

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT-III**

IA No. 5636/2023

In

IB – 908/ND/2022

IN THE MATTER OF IB-908(ND)/2022:

M/s. JONEJA BRIGHT STEELS PVT. LTD.

..... Operational Creditor

VERSUS

M/s. NIPMAN FASTENERS INDUSTRIES PRIVATE LIMITED

..... Corporate Debtor

AND IN THE MATTER OF IA-5636/2023:

Mr. Satish Kumar

(Authorized Representative on behalf of 124 workmen
of M/s. Nipman Fasteners Industries Pvt. Ltd.)

.... Applicant

VERSUS

Mr. Naresh Kumar Munjal

(Resolution Professional of M/s. Nipman Fasteners Industries Pvt Ltd.)

....Respondent

Order under Section 60(5) of the IBC, 2016

Order Delivered On: 15.04.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant: Mr. Swarnendu Chatterjee, Mr. Yashwardhan Singh,
Ms. Megha Saha Advs.

For the Respondent: Ms. Honey Satpal, Adv. a/w Mr. Naresh Munjal RP in
person

IA No. 5636/2023 In IB 908(ND)/2022

Date of Order: 15.04.2024

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present Application has been filed by Mr. Satish Kumar, the Authorized Representative on behalf of the 124 workmen of the Corporate Debtor under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016 before this Adjudicating Authority, for seeking the following reliefs:-

“(a) Admit and allow this application.

(b) Set aside the correspondence dated 02.10.2023 of the RP with respect to non-inclusion of claims of gratuity and notice pay and further direct the Respondent RP to admit the claims of 124 workmen with respect to gratuity and notice pay.

(c) Direct the RP to issue necessary directions to the EPFO so as to enable the workmen to withdraw their PF amounts as deposited with EPFO.

(d) Direct the RP to include the updated claims of workmen after inclusion of the claims of gratuity and notice pay in FORM G and re-publish the updated FORM-G.

(e) Pass any further or suitable orders as may be necessary and expedient in the facts of this case.”

2. **Case of the Applicants:**

The Applicants who are the workmen of the Corporate Debtor submitted their claims through Mr. Vipin Kumar on 07.06.2023 to the Resolution Professional pursuant to the CIRP initiated by this Adjudicating Authority vide order dated 24.01.2023. The Resolution Professional vide email dated 02.10.2023 reproduced below rejected the claim:-

“Dear Mr. Vipin, Please find attached the sheet with the claims admitted for workmen as filed by you.

We would like to clarify the following as informed to us by the Erstwhile Management of the Company:-

1. The workers are not terminated by the Erstwhile Management and they are still on the rolls of the company.

2. There is no Gratuity Fund as maintained by the Company.

3. *The Claims for Notice Period and Gratuity have not been accepted by the undersigned.*

4. *However, we are submitted the details of Gratuity payable of all the workers as on April 21st, 2023 to the Prospective Resolution Applicant before they submit the resolution plan. The same is also updated on the Virtual Data Room.*

5. *For the workers terminated or resigned before April 21st, 2023 we have accepted their Gratuity as claimed by them in full.*

Refer to Column V in the sheet for the amount of Claim admitted.”

3. Submissions of the Applicant:

- i. The Applicants have submitted that the Resolution Professional has not considered the gratuity dues of 103 workmen out of 124 workmen. It is submitted that the Corporate Debtor’s Management issued a notice on 26.10.2022 suspending the operations of the Company w.e.f. 28.10.2022 and declaring that the factory will remain close till further information.
- ii. It is submitted that pursuant to the initiation of CIRP, publication was made on 28.04.2023 and Form-G was published on the website of IBBI and newspapers by the Resolution Professional. It is submitted that the Resolution Professional has rejected the claim of gratuity dues of 103 out of 124 workmen on the ground that the workmen are still on the muster rolls of the Corporate Debtor whereas the Form G dated 07.07.2023 shows that there are no employees on the muster rolls of the Corporate Debtor.
- iii. It is submitted that out of 124 workmen of the Corporate Debtor, gratuity amounts were submitted for 110 workmen (as other 14 did not complete 5 years of service) and out of that 110, the RP has admitted the claims of gratuity and notice pay of only 7 people and the claims of others with respect to gratuity and notice pay stands negated/rejected. Such an act on the part of the Respondent is contradictory.
- iv. The Respondent’s response means that all the workmen except the ones who have retired prior to 21.04.2023, i.e., Insolvency Commencement Date (“**ICD**”) are on the rolls of the CD and are working and that is the reason for the denial of gratuity and notice pay. It is clear from the records that since last year,

