

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1364 of 2023

[Arising out of Order dated 21.08.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court-II) in IA. No.1067/ND/2023 in Company Petition No. (IB)-1088(ND)/2020]

In the matter of:

Amit Kumar Pandey & Ors.

....Appellants

Vs.

**Pardeep Kumar Sethi, Resolution Professional
(JMT Auto Ltd.) and Ors.**

...Respondents

For Appellant:

Mr. Abhijit Sinha, Mr. Utkarsh Singh, Mr. Aditya Tripathi, Advocates.

For Respondent:

Mr. Krishnendu Datta, Sr. Advocate with Mr. Prateen Kumar, Ms. Raveena Rai, Ms. Smriti Nair, Advocates

Mr. Anuj Tiwari, Mr. Swankit Nanda, Ms. Aroshi Pal, Advocates for RP.

JUDGMENT

(5th December, 2023)

Ashok Bhushan, J.

This Appeal has been filed against the order dated 21.08.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court-II) allowing IA. No.1067/ND/2023 filed by the Resolution Professional under Section 30(6) of the IBC praying for approval of the Resolution Plan dated 11.11.2022 submitted by 'Ramkrishna Forgings Limited'. The Adjudicating Authority by the impugned order has approved the Resolution Plan, aggrieved by which order, this Appeal has been filed.

2. Initially the Appeal was filed by 'Thekedaar Kramchari Committee', an unregistered union and IA No.5182 of 2023 has been filed for amending the memo of parties by substituting the Appellant/Union with five Appellants as mentioned in Annexure-2 of the IA. In the ends of justice, we allow IA No.5182 of 2023 and substitute the Appellant Nos.1 to 5 as mentioned in Annexure-2 of the IA.

3. The Appellants' case is that they are workers engaged by sub-contractor and in the Resolution Plan, the claims submitted on behalf of sub-contracted workers have been accepted only to the extent of 8% whereas workmen of the Corporate Debtor have been proposed payment of 100% of their claim.

4. We have heard Shri Abhijit Sinha, Learned Counsel for the Appellants and Shri Krishnendu Datta, Learned Senior Counsel for the Resolution Professional.

5. Shri Abhijit Sinha, Learned Counsel for the Appellants submits that the Appellants who were workers employed through sub-contractor have been working in the units of the Corporate Debtor and they were entitled for payment of their full wages including provident fund and gratuity etc. whereas the Resolution Plan only proposes 8% of such dues whereas claims of the workmen have been accepted 100% of their claims. It is submitted that there is no difference between workmen who are employed directly by the Corporate and workers who are engaged through sub-contractor, both having been performing same duties are entitled for same emoluments. It was due to

inadvertence that claims were submitted in Form-B instead of Form D or E which was inconsequential. If Section 3(36) of the IBC read with Section 2(s) of the Industrial Dispute Act, 1947, the regulation does not make any difference between workers and sub-contracted workers. Appellants are also stakeholders and a harmonious interpretation of the statute needs to be given to extend benefit to the sub-contracted workers also. Statutory dues of the Appellants cannot be forsaken in the Resolution Plan.

6. Shri Krishnendu Datta, Learned Senior Counsel appearing for the Respondents submits that the Appellants have no right to challenge the approval of the Resolution Plan. Appellants were not even stakeholders in the CIRP of the Corporate Debtor. The claims of workmen of the Corporate Debtor were filed and admitted by Resolution Professional whereas claims were filed by the sub-contractor themselves as operational debt. Learned Counsel for the Respondents has referred to copy of the claims submitted by sub-contractors which has been brought on record at pages 110-319 which indicate that the claims were filed by sub-contractor on the basis of invoices which was raised to the Corporate Debtor. He submits that the claims were submitted in Form-B i.e. by Operational Creditors except workmen and employees. Sub-contractors have raised different bills and invoices to the Corporate Debtor with regard to which the claims were submitted and the Resolution Professional has rightly admitted the claim as operational debt and the treatment of such operational debt has been made in accordance with law in the Resolution Plan. The claims filed by the sub-contractor cannot be treated to be claim filed by the workmen and dealt in the category of

workmen's claims. Under Section 53 of the IBC, claim of workmen is on higher pedestal as compared to the claim of the operational creditor. No error has been committed by the Adjudicating Authority in approving the Resolution Plan submitted by Resolution Applicant on the basis of collated and admitted claims of Operational Creditor. Total claim of the Operational Creditors was admitted which was under the category "other than workmen, employees and government dues". The Appellant cannot claim parity with workmen's claim as dealt in the Resolution Plan. The claim received in the CIRP has to be treated in accordance with IBC and CIRP Regulations, 2016.

