

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH**

**Company Appeal (IBC)/01/KOB/2024  
&  
Company Appeal (IBC)/02/KOB/2024  
&  
Company Appeal (IBC)/03/KOB/2024  
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Company Appeal (IBC)/04/KOB/2024  
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Company Appeal (IBC)/05/KOB/2024  
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Company Appeal (IBC)/06/KOB/2024  
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Company Appeal (IBC)/07/KOB/2024  
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Company Appeal (IBC)/08/KOB/2024  
&  
Company Appeal (IBC)/09/KOB/2024  
&  
Company Appeal (IBC)/10/KOB/2024**

**IN**

**TIBA/09/KOB/2019**

*(Under Section 42 of the Insolvency and  
Bankruptcy Code, 2016 r/w Rule 11 of the NCLT  
Rules, 2016)*

***In the matter of:***

**M/S. PALM LAGOON BACKWATER RESORTS  
PRIVATE LIMITED**

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH

Company Appeal (IBC)/01/KOB/2024 to Company Appeal (IBC)/10/KOB/2024  
in TIBA/09/KOB/2019

*In the matter of M/s. Palm Lagoon Backwater Resorts Private Limited (under liquidation)*

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**MEMO OF PARTIES:**

**APPELLANTS:**

**Company Appeal (IBC)/01/KOB/2024**

**MR. ROYMON,**

S/o John, Charuvila Puthen Veedu,

Kundara, Mulava P.O., Kollam- 691 503

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**Company Appeal (IBC)/02/KOB/2024**

**MR. RAVEENDRAN PILLAI,**

S/o Muralidharan Pillai, Kollarazhikathu

Veedu, Cherumoodu, Kundara, Vellimon P.O.,

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**Company Appeal (IBC)/03/KOB/2024**

**MRS. SUBHA LEKSHMI,**

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Therikkunnu, Karavaloor P.O, Kollam – 691 333

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**Company Appeal (IBC)/04/KOB/2024**

**MR. M RADHAKRISHNAN NAIR,**

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Neduvathoor, Neeleswaram P.O., Kottarakara,

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**Company Appeal (IBC)/05/KOB/2024**

**MRS. KAMALAMMA,**

W/o Mohanan Pillai, Vadakkekalluvila Veedu,

Kundara, Vellimon West P.O.,

Company Appeal (IBC)/01/KOB/2024 to Company Appeal (IBC)/10/KOB/2024  
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**Company Appeal (IBC)/06/KOB/2024**

**MRS. JAGADAMMA,**

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**Company Appeal (IBC)/07/KOB/2024**

**MR. R FRANCLIN**

S/o Robert, 218(1/243), Kunnum Pirath  
Wadakkthil, Vellimon West P.O., Kundara,  
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**Company Appeal (IBC)/08/KOB/2024**

**MR. DINESH CHANDRAN,**

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**Company Appeal (IBC)/09/KOB/2024**

**MRS. ANITHA KUMARI,**

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**Company Appeal (IBC)/10/KOB/2024**

**MR. THULASIDHARAN PILLAI**

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**-versus-**

**RESPONDENT IN ALL THE MATTERS:**

**MR. R VELU,**

***Liquidator for*** M/s. Palm Lagoon Backwater  
Resorts Private Limited, Vellimon West P.O.,  
Kundara, Kollam – 691 511

***Having office at*** New No.28, Old No.22, Menod  
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E-mail: [ramavelu@gmail.com](mailto:ramavelu@gmail.com)

**Order delivered on: 22.05.2024**

***Coram:***

**Hon'ble Member (Technical)**

**Shri. Shyam Babu Gautam**

**Hon'ble Member (Judicial)**

**TMT. Justice T Krishna Valli**

***Appearances:***

For the Appellants

: Ms. Anjaly Ann Joseph, Advocate

For the Respondent

: Mr. Vijay V Paul, Advocate

Mr. R Velu, Liquidator

## **ORDER**

### ***Per Coram***

1. All these Company Appeals have been filed by the appellants who were the employees/workmen of M/s. Palm Lagoon Backwater Resorts Private Limited (“Corporate Debtor”) under Section 42 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “Code”) aggrieved by the decision of the liquidator in rejecting the claims of the Appellants by a letter dated 28.01.2022 by citing delay of 40 days.

