

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 605 of 2019

IN THE MATTER OF:

Sunil Kumar Jain & Ors. Appellants

Vs

Mr. Sundaresh Bhatt & Ors. Respondents

Present:

For Appellants: Mr. Shikhil Suri, Mr. Shiv Kumar Suri and Ms. Shilpa Saini, Advocates.

For Respondents: Mr. Abhishek Sharma, Mr. Asmly Cherian and Mr. Sanket Tiwari, Advocate.

Mr. Bishwajit Dube and Ms. Surabhi Khattar, Advocates for Respondent Nos.

O R D E R

31.05.2019 This Appeal has been preferred by the Appellant-workmen against part of the order dated 25th April, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad, whereby, no relief has been granted to the Appellants with regard to their claim relating to salary, which they claimed for the period involving 'Corporate Insolvency Resolution Process' and the prior period.

2. Learned Counsel appearing on behalf of the Appellants submitted that the Adjudicating Authority has failed to decide the claim of the Appellants-workmen, who actually performed the duties during the 'Corporate Insolvency Resolution Process', but have not been paid the salary. This

apart, the salary of the earlier period has also not been released in their favour, though other similarly situated persons/ workmen have been paid.

3. It is submitted that by order dated 25th April, 2019 the Adjudicating Authority earlier disposed of an Interlocutory Application directing the 'Resolution Professional' to deposit Rs.2.75 crores out of approximately Rs.9.55 crores with the Registrar of the NCLT by way of fixed deposit. It is submitted that the salary for the period during which the 272 workmen and employees had worked, should have been cleared out of the said amount.

4. On hearing Counsel for the Appellants and the Counsel for the Liquidator, we find that 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 'Corporate Insolvency Resolution Process' or the earlier period, cannot be dealt with by the Adjudicating Authority till such information could have been obtained from the 'Resolution Professional' or claim is decided by the Liquidator.

5. In view of the aforesaid fact, we are not inclined to interfere with the impugned order dated 25th April, 2019, but allow the Appellants-all 272 workmen and employees 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.

6. 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. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

Ash/SK