7. We have considered the submissions of the Counsel for the parties and perused the record.

8. None of the Appellants in this Appeal have filed any claim in the CIRP of the Corporate Debtor. Appellants' claim to be workers of the sub-contractor and according to the Appellant sub-contractor has filed the claim on their behalf in the CIRP of the Corporate Debtor as operational debt. The Appellant in the Appeal has brought on record copy of the claims submitted by the sub-contractor. We may notice only one claim submitted in Form-B by one Mr. Sukhwinder Singh who claimed to be proprietor. Claim submitted in Form B dated 11.03.2022 is as follows:-

"FORM B

PROOF OF CLAIM BY OPERATIONAL CREDITORS
EXCEPT WORKMEN AND EMPLOYEES

**(Under Regulation 7 of the Insolvency and
Bankruptcy Board of India (Insolvency Resolution
Process for Corporate Persons) Regulations, 2016)**

Date:11.03.2022

To

The Interim Resolution Professional
 Sri Pradeep Kumar Sethi, RBSA Restructuring
 Advisors LLP,
 1121, Building No.11, Solitaire Corporate Park,
 Andheri Kuria Road, Andheri East,
 Mumbai Maharashtra- 400 093
 Email id: imtauto.ird@rbsa.in

From

SUKHWINDER SINGH
 Adityapur, Jamshedpur-831013

SUBJECT: SUBMISSION OF PROOF OF CLAIM

Sir,

I/We, SUKHWINDER SINGH, hereby submit this proof of claim in respect of the corporate insolvency resolution process in the case of JMT AUTO Limited. The details for the same are set out below:-

PARTICULARS		
1.	Name of Operational Creditor	Sukhwinder Sigh
2.	Identification Number of Operational Creditor (If an incorporated body provide identification number and proof of incorporation. If a partnership or individual provide identification records* of all the partners or the individual	PAN No. AWJPS5300E AADHAR No. 54102441 7395 GST No. : NO Vender No. : 230191
3.	Address and email address of Operational Creditor for correspondence	Adityapur, JAMSHEDPUR-831013 gursohi01@gmail.com
4.	Total Amount of claim (Including any interest as at the Insolvency Commencement Date)	3,64,026.79
PARTICULARS		
5.	DETAILS OF DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED	Annexure-I
6.	DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OR ORDER OF SUIT OR ARBITRATION PROCEEDINGS	
7.	DETAILS OF HOW AND WHEN DEBT INCURRED	Annexure-I

8.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE DEBTOR AND THE CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM	
9.	DETAILS OF: a. Any security held, the value security and its date, or b. Any retention of title arrangement in respect of goods or properties to which the claim refers	
10.	DETAILS OF THE BANK ACCOUNT TO WHICH THE AMOUNT OF THE CLAIM OR ANY PART THEREOF CAN BE TRANSFERRED PURSUANT TO A RESOLUTION PLAN	Punjab National Bank A/c. 06701011000495 IFSC Code PUNB0067010
11.	LIST OF DOCUMENTS ATTACHED TO THIS PROOF OF CLAIM IN ORDER TO PROVE THE EXISTENCE AND NON-PAYMENT OF CLAIM DUE TO THE OPERATIONAL CREDITOR	PAN CARD, AADHAR CARD, CANCEL CHEQUE, ANNEXURE-I
Signature of operational creditor or person authorised to act on his behalf [Please enclose the authority if this is being submitted on behalf of an Operational Creditor]		
Name in BLOCK LETTERS		SUKHWINDER SINGH
Position with or in relation to creditor		Proprietor
Address of person signing		

*PAN number, passport, AADHAAR Card or the identity card issued by the Election Commission of India”

9. The above Form clearly indicate that the claim has been filed by the Operational Creditor, by a vendor. The claim was submitted as operational creditor. The Resolution Professional has admitted the claim of various Vendors as operational creditors and the said claims were dealt in the Resolution Plan as Operational Creditors. Appellant who never submitted any claim before the Resolution Professional claiming to be workmen cannot be allowed to contend at this stage that they are workmen and they should be paid at par with the workmen of the Corporate Debtor for amount which was admitted in the CIRP by the Resolution Professional.