Corporate Debtor is under closure and there was no joining notice from the RP till date since his appointment.

- v. Hence, the mere statement that “the workmen are on the rolls” does not suffice and if so, then their claims should be accepted in totality and be paid as CIRP cost. The Applicant has relied on the judgment of Hon’ble Supreme Court in the case of **Sunil Kumar Jain vs. Sundaresh Bhatt and Ors.**, reported in (2022) 7 SCC 540, which lays down the principle that the claims of the workmen should be accepted in totality and be paid as CIRP cost.

4. **Submissions of the Respondent:**

- i. The Resolution Professional has filed a reply affidavit raising preliminary objections with regard to the execution of Special Power of Attorney.
- ii. It is submitted by the Resolution Professional that the RP has examined the claims of all 124 workmen after collecting necessary relevant information from the Erstwhile Management of the Corporate Debtor and holding meetings with the representatives of the workmen and admitted the eligible claims.
- iii. It is submitted that in terms of the available information, there are no employees of the muster rolls of the Corporate Debtor. Further, the workmen having not resigned from the Company are not eligible to claim the gratuity.
- iv. The Respondent in its reply affidavit in paragraph 21 in the interest of the workmen made the following submissions: -

“a) The Applicant has filed the instant Application on behalf of the ex-workmen.

b) That it is evident from a bare perusal of the claim form attached at page number 44 as Annexure-11 that all workmen claim gratuity on their resignation as on 21.04.2023.

c) That it is also evident from the claim form submitted that the workmen were not terminated but have resigned from 21.04.2023.

d) That the Answering Respondent had already provided this claim forms in the Information Memorandum which includes the amount of gratuity of all workmen.

e) That the Answering Respondent had no objection on accepting the resignation of all the workmen as on Insolvency Commencement Date

(“ICD”). That the Applicant has not handed over resignation letters despite repeated requests, except assurances.

f) That now since the Applicant has submitted before this Hon’ble Court that all workmen had resigned as on insolvency commencement date, the Answering Respondent will be revising the claims in terms of the provisions of law.

g) That it is submitted that this Hon’ble Tribunal may accordingly dispose of this Application.

5. The Applicants have filed rejoinder affidavit stating that they are not willing to resign and want gratuity and release of PF dues.

6. **Analysis and Findings**

- i. We have heard the submissions made by the Learned Counsel appearing for the parties and perused the records.
- ii. It is an admitted case that the Applicants are still on the muster rolls of the Corporate Debtor.
- iii. Section 53(1) of The Code on Social Security, 2020 states that:

*“Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,— (a) on his superannuation; or
(b) on his retirement or resignation; or
(c) on his death or disablement due to accident or disease; or
(d) on termination of his contract period under fixed term employment; or
(e) on happening of any such event as may be notified by the Central Government.*
- iv. It is a settled principle of law that the gratuity is payable to a workman only on the retirement or on demitting the office after completing the qualifying service and not otherwise.
- v. Having regard to the suggestions given by the Resolution Professional in paragraph 21 of the reply affidavit, we direct the Applicants to exercise their option of resigning from the service and submitting their resignation so as to enable them to be eligible for payment of gratuity and PF dues and in case, the Applicants exercise their option, the Resolution Professional is directed to consider the same in accordance with law.

vi. In view of the above facts and circumstances and the foregoing discussion. It is accordingly ordered as follows:

(i) The Application bearing **IA-5636/2023** filed by the Applicants is **disposed of in above terms.**

(ii) The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

No order as to costs.

-Sd-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-Sd-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**