### **The brief facts of the cases are as follows:**

2. The appellants herein were employees/workmen of the Corporate Debtor. These appellants were not given wages from December 2014 to February 2016. Aggrieved by this, the appellants approached the District Labour Officer, Kollam seeking payment of pending wages. The Presiding Officer, of the Labour Court ordered the attachment of immovable property of the Corporate Debtor for the non-payment of wages in P.W.A No. 1/2016.
3. Meanwhile, the Corporate Debtor was admitted into CIRP vide an order dated 20.09.2019. The Corporate Debtor entered into liquidation and the Respondent herein was appointed as the liquidator. Pursuant to the liquidation order, the Respondent issued a public announcement inviting claims. A Letter dated 28.01.2022 was issued to the employees herein regarding the same.

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4. The appellants had submitted their claim in Form-E as prescribed under Regulation 19 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016, but these claims were rejected by the Respondent citing a delay of 40 days.
5. The Respondent herein filed an application before this Hon'ble Tribunal to set aside the order of attachment of the property of Palm Lagoon Backwater Resorts Private Limited passed by the Labour Court, Kollam, dated 10.06.2016. Further, this Hon'ble Tribunal by an ex-parte order in IA(IBC)/61(KOB)/2022 in IA(IBC)/159(KOB)/2021 in TIBA/09(KOB)/2019 dated 24.06.2022 set aside the attachment.
6. Thereafter, the appellants filed a Writ Petition bearing no. WP(C) No.38157 of 2022 challenging the order of NCLT, Kochi Bench in IA(IBC)/61(KOB)/2022. The Hon'ble High Court, while disposing the above Writ Petition vide Annexure A3 order dated 02.11.2023 directed the appellants to approach this Hon'ble Tribunal under Section 42. The High Court also directed the respondent to book a Fixed Deposit for a sum of Rs.20.00,000/- (Rupees Twenty Lakhs) in a Nationalised Bank in Kerala with a lien marked to the Registrar, NCLT, Kochi.
7. Further, during the hearing of the above Writ Petition, the learned senior counsel appearing for the Respondent submitted that the appellants who were parties to the above-mentioned Writ Petition are the employees of the Company, even though a contrary view was taken by the Respondent before this Tribunal in IA(IBC)/61(KOB)/2022 and submitted that their claims have to be considered with a lenient view.

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8. As per the above direction, the appellants have approached this Hon'ble Tribunal, aggrieved by the rejection of claims of the appellants by the Respondent citing the delay of 40 days.

**Claim amounts in each of the Company Appeal:**

**Company Appeal (IBC)/01/KOB/2024**

9. The appellant herein submitted Annexure A2 Claim for an amount of **Rs.9,62,890/-** after calculating the arrears in wages and other statutory dues. A split up of the amount claimed is provided below:

WAGES FROM 13.03.2016 TO 31.12.2021 WITH 9% INTEREST	INR 2,74,500/-
PF DUES WITH ALONG WITH INTEREST	INR 2,36,390/-
GRATUITY	INR 2,52,000/-
CLOSURE COMPENSATION	INR 2,00,000/-
<b>TOTAL</b>	<b>INR 9,62,890/-</b>

**Company Appeal (IBC)/02/KOB/2024**

10. The Appellant submitted Annexure A2 Claim for an amount of **Rs.4,74,050/-** after calculating the arrears in wages and other statutory dues. A split up of the amount claimed is provided below:

WAGES FROM 13.03.2016 TO 31.12.2021 WITH 9% INTEREST	INR 1,37,250/-
PF DUES WITH ALONG WITH INTEREST	INR 64,800/-
GRATUITY	INR 72,000/-
CLOSURE COMPENSATION	INR 2,00,000/-
<b>TOTAL</b>	<b>INR 4,74,050/-</b>

