

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

**I.A. 18/2022
IN
C.P. 1487/I&B/MB/2017**

Under Section 53 of the Insolvency and Bankruptcy Code, 2016

Western India Shipyard

Workers Union

....Intervenor/Applicant Union

In the matter of:

ICICI Bank Ltd.,

..... Financial Creditor

Virsus

Western India Shipyard Ltd.

..... Corporate Debtor

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Ms Madhu Sinha, Member (Technical)

Order Reserved on : 10.02.2023

Order pronounce on : 21.03.2023

Appearance:

For the Applicant: None Present

For the Respondents: (PCA) Ayush J Rajani a/w. Khushboo Shah i/b

AKR Advisors

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

Western India Shipyard Workers Union represented by its vice president Mr. Alexander Pacheco, filed the above application for claiming workmen's dues for the period of 24 months preceding the liquidation commencement date under section 53 of the Insolvency and Bankruptcy Code 2016.

There was no representation continuously on behalf of applicant. The liquidator filed detailed reply opposing the above application. Even the above Interlocutory Application does not contain any specific prayers and reliefs, the grievance of the applicant Western India Shipyard Workers Union is pleaded in the application is as follows;

1. The present application for Intervention and claim is filed by the Western India Shipyard Workers' Union which is a duly registered trade union, registered under the trade unions act, 1926 having its office at H. No.10, Near St. Francis Xavier Church, Mormungao Harbour, Marmugao, Goa, 403803 herein represented by Vice President, Shri Alexander Pacheco, son of late Shri. Antion Pacheco, aged 50 years, married, Indian National, resident of H.No. C-381, Near Government School, Headland Sada, Marmugoa Goa on behalf of all the 215 – workmen employed with M/s. Western India Shipyard Limited., Mormugao Harbour, Mormugao, Goa ('Corporate Debtor').
2. The Intervenor Union submits that the Western India Shipyard Workers Union is the sole recognized union operating the functional at Western

India shipyard Limited (Corporate Debtor) for last many years and is the sole authorized representative upon the 215 workmen.

3. The Intervenor workers Union submits that the above named corporate debtor was on voluntary liquidation commencement date that is being the 26th day of July 2018, and still is justly truly indebted to the several persons whose names, addresses, and descriptions appear in the Annexures for amounts severally set against their names in the Annexure at A/1 and A/2 annexed with this application at Exhibit 3 for grant of 24 months wages as per section 53 sub clause (b) (i) of the I.B. Code, 2016 due to them respectively as workman in the employment of M/s Western India Shipyard Ltd., (Corporate Debtor) in respect of services rendered by them to the corporate debtor during such period as are set out against their respective names in the Annexure A/1 and A/2 annexed with this application at Exhibit 3. At page no. 43 and 48 respectively
4. The Intervenor Union submits for which said sums or any part thereof, they have not, nor has any of them had or received in any manner of satisfaction or security whatsoever.
5. The Intervenor Union submits that the Applicant Union has signed a binding wages settlement under Section 12 (3) read with section 18 (3) of the Industrial Disputes Act, 1947, with M/s. Western India Shipyard Ltd., (Corporate Debtor), before the Office of the Regional Labour Commissioner, Government of Goa, being their sole authorised representative union, pertaining to revision and enhancement in their wages, salaries and other service conditions.

6. The Intervenor Union submits that as per said settlement under Section 12 (3) read with Section 18 (3) of the Industrial Disputes Act, 1947 all the 215- workmen named in the Annexure A/1 annexed herewith were given enhanced wages revision along with Variable Dearness Allowance (VDA) as mentioned in the said Settlement and the M/s. Western India Shipyard Ltd., (Corporate Debtor), also honoured the said settlement and paid the revised and enhanced salary including Variable Dearness Allowance (VDA) rise to these 215 – workmen accordingly.
7. The Intervenor Union submits that the Union has already filed a claim in FORM F before the official Liquidator Shri. Om Prakash Kanoongo claiming 24 months salaries payable to these 250 – workmen preceding the liquidation commencement date amounting to Rs. 11,11,83,005/- (Rupees Eleven Crore Eleven Lakhs Eighty-Three Thousand and Five Rupees only) as shown in Annexure A/1 and A/2 annexed with this application to Form F at Exhibit 3. However, the official Liquidator has failed to pay the 24 months salary referred above to the 215 – workmen who were employed with Corporate Debtor at Mormugao Harbour, Marmugao Goa. The said notice sent in the FORM F to the Liquidator.
8. The Intervenor Union submits that M/s. Western India Shipyard Ltd., (Corporate Debtor) and the Liquidator Shri. Om Prakash Kanoongo have failed to pay 24 months salaries payable to these 250 – workmen preceding the liquidation commencement date amounting to Rs. 11,11,83,008/- (Rupees Eleven Crore Eleven Lakhs Eighty-Three thousand and Five Rupees only), the form F at page no. 36.

