

8. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, as CIR costs.

9. Copy of the order be communicated to both the parties as well as to the IRP.

10. To come up on for 10th June, 2019 further consideration.

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[2019] 154 SCL 417/107 taxmann.com 194 (NCL-AT)

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Sunil Kumar Jain

v.

Sundaresh Bhatt

JUSTICE S.J. MUKHOPADHAYA, CHAIRPERSON

A.I.S. CHEEMA, JUDICIAL MEMBER

AND KANTHI NARAHARI, TECHNICAL MEMBER

COMPANY APPEAL (AT) (INSOLVENCY) NO. 605 OF 2019†

MAY 31, 2019

Where workmen of corporate debtor had alleged that Adjudicating Authority had failed to decide their claims, since in respect of corporate debtor an order of liquidation had already been passed, that apart, disputed question of fact, as to whether those workmen had actually worked during CIRP or earlier period, could not be dealt with by Adjudicating Authority, impugned order passed by Adjudicating Authority could not be interfered with

Section 3(6), read with section 33 of the Insolvency and Bankruptcy Code, 2016 - Claims - Appellant-workmen of corporate debtor preferred an appeal against order passed by Adjudicating Authority whereby, no relief had been granted to appellant-workmen with regard to their claim relating to salary, which they claimed for period involving ‘Corporate Insolvency Resolution Process’ and prior period - It was noted that in respect of corporate debtor an order of liquidation had already been passed - That apart, disputed question of fact, as to whether

†Arising out of order of NCLT in *Sunil Kumar Jain v. Sundaresh Bhatt* [2019] 107 taxmann.com 193 (NCLT - Ahd.).

appellant workmen had actually worked during CIRP or earlier period, could not be dealt with by Adjudicating Authority till such information could have been obtained from RP or claim was decided by liquidator - Whether thus, impugned order passed by Adjudicating Authority could not be interfered with - Held, yes - Whether however, appellant workmen could file their individual claims before liquidator, who after going through record and taking into consideration pleadings made by appellant workmen would determine their claim - Held, yes - Whether if claim of one or other appellant workmen was rejected, it would be open to them to move before Adjudicating Authority, who would decide same in accordance with law - Held, yes [Para 5]

FACTS

- The Adjudicating Authority earlier disposed of an interlocutory application directing the RP to deposit Rs. 2.75 crores out of approximately Rs. 9.55 crores with the Registrar of the NCLT by way of fixed deposit. The salary for the period during which the 272 workmen and employees had worked, should have been cleared out of the said amount.
- The appellant-workmen of corporate debtor had alleged that no relief had been granted to them with regard to their claim relating to salary, which they claimed for the period involving 'corporate insolvency resolution process' and the prior period.

HELD

- In respect of corporate debtor, an order of liquidation has already been passed. This apart, the disputed question of fact, as to whether the appellants have actually worked during the CIRP or the earlier period, cannot be dealt with by the Adjudicating Authority till such information could have been obtained from the RP or claim is decided by the liquidator. [Para 4]
- Thus, order passed by Adjudicating Authority could not be interfered with however, appellants - all 272 workmen and employees are allowed to file individual claims before the liquidator, who after going through the record and taking into consideration the pleadings made by workmen/employees will determine the claim. If claim of one or other workmen/employee is rejected, it will be open to them to move before the Adjudicating Authority, who may decide the same in accordance with law. [Para 5]
- So far as, the Gratuity and Provident Funds are concerned, it is sufficient to say that the same cannot be treated to be the asset of the 'corporate debtor'. They are to be disbursed among the employees/workmen who are entitled for the same. The appeal stands disposed of with aforesaid observation. [Para 6]

CASE REVIEW

Sunil Kumar Jain v. Sundaresh Bhatt [2019] 107 taxmann.com 193 (NCLT - Ahd.) (para 5) [affirmed; see annex].