10. Learned Counsel for the Appellant has contended that there is no difference in the work of workers who are engaged by sub-contractor and workmen who are engaged directly by the Corporate Debtor and both are workmen within the definition of workmen as defined in Section 2(s) of the Industrial Dispute Act. Section 2(s) of the Industrial Dispute Act is as follows:-

“2. Definitions.-

xxx

xxx

xxx

(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the

powers vested in him, functions mainly of a managerial nature.”

11. Learned Counsel for the Appellant has referred to Section 3(36) of the IBC which provides as follows:-

“3. Definitions.-(36) "workman" shall have the same meaning as assigned to it in clause (s) of section 2 of the Industrial Disputes Act, 1947”

12. There can be no dispute with the submission with regard to statutory definition of workmen as given in Industrial Dispute Act and adopted by Section 3(36) of the IBC but the question is as to whether when the claim has not been filed in the CIRP as workmen by the Appellant and the claim which can be referable by them is the claim filed by sub-contractor as operational debt, can it be treated at par with the workmen dues. The treatment of such operational debt cannot be faulted on the anvil of Section 53 of the IBC. Section 53 itself provides different treatment in distribution of assets where workmen dues are dealt in Section 53(1)(b) and operational debt at much lower ladder. The Resolution Plan has also similarly dealt with workmen dues differently from operational debt and the admitted workmen dues and admitted operational debt cannot be faulted in the Resolution Plan.

13. In the Resolution Plan where paragraph 7.33 notices distribution of claims provided in the approved Resolution Plan is as follows:-

“7.33. That the distribution of claims provided in the approved Resolution Plan is provided hereinunder:-

Sr. No.	Category of Creditors	Amount Claimed	Amount Admitted	Amount Provided under the Resolution Plan	Amount Provided to the Amount Claimed (%)
1.	Financial Creditors	1,68,39,69,450	168,36,81,352	1,11,24,40,394	66%
2.	Operational Creditors (Government Dues)	43,21,78,653	18,72,42,052	8,22,90,131	19%
3.	Operational Creditors (Employees)	9,41,16,803	9,27,71,650	1,41,17,535	15%
4.	Operational Creditors (Workmen)	1,02,39,732	1,02,24,742	1,02,39,732	100%
5.	Operational Creditors (other than Workmen, Employees and Government Dues)	26,10,54,063	23,38,13,932	2,12,74,408	8%
6.	Other Debt and Dues			96,37,800	-
	TOTAL	2,48,15,58,701	2,20,77,33,728	125,00,00,000	50%

14. The claim at best on behalf of the Appellants through sub-contractor was a claim of operational debt filed by operational creditor i.e. vendors, hence, the same has been treated as Serial No.5 in paragraph 7.33. A claim which was filed by operational creditor cannot be treated at par with claim of workmen. When Resolution Plan differentiate between payment to the workmen as well as to the Operational Creditors, such distinction is in accordance with law and cannot be faulted.

15. The Hon'ble Supreme Court in ***“Committee of Creditors of Essar Steel India Limited Through Authorised Signatory vs. Satish Kumar Gupta & Ors., (2020) 8 SCC 531”*** held equitable treatment is to be accorded to each creditor depending upon the class to which it belongs: secured or

unsecured, financial or operational. In paragraphs 88 and 90, following has been laid down:-

“88. By reading paragraph 77 (of Swiss Ribbons) de hors the earlier paragraphs, the Appellate Tribunal has fallen into grave error. Paragraph 76 clearly refers to the UNCITRAL Legislative Guide which makes it clear beyond any doubt that equitable treatment is only of similarly situated creditors. This being so, the observation in paragraph 77 cannot be read to mean that financial and operational creditors must be paid the same amounts in any resolution plan before it can pass muster. On the contrary, paragraph 77 itself makes it clear that there is a difference in payment of the debts of financial and operational creditors, operational creditors having to receive a minimum payment, being not less than liquidation value, which does not apply to financial creditors. The amended Regulation 38 set out in paragraph 77 again does not lead to the conclusion that financial and operational creditors, or secured and unsecured creditors, must be paid the same amounts, percentage wise, under the resolution plan before it can pass muster. Fair and equitable dealing of operational creditors’ rights under the said Regulation involves the resolution plan stating as to how it has dealt with the interests of operational creditors, which is not the same thing as saying that they must be paid the same amount of their debt proportionately. Also, the fact that the operational creditors are given priority in payment over all financial creditors does not lead to the conclusion that such payment must necessarily be the same recovery percentage as financial creditors. So long as the

provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors, together with negotiating with a prospective resolution applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors.

