NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.40/2021
(IA No.92/2021)

In the matter of:

Mathew.C.K.,
Aged 63 years,
S/o. Kuriako.C.C.,
Chakyathil House,
Karikode.P.O., Peruva,
Kottayam, Pin – 686 609.

Chacko.K.M.,
Aged 61 years,
S/o. Mani.K.C.,
Karimadath,
Karikode.P.O.,
Kottayam District, Pin – 686 610.

Rajagopal.B.,
Aged 60 years,
S/o. Bhaskaran Nair,
Sreenilayam, Kanjiramattom Bypass Road,
Thodupuzha.P.O., Pin – 685 584.

Thankamony.T.K.,
Aged 61 years,
S/o. Divakaran.T.R.,
Kariyil House, Varanadu P.O.,
Cherthala, Alappuzha District,
Pin – 688 535.

Sudarsanakumar.V.P.,
Aged 63 years,
S/o. Ponnappan Pillai,
Valyaveedu House Perunna West.P.O.,
Changanacherry, Kottayam District,
Pin – 686 102.

Anu Boban,
Aged 58 years,
W/o. Boban Varkey (Late),
Vadakkeparambil,
Achiluppa, Kovappally,
Mannarakkayam.P.O.,
Kanjirappally, Kottayam,
Pin – 686 541.

Ouseph Antony,
Aged 62 years,
S/o. Antony.C.J.,
Sakaramakel,
Kulathooprayar.P.O.,
Kottayam, Pin – 686 541.

Pareekunnu.P.V.,
Aged 63 years,
S/o. Veeran,
Mathrakattu House,
Kannadu.P.O.,
Ernakulam, Pin – 682 310.

Ravi.N.T.,
Aged 63 years,
S/o. Thampi,
Myalpallil House,
Mevelloor.P.O.,
Kottayam District, Pin – 686 609.

Murali.M.P.,
S/o. Gopalan Nair,
Puthenpurayil House,
Karikode.P.O.,
Peruva, Kottayam, Pin – 686 610.

Joy.K.,
Aged 61 years,
S/o. Kunjappy,
Thundil Padinjattathel Veedu,
Thazhathu Vadakku, Pattazhi.P.O.,
Kollam, Pin – 691 522.

Pappachan.K.J.,
Aged 62 years,
S/o. John K J,
Kottoor House,
Mangaikadav Road,
Udayamperoor P.O.,
Ernakulam District, Pin – 682 307.

Ravindran Nair T M,
Thekkeparambil House,
Velloor P O, Pampady,
Kottayam.

Sreepathy.R.,
Aged 61 years,
S/o. Rajagopala Varier,
Sreeganesam, Sanskrit College Road,
Tripunithura.P.O., Ernakulam District,
Pin – 682 301.

Harikumar.P.S.,
Aged 62 years,
S/o. Sreedharan Nair,
Peandanathu House, Kanjiramattom,
Thodupuzha East.P.O.,
Pin – 685 585.

Narayan A,
Aged 60 years,
S/o. late Appuswamy Rao,
Qtr No.B 29/114, HNL Colony,
Newsprint Nagar P.O.,
Kottayam, Kerala State.
Pin – 686 616.

Binu K,
Aged 50 years,
S/o. late P K Karunakaran,
Abhivanam,
Green Valley Villa,
Near Kalarickal Lane, Manganam P.O.,
Kottayam District, Pin – 686 018.

Shaji K G,
Aged 59 years,
S/o. Gopalan K E,
Dreams house VTC,
Mulakkulam, Keezhoor P.O.,
Kottayam District,
Kerala State, Pin – 686 605.

Radhakrishnan K G,
Aged 59 years,
S/o. K. Gopalan Nair,
Qtr. No. A 44/173, HNL Colony,
Newsprint Nagar P.O,
Kottayam District, Kerala State,
Pin – 686 616.

Dr. Latha K K,
W/o. late Vijukumar MD,
Aged 50 years,
Madethedathkudi House,
Parapuram, Kanjoor P.O,
Ernakulam District,
Kerala State,
Pin – 683 573.

Augustin T A,
S/o. Agusthy,
Aged 61 years,
Thottumkal House,
Amalagiri P.O.,
Kottayam District,
Pin – 686 561.

Narayana Namboodiri C,
S/o. Chandrasekharan Namboodiri,
Aged 64 years,
Manayathattu Mana,
Karikode P.O.,
Kottayam District, Pin – 686 610.