Annexure A/1 of this application mentions the detail calculation of the 12 months i.e. 2016-2017 amounting to Rs. 5,50,60,229/- (Rupees Five Crore Fifty Lakhs Sixty Thousand Two Hundred and Twenty-Nine only) and Annexure A/2 the detail calculation of the 12 months i.e. 2017-2018 amounting to Rs. 5,61,22,776/- (Rupees Five Crores Sixty-One Lakhs Twenty-Two Thousand Seven Hundred and Seventy-Six only). The above salary calculation is inclusively of VDA for the period of 24 months as per section 53 of Insolvency and Bankruptcy Code, 2016.

9. The Intervenor Union submits that M/s. Indian Shipyard Ltd. (Corporate Debtor) and the liquidator Shri. Om Prakash Kanoongo is under the obligation to pay these 250 – workmen have salaries for 24-months preceding the liquidation commencement date as per section 53 sub clause (b) (i) of the I. B. Code, 2016 amounting Rs. 11,11,83,005/- (Rupees Eleven Crore Eleven Lakhs Eighty-Three Thousand and Five Rupees only).
10. **Particulars of how debt was incurred by the Corporate Debtor,** including particulars of any dispute as well as the record of pendency of suit or arbitration proceedings is mentioned hereunder: -
 - (i) The 215 – workmen are entitled for 24 months salaries preceding the liquidation commencement dated as per section 53 sub clause (b) (i) of the IB Code, 2016 amounting to Rs. 11,11,83,005/- (Rupees Eleven Crore Eleven Lakhs Eighty-Three Thousand and Five Rupees only)
11. The Intervenor Union relies and attached herewith the following documents to prove the claim:

DOCUMENTS

- i) Registration certificate of the Intervenor Union issued by Registrar of Trade Unions, Government of Goa dated 18.01.2016.
- ii) Wages Settlement signed by Intervenor Union with Western Indian Shipyard Limited (Corporate Debtor).
- iii) The notice in FORM F along with the calculation 24 months wages due and payable to the 215 workmen as per section 53 (b) (i) of IB Code, 2016 payable to 215 sent to the Liquidator by the Intervenor Union.

The Liquidator filed reply opposing the above application the relevant important paras of the Liquidator as follows: -

1. The applicant submits that the workers and employees first approached the Provident Fund Department in July-August 2019 with regard to the outstanding arrears and dues for the period January – April 2016. It was informed by the employees that as the company had closed down its operations in December 2015 hence PF department raised claim only upto December 2015.
2. It is also relevant to note that the Corporate Debtor had a lockdown w.e.f October 2016, so technically September 2016 was the last month for which claims can be admitted. However, the management under pressure of then Chief Minister paid as an advance salary for 4 months. However, the workers did not perform their duties, yet they wanted PF for this period also hence they made request to PF department to take up this issue. When PF department did not do anything for 4 months

they approach the Liquidator and after consultation with Financial Creditor it was paid by him.

3. The applicant submits that none of the workmen or employees had provided this information to the Liquidator and hence a higher claim amount stood admitted (considering the repayment under law for considering claims for past 24 months prior to liquidation commencement date). This can be seen from the claim details as submitted in the 1st to 4th Progress report for the quarter ended June 2019.
4. Thereafter, it was understood that the Corporate Debtor had already issued a lockdown, the last month for which claims could be considered was as of 30 September 2016. In view of the fact that the liquidation commencement date is 26 July 2018, hence in view of 24 months prior to liquidation commencement date and in view of the fact that the Corporate Debtor was under lockdown w.e.f. October 2016 (September 2016 being the last month), hence, claim for only 2 months 6 days could have been admitted for the purpose of distribution in terms of provisions of section 53 of the Code as such the same was revised and reported in the 5th Progress Report onwards.
5. It is pertinent to note that the present Application is filed with unclean hands. The arrears and dues of the workmen and employee have already been paid and the claims have been settled with all these 215 workmen/employees. The summary of the claims received, claims admitted and the amount paid to these workmen has been summarised. Pursuant to the said payment, liquidator has also obtained

confirmation letter from these workmen and employees admitting that they are in receipt of their provident fund dues and gratuity dues.

It is evident from the said document/disclosure at Annexure 1 therein that the basis of claim is

“On account of suspension of operation w.e.f. 30.09.2016 leading to permanent closure of Opponent No. 1 Company”

6. Hence, undisputedly the dues which had to be admitted and to be considered while distributing the amount under section 53 of the Code has to be only upto 30 September 2016. It is surprisingly to see that the Applicant has now approached this Hon'ble Adjudicating Authority at the end of Liquidation process when all assets are disposed-off with another set of claim of Rs. 11,11,83,005/- for the period from July 2016 (liquidation commencement date i.e. 26 July 2018) till July 2018 which is blatantly bad in law and against the facts. The applicant is put to strict proof to show the basis on which the workmen demand dues upto July 2018, when admittedly the Corporate Debtor was under permanent lockdown as of 30 September 2016 with is evident from their own settlement letters whereby their dues towards provident fund and gratuity were paid by the Liquidator.
7. The Liquidator had deposited with the PF Department the entire PF Arrears upto December 2015 for a sum of Rs. 76,21,578/- alongwith application interest Rs. 40,61,273/- as claimed, aggregating to Rs. 1,16,82,851/- on 29 January 2019.
8. The applicant submits that in view of the aforesaid facts, the present application deserves to be dismissed since the Applicant has blatantly

digressed from the facts of the case and is now under a literal interpretation of section 53(1) (b) (i) which says that the dues for the period of 24 months preceding the liquidation commencement date falls under this category does not mean that the dues are payable by the Corporate Debtor w.e.f. 01 October 2016, since undisputedly 30 September 2016 was the last day prior to the permanent lockdown of the Corporate Debtor.