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**Company Appeal (IBC)/03/KOB/2024**

11. The Appellant submitted Annexure A2 Claim for an amount of **Rs.6,95,481/-** after calculating the arrears in wages and other statutory dues. A split up of the amount claimed is provided below:

WAGES FROM 13.03.2016 TO 31.12.2021 WITH 9% INTEREST	INR 1,37,250/-
PF DUES WITH ALONG WITH INTEREST	INR 2,49,091/-
GRATUITY	INR 1,86,300/-
CLOSURE COMPENSATION	INR 2,00,000/-
<b>TOTAL</b>	<b>INR 6,95,481/-</b>

**Company Appeal (IBC)/04/KOB/2024**

12. The Appellant submitted Annexure A2 Claim for an amount of **Rs.9,54,010/-** after calculating the arrears in wages and other statutory dues. A split up of the amount claimed is provided below:

WAGES FROM 13.03.2016 TO 31.12.2021 WITH 9% INTEREST	INR 3,16,680/-
PF DUES WITH ALONG WITH INTEREST	INR 2,36,390/-
GRATUITY	INR 2,00,940/-
CLOSURE COMPENSATION	INR 2,00,000/-
<b>TOTAL</b>	<b>INR 9,54,010/-</b>

**Company Appeal (IBC)/05/KOB/2024**

13. The Appellant submitted Annexure A2 Claim for an amount of **Rs.4,74,500/-** after calculating the arrears in wages and other statutory dues. A split up of the amount claimed is provided below:



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WAGES FROM 13.03.2016 TO 31.12.2021 WITH 9% INTEREST	INR 1,37,250/-
PF DUES WITH ALONG WITH INTEREST	INR 71,250/-
GRATUITY	INR 66,000/-
CLOSURE COMPENSATION	INR 2,00,000/-
<b>TOTAL</b>	<b>INR 4,74,500/-</b>

**Company Appeal (IBC)/06/KOB/2024**

14. The Appellant submitted Annexure A2 Claim for an amount of **Rs.4,74,050/-** after calculating the arrears in wages and other statutory dues. A split up of the amount claimed is provided below:

WAGES FROM 13.03.2016 TO 31.12.2021 WITH 9% INTEREST	INR 1,37,250/-
PF DUES WITH ALONG WITH INTEREST	INR 64,800/-
GRATUITY	INR 72,000/-
CLOSURE COMPENSATION	INR 2,00,000/-
<b>TOTAL</b>	<b>INR 4,74,050/-</b>

**Company Appeal (IBC)/07/KOB/2024**

15. The Appellant submitted Annexure A2 Claim for an amount of **Rs.5,24,450/-** after calculating the arrears in wages and other statutory dues. A split up of the amount claimed is provided below:

WAGES FROM 13.03.2016 TO 31.12.2021 WITH 9% INTEREST	INR 1,37,250/-
PF DUES WITH ALONG WITH INTEREST	INR 97,000/-
GRATUITY	INR 90,000/-
CLOSURE COMPENSATION	INR 2,00,000/-
<b>TOTAL</b>	<b>INR 5,24,450/-</b>

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**Company Appeal (IBC)/08/KOB/2024**

16. The Appellant submitted Annexure A2 Claim for an amount of **Rs.5,98,836/-** after calculating the arrears in wages and other statutory dues. A split up of the amount claimed is provided below:

WAGES FROM 13.03.2016 TO 31.12.2021 WITH 9% INTEREST	INR 1,78,375/-
PF DUES WITH ALONG WITH INTEREST	INR 1,67,961/-
GRATUITY	INR 1,42,500/-
CLOSURE COMPENSATION	INR 2,00,000/-
<b>TOTAL</b>	<b>INR 5,98,836/-</b>

