Debtor. Mr. Ajay Kumar Jain was appointed as Interim Resolution Professional (IRP) and the Moratorium was declared. In due course, the IRP issued public announcement and constituted the Committee of Creditors (CoC).
3. In the 1st CoC meeting that was held on 04.05.2022, the CoC decided to replace the Resolution Professional (RP). In this regard Bank of Baroda, the sole member of the CoC, filed an application vide IA(IBC)/97/2022 seeking to replace the IRP with a new RP, which was allowed by this Tribunal vide order³ dated 22.08.2022, and applicant herein was appointed as the RP of the CD.
4. On 29.08.2022, the RP took over charge and records from the IRP and called for further evidence from the creditors for verification of the claims for admission. After verification of the claims received from the creditors, the applicant updated the list of creditors and re-constituted the CoC and filed an application being IA(IBC)/236/2022 seeking to take on record the report of constituting CoC and the list of creditors and the same was allowed by this Tribunal.

¹ Pages 35 to 55 of the Application


² Corporate Insolvency Resolution Process

³ Pages 56 to 60 of the Application

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5. In the 7th CoC meeting that was held on 26.09.2022, the RP appraised the members of the CoC and discussed about calling for Expression of Interests (EoIs) by issuing Form-G and eligibility criteria of the prospective Resolution Applicants (PRAs). He also informed to the CoC that the CIRP period of 180 days will expire on 01.10.2022. The members of the CoC, approved the eligibility criteria of the PRAs and also approved calling of the EoIs by issuing of Form-G. The RP was also instructed to file an application seeking extension of CIRP for 90 days with 71.46% voting.
 6. The RP filed an application i.e., IA(IBC)/242/2022 seeking for extension of CIRP for 90 days beyond 180 days and the same was allowed by the Tribunal vide order dated 11.10.2022. After getting the extension of time, on 13.10.2022, the RP has issued EoI in Form-G and fixed the last date of receipt of resolution plan on 12.12.2022. In response, RP received 7 (seven) EoIs from PRAs⁴, out of which only 3 PRAs submitted their Resolution Plans within due date. These were (i) Shri. Guduru Siva Ramakrishna; (ii) Smt. T. Padma and Venu Feeds India (P) Ltd. & (iii) Shri Gaurang Bhartia and Smt.Manju Bhartia (Members of the Suspended Board of the CD).
 7. In the 9th CoC meeting held on 19.12.2022, the RP opened the Resolution Plans in front of CoC members and respective PRAs. He also apprised the CoC members about pending compliances before approving the Resolution Plans and requested the CoC to authorise filing of an application for extension of CIRP by another 60 days beyond 270 days. Members of the CoC approved for filing of extension application with 100% voting. Consequently the RP filed an IA(IBC)/400/2022 seeking for extension of 60 days from 30.12.2022 to 27.02.2023 and the same was allowed by this Tribunal vide order dated 04.01.2023.

⁴ Prospective Resolution Applicants

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8. In the 10th CoC meeting held on 18.01.2023, the RP submitted the resolution plans before the CoC members. The CoC members after examination of the resolution plans received, the CoC members rejected two out of the three plans which were received by the RP.
9. The first plan bid was of Rs 6 crores from Shri Guduru Siva Rama Krishna submitted as an individual. This was not considered, as the Resolution Applicant was found to be ineligible under section 29A, for the reason that he had defaulted in repayment of dues of a business loan facility of Rs 7 lakhs. In any case, his bid offer was the lowest of the three plans received
10. Second plan was from Smt T.Padma & Venu Feeds India (P) Ltd, submitted as a consortium. Their bid was of Rs 20.50 crores. This bid was also rejected by CoC for two reasons. One, that during EoI phase Smt Padma had expressed her interest as an individual and now she was coming in a consortium with another company. Two, that when during negotiation, she was asked about upward revision of the plan amount, she had "replied in negative and asserted that the plan amount shall be reduced only".
11. The remaining plan was that from the suspended Board members, i.e. Shri Gaurang Bhartia and Smt Manju Bhartia. Their bid was of Rs 20.21 crores with NPV⁵ of Rs 16.00 crores. This plan was allowed for resubmission to the extent of re-allocation of funds to the stakeholders, without restrictions on increasing the Bid Amount. The Resolution Applicants were also asked to provide for suitable amount with regard to the claim of ESIC and provide non-discriminatory distribution among the unsecured Financial Creditors, i.e. by allocating funds to all the

⁵ Net Present Value

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unsecured Financial Creditors at the same proportion, with or without interest.