9. The applicant says that the entire claim of Rs. 11,11,83,005/- is completely misplaced and no such claim can be admitted. Without prejudice to the fact that the said claim under the present Application is based on incorrect facts and bad in law and is *devoid of any merits*, be that as it may, by the time this Application came to be filed by the Applicant, all realisable assets have been disposed of and the amount so recovered has been disturbed amongst the stakeholders in terms of provision of section 53 of the Code. For sake of clarity a short synopsis with regard to the claims admitted of the financial creditor and other stakeholders and the amounts distributed is provided hereunder:

Summary of claims admitted

| Sr. No | Particulars | Amount admitted (Rs. In Lakhs) | Whether Ordinary or Preferential |
|-----------------------------|--------------------------|-----------------------------------|-------------------------------------|
| 1 | Financial Creditors | 8,696 | Preferential |
| 2 | Workmen | 163 | Preferential |
| 3 | Employee | 174 | Ordinary |
| 4 | Operational Creditors | 5,342 | Ordinary |
| Total Claim admitted | | 14,375 | |

Summary of Resolution and its distribution up to August 2022

| Sr. No. | Particulars | Amount (Rs. In Lakhs) | Amount (Rs. In Lakhs) |
|---------|---|-----------------------|-----------------------|
| 1. | Realisation - Net of CIRP & Liquidation Expenses (A) | | 2,151 |
| 2. | Paid to Workers | | |
| | a) As Gratuity (up to September 2016) | 485 | |
| | b) Paid to PF Department (up to December 2015) | 117 | |
| | c) As PF (For January 2016-April 2016) | 48 | |
| | d) Workers share as per under Section 53 of the Code (1.85%) | 24 | |
| | Total (B) | | 674 |
| 3. | Paid to Employees | | |
| | a) As gratuity | 100 | |
| | b) As PF | 8 | |
| | Total (C) | | 108 |
| 4. | Paid to Financial Creditor under Section 53 of the Code (98.15%) (D) | | 1,296 |
| 5 | Balance Fund available (E = A - B - C - D) | | 73 |

10. The applicant says that it is clear that the Applicants are merely attempting to seek additional money against the claim which does not exist and hence, the present application deserves to be dismissed as being *devoid of any merits and bad in law*.

Heard Mr. Ayush Rajani Ld. PCA appearing for the Liquidator and perused the record. There was no appearance on behalf Petitioner at any time after filing the above Interlocutory Application. The learned PCA Mr. Ayush Rajani

appearing for the Liquidator submitted that the employees of the Petitioners union first approached the provident fund department in July-August 2019 with regard to the outstanding arrears and dues for the period of January to April 2016. He further submitted that the company has closed down its operations in December 2015 and the provident fund department raised claim only up to 2015 and there was a lockdown with effect from October 2016 and technically September 2016 was the last month for which claims can be admitted. The Ld. PCA also invited the attention of this tribunal to the lockdown notice published in the newspaper. The liquidation was commenced in this case on 26.07.2018 and in view of the fact that the Corporate Debtor was under lockdown with effect from September 2016, the claim for only two months six days have been admitted for the purpose of distribution in terms of provisions of section 53 of the Code.

He also invited the attention of this tribunal the withdrawal letter dated 02.10.2019 given by the present representative Mr. Alexander Pacheco to the Regional Labour Commissioner confirming receipt of gratuity by way of banker cheques with an undertaking that he will not dispute the said gratuity amount in future directly or indirectly through any litigation. He has also invited the attention of this tribunal to the letter dated 30.12.2019 by the same person addressed to the Liquidator confirming receipt of Rs.19,987/- towards the entire dues of the Provident Fund with a further undertaking that he will not claim any further amount or institute any application towards recovery of PF either individually or in concept with any other workman against the Corporate Debtor.

The Liquidator also filed the distribution of the claims of all the workman mentioning the details of the amount, name of the bank, etc.

After hearing the submissions and upon going through the record this tribunal is of the considered opinion that there is no merit in the above application and the same is liable to be rejected. In addition to the above, it is appropriate to mention here that the entire liquidation process and the distribution has been completed in the above matter and present application is filed simply placing on record the wage settlement signed by the intervenor union with the Corporate Debtor without any specific prayers. Mr. Alexander Pacheco who claims to have filed the above application on behalf of workers did not annex any authorisation in his favour passed by the workers authorising him to file the above application in their behalf also. Therefore, it needs to be dismissed on that ground also.

With the above observations and direction, the above Interlocutory Application is **Dismissed**.

Sd/-
MADHU SINHA
MEMBER (T)

Sd/-
H.V. SUBBA RAO
MEMBER (J)