**Company Appeal (IBC)/09/KOB/2024**

17. The Appellant submitted Annexure A2 Claim for an amount of **Rs.6,21,650/-** after calculating the arrears in wages and other statutory dues. A split up of the amount claimed is provided below:

WAGES FROM 13.03.2016 TO 31.12.2021 WITH 9% INTEREST	INR 1,37,250/-
PF DUES WITH ALONG WITH INTEREST	INR 1,34,400/-
GRATUITY	INR 1,50,000/-
CLOSURE COMPENSATION	INR 2,00,000/-
<b>TOTAL</b>	<b>INR 6,21,650/-</b>

**Company Appeal (IBC)/10/KOB/2024**

18. The Appellant submitted Annexure A2 Claim for an amount of **Rs.6,21,650/-** after calculating the arrears in wages and other statutory dues. A split up of the amount claimed is provided below:

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WAGES FROM 13.03.2016 TO 31.12.2021 WITH 9% INTEREST	INR 1,37,250/-
PF DUES WITH ALONG WITH INTEREST	INR 1,34,400/-
GRATUITY	INR 1,50,000/-
CLOSURE COMPENSATION	INR 2,00,000/-
<b>TOTAL</b>	<b>INR 6,21,650/-</b>

19. The above-mentioned entire claim amounts of all the appellants herein were rejected by the Respondent by Annexure A1 letter, citing a delay of 40 days.
20. As mentioned supra, the Hon'ble High Court, while disposing of Annexure A8 Writ Petition, directed the Appellants vide Annexure A3 order to approach this Hon'ble Tribunal under Section 42 seeking for condonation of delay in submitting the claim within 2 weeks of receipt of the copy of the order.
21. It is submitted that the Appellants who are parties to the Annexure A5 order are to be treated as par with secured creditors to the extent of their arrears in wages amounting to Rs. 17.5 lakhs collectively by virtue of the attachment order of the Labour Court, Kollam. By virtue of this order dated 10.06.2016, the appellants have a charge over the property of the CD as there is a security interest in favour of the Appellants.
22. Furthermore, it is submitted that the Appellants seek condonation of delay of 40 days in filing the claim citing the following reasons:
  - a. There was no mention of the due date in the Annexure A6 letter sent by the Respondent, within which the claim has to be submitted

because of which there was no guidance to the Appellants regarding the timelines prescribed under the Code.

- b. The Appellants are poor illiterate employees and can only understand Malayalam. The only Malayalam newspaper in which the liquidator has advertised the public announcement inviting the claim was the Mangalam newspaper, but it is not a widely circulated newspaper in Kerala. Hence, the Appellants had no means to know the due date.
- c. The Appellants are poor employees/workmen from a remote village in Kollam district working for a meagre salary. The Appellants were also unable to access proper legal guidance from his place. The only resource for the Appellants was the liquidator who failed to give proper guidance to the Appellants.
- d. The Appellants also faced severe health issues due to which, the Appellants were unable to take the necessary steps to file their claims.
- e. As the recovery proceedings were going on in light of the Annexure A5 order of the Hon'ble Labour Court, Kollam in P.W.A No.1/2016, the Appellants thought that their arrears in salary would be recoverable from the property of the CD. The Appellants were not aware of the overriding effect of the I&B Code.
- f. After considering the pathetic situation of the appellants who were denied their wages, the Hon'ble High Court was also convinced of their entitlements and the distress owing to the lack of financial strength, time and health to fight a legal battle for their entitlements, by taking a considerate view on their legitimate claims.

23. The Appellants are aggrieved and deeply prejudiced by the rejection of claims by the Respondent herein and submitted that the delay of 40 days in the submission of the claims was only due to extraneous circumstances and it was neither wilful nor intentional.