12. On 04.02.2023, the Resolution Applicants, Shri Gaurang Bhartia and Smt. Manju Bhartia submitted their revised Resolution Plan to the RP for a consideration of Rs.12,47,05,278/- (NPV of Rs.6,36,53,440/-). The revised Plan was therefore a substantial reduction from the Plan amount of Rs 20.21 crores originally submitted. Besides, as pointed by the RP, the Resolution Applicants had not addressed the non-compliances notified in the 10th CoC meeting, and thus it was not in conformity with the resolution passed in that meeting.
13. In the 11th CoC meeting held on 09.02.2023, the RP appraised the members of the CoC about the revised resolution plan of Shri Gaurang Bhartia and Smt. Manju Bhartia. One of the members of CoC, Shri Hemant Gupta, representative of Encord Trading (P) Ltd (3.13% voting) sought clarifications from the Resolution Applicant as to why they have submitted revised Resolution Plan for a lesser amount than the previous amount and why the non-compliances notified in the 10th CoC meeting have not been addressed.
14. In response, the Resolution Applicants Shri Gaurang Bhartia and Smt. Manju Bhartia narrated the following reasons⁶ for the reduced amount in the revised proposal:

“a) Bindawala Cables & Conductors (P) Limited and Midland Projects (P) Ltd were treated as unrelated parties and distributions made accordingly and now these two creditors are declared as related parties by the Adjudicating Authority, their reduced share as apportioned to the related parties resulted in reduction of the bid amount.


b) There are certain developments that have taken place after passing the resolution in the 10th COC, with regard to shifting of AP Capital to Visakhapatnam, which cast a shadow on the land values across Andhra Pradesh.

⁶ Minutes of 11th CoC meeting – Page 117 & 188 of the Application

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c) It is now learnt that the land property of the Corporate Debtor is continuing as agricultural property, which requires lot of efforts and amount to convert it into industrial/ commercial and also the land is not in the name of the Corporate Debtor, but in the name of its predecessor company, M/s. Circar Fibres (P) Ltd.

d) There are certain pressures cropping up from local politicians.


e) With reference to the non-compliance pointed out in the previous meeting, the Resolution Applicant, substantiated his stand that they are not non compliances and there are judgement(s) given by few NCLT Benches, which include Amaravati Bench.”

15. The COC members advised the RP to consider the pleading of the Resolution Applicant but the RP informed the members of COC that the Resolution Plan submitted is contrary to the resolution passed by the COC in their 10th meeting with regard to resubmission of Resolution Plan by Shri Gaurang Bhartia and Mrs. Manju Bhartia.
16. He pointed out that non-adherence to the said resolution by the Resolution Applicants and the RP will be seen with disfavour by the Adjudicating Authority and may be seen as a matter of collusion by all or some of the parties to the detriment of the stakeholders who do not have the opportunity to take part in the resolution process. He also mentioned that the reasons cited by the Resolution Applicants, for submitting reduced revised plan were in the know of the Resolution Applicants even before submission of the original plan of Rs 20.21 crores. The RP suggested to the Resolution Applicant to resubmit their plan again in strict compliance to the resolution passed in the 10th CoC meeting within 72 hours.
17. Two days later on 11.02.2023, the Resolution Plan was resubmitted by Shri Gaurang Bhartia and Smt. Manju Bhartia for Rs.14.09 Crores. The resubmitted plan was also lesser than the original Bid Amount of Rs.20.21 Crores. This Plan also did not address the non-compliances pointed out by the CoC in its 10th meeting.

