

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I, CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **27.06.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : Airpack Gases
Vs
Chowel India Pvt. Ltd.

MAIN PETITION NUMBER : IBA/1121/2019

(IA/MA) APPLICATION NUMBERS

MA/5(CHE)/2023, IA/1599(CHE)/2022, IA/446(CHE)/2022, IA/780(CHE)/2021,
IA/781(CHE)/2021, IA/908(CHE)/2021

COMMON ORDER

MA/5(CHE)/2023

Present: Shri. K.M. Anand, Ld. Counsel for the Applicant.

Shri.A.G.Sathyannarayana, Ld. Counsel for the
Liquidator/Respondent.

Heard.

This application has been filed by the workman E. Muthukumar who is also the General Secretary of Kanchipuram Pothu Thozhilalar Sangam.

As per the document dated 17.07.2022, he has been authorized by the workmen to file petition before the NCLT for claiming compensation for the employees. The authorization carries the signature of 152 workmen / employees. This application has been filed by 153 workmen/employees and the 153th is Mr. E. Muthukumar.

This application is against rejection of claim which were stated to be filed belatedly. It was held in the case of "***JK JUTE MILL MAZDOOR MORCHA versus JUGGILAL KAMLAPAT JUTE MILLS COMPANY LIMITED*** through its Director. [(2019) 11 Supreme Court Cases 332]

Rule 6. Form 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 also recognises the fact that claims may be made not only in an individual capacity, but also conjointly. Further, a registered trade union recognised by Section 8 of the Trade Unions Act, makes it clear that it can sue and be sued as a body corporate under Section 13 of that Act. Equally, the general fund of the trade union, which inter alia is from collections from workmen who are its members, can certainly be spent on the conduct of disputes involving a member or members thereof or for the prosecution of a legal proceeding to which the trade union is a party, and which is undertaken for the purpose of protecting the rights arising out of the relation of its members with their employer, which would include wages and other sums due from the employer to workmen. (Para 12)

A petition for winding up would be maintainable at the instance of the trade union. This is for the simple reason that Sections 15(c) and (d) clearly mandate that the prosecution or defence of any proceeding to which the trade union or any member thereof is a party as well as the conduct of trade disputes on behalf of the trade union or any member thereof can be done by the trade union. This would clearly go to show that the trade union, for and on behalf of its members can certainly prefer a winding-up petition as contemplated under Section 439 of the Companies Act, 1956. This is for the simple reason that if the workmen have not been paid their wages and/or salary by the company, they would certainly be a creditor or creditors as contemplated under Section 439(1)(b) of the Companies Act, 1956. This rationale based upon Sections 15(c) and (d) of the Trade Unions Act, which is the context of a winding-up petition, equally applies to a petition filed under the Insolvency and Bankruptcy Code, 2016 (Paras 13 and 14)

A "person" includes a company in Section 3(23)(c) of the Code, and would include "any other entity established under a statute" under Section 3(23)(g). It is clear that Section 3(23)(g) has to be read *noscitur a sociis* with the previous clauses of Section 3(23) of the Code. This being the case, entities such as companies, trusts, partnerships, and limited liability partnerships are all entities governed by the Companies Act, the Trusts Act, 1882 and the Partnership Act, which are not "established" under those Acts in the sense understood in *Canara Bank*, (2018) 9 SCC 322 and the judgments followed by it. The context, therefore, in which the phrase "established under a statute" occurs in Section 3(23)(g) of the Code, makes it clear that a trade union, like a company, trust, partnership, or limited liability partnership, when registered under the Trade Unions Act, would be "established" under that Act in the sense of being governed by that Act. For this reason, the judgment in *Canara Bank*, (2018) 9 SCC 322 would not apply to Section 3(23) of the Code. (Para 15)

With the application, prayer has been made for condonation of delay in filing the application/appeal.

As seen from the reply, the CIRP in the present case was initiated on 05.05.2020. The liquidation order was passed on 29.11.2021. The Liquidator invited the claims giving the last date for submission as 01.01.2022. The Applicant had preferred the claim only on 03.08.2022 in respect of their salaries for the period from 01.05.2019 to 30.06.2022 for Rs.18,00,00,000/- (Rupees Eighteen Crores only). The Respondent/Liquidator rejected the claim observing that the claim is time barred and provisions of section 53(b)(i) are applicable. It is also stated that no employees association is registered in the company. The Corporate Debtor stopped its operations way back on 19.05.2019.

In the instant case, the employees / workmen have authorized E. Muthukumar who is also the workman / employee to file the claim on their behalf which is permissible in view of the law laid down in the case referred above. The claims have not been filed by the union but by the authorized person on behalf of the employees. Admittedly, the claims were belatedly filed but since the company has not been fully liquidated and distribution is not complete and that the claims relate to the workmen / employees, we are of the view that the Liquidator should take a liberal approach for admitting and collating the claims. This is however subject to the applicable provisions and admissibility of the claims.

With these observations, we allow the application condoning the delay and direct the Liquidator to admit and collate the claims in terms of the applicable provisions of law.

Application is accordingly **disposed of**.

IA/1599(CHE)/2022

Present: Shri.A.G. Sathyanarayana, Ld. Counsel for the
Liquidator/Applicant.

Respondents are ex-parte.

IA/446(CHE)/2022

Present: Shri.A.G. Sathyanarayana, Ld. Counsel for the
Liquidator/Applicant.

Ms. Indhu Karunakaran, Ld. Counsel for the Respondent No.1.

None for Respondent No.2.

Ld. Counsel for Respondent No.1 submits that she has not been served with the copy of the application.

Let copy be served.

Two weeks time is granted to the Respondents to file reply.

Fresh step be taken by the Applicant for service on Respondent No.2.

IA/780(CHE)/2021

Present: Shri.A.G. Sathyanarayana, Ld. Counsel for the Liquidator/Applicant.

None for Respondent No.1.

IA/781(CHE)/2021

Present: Shri.A.G. Sathyanarayana, Ld. Counsel for the Liquidator/Applicant.

None for Respondent No.1.

IA/908(CHE)/2021

Present: Shri.A.G. Sathyanarayana, Ld. Counsel for the Liquidator/Applicant.

Shri.ChandramouliPrabhakar, Ld. Counsel for R1.

None for Respondent No.2.

The Applicant has filed the minutes of SCC dated 03.03.2024 regarding his authorization to proceed with the application.

Pleadings be completed before the date fixed.

List the applications for hearing on **23.08.2024**.

Sd/-
VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-
SANJIV JAIN
MEMBER (JUDICIAL)

VS