**Counter affidavit filed on behalf of the Respondent:**

24. The respondent/liquidator filed his counter affidavit in each of the abovementioned Company Appeals inter-alia stating as under:

- a. The respondent submitted that the Appellants herein have not produced any proof that they continued to be employed from December 2014 to February 2016. The wage slip specifically produced by the Appellant in Company Appeal (IBC)/01/KOB/2024 does not prove his employment till 2016.
- b. It is submitted that the Annexure A4 application filed before the Labour Court, Kollam does not mention "Palm Lagoon Backwater Resorts Private Limited" as the opposite party. The names of the opposite parties mentioned in the Annexure A4 application are different from those of the CD. Also, the Annexure A5 order of the Presiding Officer, Labour Court, Kollam does not mention the CD's name as the respondent. The Annexure A5 order has been issued against (1) The Managing Director, CAMBAY Palm Lagoon Resorts (2) CAMBAY Palm Lagoon Back Water Resorts Ltd. wherein the properties of the CD were attached by the authorities.

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- c. The appellants were issued a letter asking for claims to be filed if any. Further, no information was provided to the respondent regarding the dues of the employees.
  - d. It is submitted that the claims were rejected prima facie due to a delayed receipt without verifying the facts. However, this rejection was not challenged by the employees by filing an appeal before the NCLT as required under Section 42 of the Code. Also, no evidence was submitted by the employees to show that they were in fact employed by the CD, for them to be eligible to receive the arrears in accordance with the Annexure A5 order.
  - e. It is submitted that even if claims are fully satisfied, the employees' dues are to be considered as wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date as under Section 53(1)(c) of the Code. These dues are barred by the limitation of the claim period as prescribed under Section 53.
  - f. Further, the Liquidator/Respondent herein had pointed out the Public Announcement released on 25.11.2021 in the Annexure A6 letter for the employees to be guided accordingly and as per the law, the Liquidator can only admit claims within 30 days and as prescribed under Section 53 of the Code.
25. Heard the counsels for both sides and perused all the material/documents available on record.

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26. All these Company Appeals have been filed under Section 42 of the I&B Code, 2016 by the appellants herein who were the employees/workmen of the M/s. Palm Lagoon Backwater Resorts Private Limited (“Corporate Debtor”) aggrieved by the decision of the liquidator in rejecting the claims of the appellants by a letter dated 28.01.2022 by citing a delay of 40 days.
27. Since the matter in controversy in all the Company Appeals referred to above are the same, arising out of the common questions of law and facts and since all the above Company Appeals have been heard together, and reserved for orders on the same date, they are all being decided and disposed of by this common order of this Hon’ble Tribunal. There arise two points for consideration before this tribunal:
28. **Point 1:** Whether the appellants in all the company appeals herein are the workmen/employees of the corporate debtor?
29. It is seen that upon the commencement of the liquidation process, the liquidator sent the annexure A6 letter to the appellants herein requesting them to file their respective claims, if any, against the Corporate Debtor in Form E as specified by the IBBI (Liquidation) Regulations, 2016. Regulation 19 as mentioned specifies the claims by the workmen and employees.
30. It is obvious that pursuant to the commencement of the liquidation, the liquidator had access to all the books and other documents of the corporate debtor. Hence, the liquidator has issued the Annexure A6 letter under the aforementioned Regulation with a clear knowledge that the appellants are the workmen/employees of the corporate debtor.

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31. Moreover, the proceedings before the Labour Court, Kollam commenced in 2016 and throughout all these years the respondent never submitted that the appellants are not the workmen/employees of the corporate debtor.
32. In the reply filed in the Company Appeal (IBC)/01/KOB/2024, the appellant has produced a pay slip which states that the appellant is the workmen/employee of the corporate debtor. This also shows the name of the CD as 'Palm Lagoon Backwater Resorts Private Limited - CAMBAY Palm Lagoon.'
33. Further, by virtue of the attachment order of the Labour Court, Kollam, the appellants have a charge over the property of the corporate debtor. The appellants are to be treated as secured creditors as there is a security interest in favour of the appellants.
34. Further, when the appellants approached the High Court, during the hearing of the Writ Petition, the learned senior counsel appearing for the Respondent submitted that the appellants who were parties to the Writ Petition were the employees of the Company, even though a contrary view was taken by the Respondent before this Tribunal in IA(IBC)/61(KOB)/2022 and submitted that their claims have to be considered with a lenient view.
35. Given all the above, this Tribunal is of the view that the appellants are the employees/workmen of the Corporate Debtor herein.
36. **Point 2:** Whether the belated claim submitted by the appellants herein can be admitted and processed by the liquidator?