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18. In the 12th CoC meeting held on 15.02.2023, the RP apprised the members of the CoC about the resubmitted Resolution Plan, and that it was not in conformity with the resolutions passed in its 10th CoC meeting. He asserted before the CoC that the Revised Resolution Plan does not meet the spirit of IBC, i.e., maximisation of value to the Stake Holders, fair and transparent Process of CIRP and distribution of Bid amount among the all classes of creditors as per Section 53(1) of the Code. The RP therefore treated that no Resolution Plan is received and proposed for Liquidation of the CD.
 19. The members of CoC requested the RP to put the resolutions relating to liquidation "ON HOLD" and passed a resolution (with 100%) authorising the RP to seek extension of CIRP period by 30 days. Accordingly, the RP filed an Application IA No.73/2023 and the same was allowed by this Tribunal vide order dated 03.03.2023 extending the CIRP period till 29.03.2023. Later, in response to an email request from the CoC members, the RP convened the 13th CoC meeting on 23.03.2023. Once again, with unanimous voting (100% approval), the CoC agreed to further extend the CIRP period—this time for 60 days. The RP filed application IA No.119/2023, and the Tribunal granted the extension through an order dated 18.04.2023.
 20. In the meanwhile, one of the members of the CoC with 36.44% voting rights filed an IA No. (IBC)/69/2023 before the Adjudicating Authority praying for a direction to the RP to place the non-compliant Resolution Plan before CoC.
 21. During the pendency of IA No. (IBC)/69/2023, at the request of the CoC, the RP to conducted 14th meeting on 18.05.2023, where the CoC with 100% voting approved for extension of CIRP period for 90 days. Yet another Application IA(IBC)/217/2023 was then filed by the RP for extension of CIRP period for 90 days and the same was allowed by

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Tribunal vide order dated 02.06.2023 and CIRP was extended for 90 days from 31.05.2023 to 28.08.2023.

22. Vide order dated 19.06.2023, this Tribunal disposed of the IA(IBC)/69/2023 and directed as follows

“RP is directed to immediately convene a meeting of the CoC and place the revised/final resolution plan dated 11.02.2023 submitted by R2 before the CoC for their discussion and voting on the resolution plan dated 11.02.2023.”

23. In compliance thereof, the Resolution Plan dated 11.02.2023 of Shri Gaurang Bhartia and Smt. Manju Bhartia was placed before CoC in the 15th CoC meeting held on 12.07.2023, where the Resolution Plan with Bid Amount of Rs.14,08,83,931 (NPV of Rs.808.19 Lakhs) was approved by 100% voting. The RP informed the Successful Resolution Applicant (SRA) and requested them to comply with the terms and conditions stipulated in RFRP document. The SRA as stipulated in the RFRP Document transferred an amount of Rs.1,00,00,000/- via NEFT bearing UTR Code-NEFT:000137799529 on 25.07.2023 into the account of CD as Performance Guarantee.
24. After examining the Resolution Plan in terms of Section 30 of IBC and Regulations 37 and 38, the RP has submitted the Compliance Certificate in Form-H under Regulation 39(4) of the Regulations⁷ showing the compliances of the Plan with mandatory requirements under the Code. This application has been made for the approval of the Resolution Plan that has been approved by the CoC.
25. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with the Application. The salient

⁷ IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

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features of the plan which offers an amount of Rs.14,08,83,931 are extracted below:

Table-1

S.No.	Creditor Category (1)	Claim Admitted Amount (2)	Amount offered (Rs in Lakhs)			Terms (6)
			Cash component (3)	In form of unsecured loan (4)	Total (5)	
1.	CIRP Costs	35,00,000	35,00,000	-	35,00,000	See Note 1 below
2.	FC-Secured Creditor Ms. Manju Bhartia	2,35,00,000	2,35,00,000	-	2,35,00,000	
3.	Operational Creditors	1,55,36,249	31,07,250	-	31,07,250	
4.	OC-Govt. (ESIC)	9,63,939	9,63,939	-	9,63,939	
5.	FC - Unrelated Unsecured	7,31,25,141	1,10,00,000	2,19,06,313	3,29,06,313	See Note 2 below
6.	FC- Related Unsecured*	30,76,25,716	-	7,69,06,429	7,69,06,429	See Note 3 below
7.	Others	Nil	Nil	Nil	Nil	No claims admitted by RP
Total		42,42,51,045	4,20,71,189	9,88,12,742	14,08,83,931	