90. *Under Regulation 39(4), the compliance certificate of the resolution professional as to the CIRP being successful is contained in Form H to the Regulations. This statutory form, in Paras 6 and 7, states as under:*

6. *The Resolution Plan includes a statement under Regulation 38(1-A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and Regulations made thereunder.*

7. *The amounts provided for the stakeholders under the Resolution Plan are as under:*

(Amount in Rs lakh)

<i>Sl. No.</i>	<i>Category of stakeholder [If there are sub-categories in a category, please add rows for each category.]</i>	<i>Amount claimed</i>	<i>Amount admitted</i>	<i>Amount provided under the Plan</i>	<i>Amount provided to the amount claimed (%)</i>
1.	Dissenting Secured Financial Creditors				
2.	Other Secured Financial Creditors				
3.	Dissenting Unsecured Financial Creditors				
4.	Other Unsecured Financial Creditors				
5.	Operational Creditors				

	Government			
	Workmen			
	Employees			
	...			
6.	Other Debts and Dues			
<i>Total</i>				

Quite clearly, secured and unsecured financial creditors are differentiated when it comes to amounts to be paid under a resolution plan, together with what dissenting secured or unsecured financial creditors are to be paid. And, most importantly, operational creditors are separately viewed from these secured and unsecured financial creditors in Sl. No. 5 of Para 7 of statutory Form H. Thus, it can be seen that the Code and the Regulations, read as a whole, together with the observations of expert bodies and this Court's judgment, all lead to the conclusion that the equality principle cannot be stretched to treating unequals equally, as that will destroy the very objective of the Code — to resolve stressed assets. Equitable treatment is to be accorded to each creditor depending upon the class to which it belongs: secured or unsecured, financial or operational.”

16. Shri Abhijit Sinha, Learned Counsel for the Appellant has also placed reliance on the judgment of the Hon’ble Supreme Court in **“Basti Sugar Mills Ltd. vs. Ram Ujagar and Ors.- (1964) 2 SCR 838”** where the Hon’ble Supreme Court in paragraph 10 laid down following:-

“10. On the ordinary grammatical sense of the words “employed by a factory” they include, in our opinion, every person who is employed to do the work of the factory. The use of the word “by” has nothing to do with the question as to who makes the appointment. The reason why “by” was used instead of “in” appears to be to ensure that if a person has been employed to do the work of the industry, whether the work is done inside the factory or outside the factory he will get the benefit of the Standing Orders.”

17. In the present Appeal, the claim which was filed through sub-contractor cannot be treated as workmen of the Corporate Debtor. The Resolution Plan has dealt with claim as admitted by Resolution Professional and reflected in the Information Memorandum. The claim filed by the Operational Creditor in Form B has been dealt with in accordance with the IBC and CIRP Regulation and the claim which was filed by the Operational Creditor cannot be transposed to be claim of workmen for the purpose of this Appeal.

18. We, thus, are of the view that the issue raised by the Counsel for the Appellant that workers employed by sub-contractor are also workers of the Corporate Debtor need no answer in this Appeal since the question is as to treatment of the claim which was submitted in the CIRP of the Corporate Debtor and admitted by the Resolution Professional.

19. The submission which has been advanced by Counsel for the Appellant that due to the workers of sub-contractor being not aware of the CIRP could not file their claim cannot be considered at the stage when all claims have

been collated and admitted and dealt with in the Resolution Plan. Challenge in this Appeal is to the order of the Adjudicating Authority approving the Resolution Plan. We are satisfied that there is no infirmity in the Resolution Plan giving different treatment to the workmen dues and those claimed by the Operational Creditor. At the instance of the Appellant, we do not find any error in the order impugned warranting interference in exercise of our appellate jurisdiction. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

New Delhi
Anjali