Jose Paul,
S/o. Pouly N O,
Aged 64 years,
Narikkunnel House,
Elanji P.O.,
Ernakulam District,
Kerala State, Pin – 686 665.

Thankappan P G,
S/o. Govindan,
Aged 63 years,
Panekassery House,
Koorachundu P.O.,
Kozhikode District,
Kerala State, Pin – 673 527.

Joseph KC,
S/o. Joseph Chacko,
Aged 31 years,
Kalambukattu House,
Athirambuzha P.O.,
Kottayam District,
Kerala State, Pin – 686 562.

Varghese V M,
S/o. Varghese Mathai,
Aged 61 years,
Poovathummottil House,
Meenadam P.O.,
Kottayam District,
Kerala State, Pin – 686 615.

Thulasi Pisharasiar,
D/o. Subrayan Embran,
Thulaseevanam House,
Mutholapuram P.O.,
Ernakulam District,
Kerala State, Pin – 686 665.

Philip C Kurian,
S/o. Kuriakose C P,
Chanakaparackal House,
Pampady P.O., Kottayam District,
Kerala State, Pin – 686 502. **…Appellants**

V

Shri Kumar Rajan, Resolution Professional
Hindustan Newsprint Ltd.
Unit No.104, First Floor, Sufiya Elite
#18, Cunningham Road, Bengaluru – 560 052.

RBL Bank Ltd.
Branch Office: No.105/56,
G N Street, 6th Floor,
T Nagar, Chennai – 600 107.

Hindustan Newsprint Limited,
Newsprint Nagar,
Kottayam,
Kerala – 686 616.

Kerala Industrial Infrastructure
Development Corporation (KINFRA),
(Monitoring Committee of Hindustan
Newsprint Limited), KINFRA House,
31/2312, Sasthamangalam,
Thiruvananthapuram,
Kerala – 695 010.
Rep. by its Managing Director. **…Respondents**

Present :

For Appellants : Mr. Santhosh, Advocate

For Respondents : Mr. PV Vinod, Advocate for R1 & R2
Ms. Srishti Thukral, Advocate for R3 & R4

ORDER

(Hybrid Mode)

Oral Judgment: Justice Sharad Kumar Sharma, Member (Judicial):-

16.07.2026:

Brief facts which require consideration, in the instant Appeal are that the Appellants, who are 28 in number, claiming themselves to be the former employees/workmen of the Corporate Debtor M/s. Hindustan Newsprint Ltd., have raised a claim by filing the same before the competent authorities and thereafter, in the proceedings before the Learned Adjudicating Authority, contending thereof that, the decision taken by the Learned Adjudicating Authority on 29.01.2021 as rendered in IA(IBC) No.21/KOB/2021 in TIBA/03/KOB/2019, filed by Shri Kumar Rajan runs contrary to the settled ratio as propounded by the courts while dealing with the issue of payability of the gratuity and the leave encashment amount from out of the Resolution Plan.

2. The Appeal in question puts a challenge to the impugned order dated 29.01.2021, passed by the Learned NCLT, Kochi Bench in IA(IBC)/21/KOB/2021, being the proceedings held under Section 30(6) & 31(1) of the I & B Code, 2016, through which the Resolution Plan submitted by M/s. KINFRA has been approved. In the said impugned order, passed in a proceedings in the absence of the Appellants being made as a party before the Learned NCLT, the claim of the Appellants under the heads of gratuity and leave encashment was declined to be considered in the Resolution Plan. The effect of the impugned order had been that it had allowed the application filed by the Resolution Professional, by which the plan submitted by the Resolution Applicant **KINFRA** was approved. However, in the said approved plan, the claim raised by the Appellants as the former workers and employees of the Corporate Debtor, namely M/s. Hindustan Newsprint

Limited, except for the Appellant Nos.16-19, who are the current employees, the 6th Appellant, who is the wife of the former deceased workman.