*Includes Financial Creditor whose application u/s 7 of IBC resulted in CIRP of the CD

Note 1: Total by Cash – Will be paid within 30 days from the date of the order issued by NCLT

Note 2 One third or 33.33%, i.e., Rs.110.00 lakhs will be paid by Cash, within 30 days from the date of the NCLT Order. Remaining two third or 66.67% i.e., will be paid within 5 years as unsecured loan @ 12% of Interest payable at maturity. Loan to be documented by way of renewed loan undertaking within 90 days from the date of the NCLT Order.

Note 3: No Cash. To be converted to 10 year unsecured loan to be documented by way of renewed loan undertaking within 90 days from the date of NCLT Order, without any Interest.

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26. The Resolution Plan submitted for approval has NOT been found to be meeting all the requirements of IBC. The approval by the CoC of the Resolution Plan does not reflect its commercial wisdom and it does not cater to the interest of all stakeholders.
27. The CoC's decision on approving the Resolution Plan of Shri Gaurang Bhartia and Smt. Manju Bhartia was injudicious and appears to be motivated. The CoC was well aware of the original Bid Amount of Rs.20.21 Crores made by the Resolution Applicants and yet, they approved a much lower amount of Rs.14,08,83,931. Net Present Value⁸ of this Plan is only Rs.7,50,49,591 which is even less than the Liquidation Value⁹ of Rs.11,83,88,126.
28. Also, the amount of Rs.14.09 Crores being offered, in reality is misleading and deceptive for the reasons, that
- Only Rs.4.20 Crores is being offered in cash to be paid within 30 days, out of which Rs.2.35 Crores will be paid to Smt. Manju Bhartia who herself is one of the Resolution Applicants.
 - Other Rs.9.88 Crores offered to the operational creditors is in the form of unsecured loans of 5/10 year duration.

The Resolution Plan, thus provides for payment of only Rs 1.50 Crores¹⁰ in cash for a Company whose **liquidation value is Rs.11.84 Crores, and Fair Value is Rs 15.55 crores.***

29. During the hearing before this Authority in CP(IB)/78/7/AMR/2020 value of the assets of the CD was stated¹¹ to be **Rs 40 crores**. As per the

⁸ As per the averment of the RP in IA (IBC) No. 69/2023 – Page 156 of the Application


⁹ Form-H submitted by the RP – Page 229-230 of the Application

¹⁰ Cash Component as in Colum (3) of Table-1 Above: Excluding CIRP costs (of Rs 0.35 cr) and the amount (of Rs 2.35 cr) owed to the Smt Manju Bhartia, one of the Resolution Applicant herself

* Form-H on Pg 229-230 of the Application.

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claims admitted by the RP, the present liabilities are of Rs 39.72 crores¹² of which only Rs 1.50 crores¹³ is proposed to be settled in cash within 30 days and Rs 9.88 crores¹⁴ to be converted into unsecured loans repayable in 5/10 years. **The Resolution Applicants are therefore proposing to acquire the assets of the CD company worth about Rs 40 crores by paying only Rs 1.50 crores in cash and taking a long-term liability of Rs 9.88 crores.** Creditors worth Rs 28.34 crores out of Rs 39.72 crores of admitted claims will be written off as a result of CIRP.

30. As pointed out by the RP in 12th CoC meeting, that after 10th CoC meeting, the Resolution Applicants Shri Gaurang Bhartia and Smt. Manju Bhartia had realized that they were the lone bidders. Therefore, in their revised Plan, they reduced their offer considerably from Rs.20.21 Crores to Rs.12.47 Crores and only to increase it marginally to Rs.14.09 Crores in the resubmitted plan. The reasons given by them for reducing the Bid Amount are completely flimsy. None of these reasons have any bearing on the value of the CD which was under their own management before the commencement of CIRP. In any case, these reasons were in the know of the Resolution Applicants even at the time of their making the earlier bid of Rs 20.21 crores.