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37. Pursuant to the liquidation order, the Respondent issued a public announcement inviting claims and a letter dated 03.12.2021 was issued to the employees herein regarding the same but the letter had no mention of the last date within which the claim has to be submitted. The appellants herein had submitted their claims in Form E as prescribed under Regulation 19 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. As per the public announcement made by the liquidator, the last date for the submission of the claims was 16.12.2021. The claims of the appellants were received on 25.01.2022. The entire claim amounts of all the appellants herein were rejected by the Respondent/liquidator by Annexure A1 letter, citing a delay of 40 days.
38. After hearing both sides and after the perusal of all the documents it is seen that the failure to submit the claims before the liquidator was neither wilful nor intentional but was purely inadvertent from the side of the appellants.
39. Also, the Hon'ble High Court vide Annexure A3 order had directed the Appellants herein to approach this Hon'ble Tribunal under Section 42 seeking for condonation of delay in submitting the claim within 2 weeks of receipt of the copy of the above-mentioned order.
40. In *Para 58 of State Tax Officer vs. Rainbow Papers Limited, 2022 SCC Online SC 1162*, 'it was observed that the delay in filing a claim cannot be the sole ground for rejecting the claim.' In *Edelweiss Asset Reconstruction Co. Pvt. Ltd. Vs. Adel Landmarks Ltd.*, the Principal Bench has held that 'the claims of the Applicant shall not be rejected on the grounds of delay.'

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41. Moreover, this Tribunal is of the view that the decision for not condoning the delay should be measured against the loss it can cause. In the instant case at hand, the appeals are with respect to the rejection of claims concerning the wages of the employees/workmen by the liquidator. The stake of the employees/workmen who depend upon these meagre amounts to sustain their living will be prejudiced if this minor delay is not condoned.
42. Given the above, this Tribunal is of the view that there is no wilful delay or latches on the part of the appellants herein who are the employees/workmen of the CD, in filing the claim before the respondent/liquidator. This Bench therefore takes a lenient view and hereby condones the delay of 40 days in submitting the claims in the 'interest of justice' as no prejudice will be caused to the liquidation process of the CD. In the aforesaid circumstances, this Tribunal also directs the respondent/liquidator to accept the claims of the appellants and process them accordingly as per section 53 of the Code.
43. All these Company Appeals bearing no's **Company Appeal (IBC)/01/KOB/2024, Company Appeal (IBC)/02/KOB/2024, Company Appeal (IBC)/03/KOB/2024, Company Appeal (IBC)/04/KOB/2024, Company Appeal (IBC)/05/KOB/2024, Company Appeal (IBC)/06/KOB/2024, Company Appeal (IBC)/07/KOB/2024, Company Appeal (IBC)/08/KOB/2024, Company Appeal (IBC)/09/KOB/2024, and Company Appeal (IBC)/10/KOB/2024** are, therefore, **allowed** and disposed of accordingly by this common Order without any costs.

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44. The respondent must take the necessary steps to accept and process the claims submitted by all the appellants herein (the workmen/employees of the corporate debtor) as per section 53 of the Code in all the Company Appeals herein.
45. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and to take necessary steps.
46. Let the certified copy of the order be issued, if applied for, upon compliance with the requisite formalities.
47. File be consigned to records.

**SHYAM BABU GAUTAM**  
**(MEMBER TECHNICAL)**

**T. KRISHNA VALLI**  
**(MEMBER JUDICIAL)**

Signed on this the 22<sup>nd</sup> day of May, 2024

*Leona/LRA*