31. The reasons given by the CoC for approving the Resolution Plan submitted by the Bhartia's are also insubstantial. Merely because the gross offer of Rs.14.09 Crores (which is misleading) was apparently higher than the Liquidation value of Rs.11.84 Crores, the CoC preferred to go with Resolution Plan. The CoC did not even consider that this misleading gross offer of Rs.14.09 Crores was less than the Fair Value of

¹¹ Page 16 of CIRP admission order dated 04.04.2022 @ Page 51 of the Application

¹² Admitted Claims as in Column (2) of Table-1 above: Excluding CIRP costs (of Rs 0.35 cr) and the amount (of Rs 2.35 cr) owed to the Smt Manju Bhartia, one of the Resolution Applicant herself


¹³ See Footnote 10

¹⁴ Amount offered in form of unsecured loan as in Column (4) of Table-1 above

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Rs.15.55 Crores of the CD. The NPV of the plan of Rs.14,08,83,931 was only Rs.808.19 Lakhs¹⁵, and out of which Rs 235 lakhs will be appropriated by the Resolution Applicant herself. Acceptance of such a self-serving plan, which would allow the Members of the suspended Board to take over the CD, with assets worth Rs 40 crores, for a meagre sum of Rs 1.5 crores shows complete lack of commercial wisdom on part of the CoC.

32. Order of this Authority dated 19.06.2023 only directed the RP to place the eligible Resolution Plan of the Bhartia's before CoC. Thereafter, it was the CoC which was expected to demonstrate its commercial wisdom in evaluating the Plan and take appropriate decision. The CoC however has chosen to approve the Plan that neither aims to achieve maximization of value nor takes care of the interest of all these stakeholders. The Plan provides for only about Rs.1.5 Crores to be paid¹⁶ to the Creditors having over Rs.40 Crores outstanding against the CD.

33. Moreover, as recorded by the RP, in his checklist prepared for examination of the Resolution Plan under section 30, that the plan contravenes the provisions of section 30(4) of IBC. It is noted by him that:

“While distributing the Bid Amount, the order of priority amongst the creditors as laid down in sub-section (1) of section 53 not followed. While Section 53 recognizes the secured financial creditors are to be treated as one class and accordingly be treated for distribution. However, the Resolution Plan under reference proposed to divide the unsecured financial creditors as “related” and “unrelated and distributions were proposed without complying the sub section 4 of Section 30 of IBC. Thus the Resolution Plan under reference

¹⁵ Note in the Agenda Item no. 3 of 15th CoC meeting in a Resolution to approve Plan submitted by Shri Gaurang Bhartia and Smt Manju Bhartia – Page 165 of the Application

¹⁶ After meeting CIRP Cost of Rs 35 lakhs

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contravenes the provisions contained in Section 30(4) of the Code,2016, to that extent”

34. In the case of **Vallal RCK vs Siva Industries** ¹⁷ the Hon'ble Supreme Court has also held that

“...in our view, the adjudicating authority or the appellate authority cannot sit in an appeal over the commercial wisdom of CoC. The interference would be warranted only when the adjudicating authority or the appellate authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and de hors the provisions of the statute or the Rules.”

35. In the present case, the CoC not only acted in “capricious, arbitrary, irrational” manner but also approved the plan that contravenes the provisions of IBC. To that end, the CoC has failed to exercise its commercial wisdom in deciding on the Resolution Plan which in real sense is not only far below than the Liquidation value, it also contravenes the law. Therefore, we are of the considered view that the Resolution Plan proposed through this application be rejected.

36. The RP is directed to make another attempt for obtaining a Resolution Plan that meets requirements of the Code in letter and spirit by issue of fresh Form-G notice and invite fresh EoI from the eligible PRAs.

This IA is therefore dismissed with the above remarks.

Sd/-

(SANJAY PURI)
MEMBER (TECHNICAL)

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(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

V/L

¹⁷ Vallal RCK vs. Siva Industries and Holdings Limited and Ors. (03.06.2022 - SC) : MANU/SC/0753/2022