3. They came up with a case that the Corporate Debtor, M/s. Hindustan Newsprint Limited (HNL) was a wholly owned subsidiary of M/s. Hindustan Paper Corporation Limited (HPCL), which is a public sector undertaking falling directly under the management and control of the Ministry of Heavy Industries of the Government of India, having been incorporated on 07.10.1974, as a consequence of the agreement entered into between the Government of Kerala and M/s. Hindustan Paper Corporation Limited. The company was incorporated for establishment of a Kerala Newsprint Project in which the Government of Kerala had extended certain concessions rights and privileges to the M/s. Hindustan Paper Corporation Limited. The Government of Kerala had acquired land about 282.8673 hectares for the establishment of the unit and assigned to HPCL. Besides that, other land was also acquired by HNL with the residential and office building and plantation of trees for production purposes. Also, the Corporate Debtor (HNL) owned 1.8687 Hectares of land lying in Ranni, Pathanamthitta District and 6.4923 hectares in Vandipariyar. Since, the Corporate Debtor fell into commercial crisis it stopped its manufacturing since 01.01.2019. The application was filed by the RBL Bank Limited, the Respondent No.2 herein, for initiation of the CIRP against HNL which was admitted by an order of 28.11.2019 in TIBA/3/KOB/2019 and IRP was appointed. He

invited claims from the creditor by issuance of public announcement on 04.12.2019. Subsequently, on 05.06.2020, a public announcement in form G was made by the RP inviting EoI from PRA. As a consequence, thereto 2 PRAs (i.e., KINFRA and M/s. Sun Paper Mill Limited) submitted the plan. In the 9th CoC meeting, the committee rejected the plan of M/s. Sun Paper Mill Ltd., after which the revised plan of KINFRA was resubmitted on 22.12.2020 and was approved by CoC and by Learned NCLT vide the impugned order.

4. Under the said approved resolution plan provision was made to pay 35% of the admitted claim of the workmen and 16.31% of the admitted claim to the employees. The claims filed, admitted and payment done as per the Resolution Plan in respect of the operational creditors and trainees are given below: -

<table>
<tr><th colspan="6">Operational Creditors</th></tr>
<tr><td>Operational Creditors-Workmen</td><td rowspan="2">9,031.82</td><td rowspan="2">6,396.81</td><td>3,435.35</td><td>1,209.27</td><td>35.13%</td></tr>
<tr><td>Operational Creditors – Workmen – Gratuity</td><td>2,961.46</td><td>1,040.24</td><td>35.13%</td></tr>
<tr><td>Operational Creditors-Employees</td><td rowspan="2">4.541.72</td><td rowspan="2">3,189.71</td><td>1,778.96</td><td>290.30</td><td>16.31%</td></tr>
<tr><td>Operational Creditors-Employees-Gratuity</td><td>1,410.75</td><td>495.54</td><td>35.13%</td></tr>
<tr><td>Operational Creditors-PF Claims</td><td>3,046.32</td><td>3,046.32</td><td>3,046.32</td><td>1,070.05</td><td>35.13%</td></tr>
</table>

Operational Creditors-Trainees	343.51	199.12	199.12	69.94	35.13%
Operational Creditors-Government Dues other than PF Claims	5,837.79	5,837.79	5,837.79	952.21	16.31%
Operational Creditors-Other Creditors	13,433.81	11,184.99	11,184.99	1,824.40	16.31%
Operational Creditors-Other Creditors	4,586.68	1,091.49	1,091.49	145.71	16.31%
Operational Creditors-Total (C)	**40,821.64**	**30,946.22**	**30,946.22**	**7,097.67**	

5. The approval of the said Resolution Plan is being challenged by the Appellant in the instant Appeal. The contention of the Appellants is that the Resolution Professional had admitted the claim of the workmen, trainees and the employees only to the extent of Rs.6404.12 lakhs, Rs.199.12 lakhs and Rs.3190.48 lakhs respectively and not the full claim. Further, the Resolution Plan has proposed a payout of the 35% of the admitted claims of the workmen and 16.31% of the admitted claims of the employees which is against the provisions of the I & B Code and particularly the provision of Section 30(2) of the Code.

6. The Appellants have further contended that, the Resolution Professional had grossly undervalued the properties of the Corporate Debtor, that the value arrived at is much lower than the actual market value, that the

said valuation is much lower than what was shown in the EoI floated by Government of India in 2017 for the purpose of disinvestment and that the Resolution Professional had not properly appreciated and assessed the value of the assets and investments made by the Corporate Debtor as regards to the other assets, including the plantations done in the 3035 hectares of forest land taken on lease.

7. The Appellants have further submitted that the Resolution Plan that was submitted by KINFRA has been prepared without any technical expertise and without appropriate consultation with any employee, that the plant and machinery were not properly valued and crores of investments made by the company in the plant and machinery were not considered and discussed in the plan.

8. The Appellants have further contended that, the approved plan and the orders passed by the Learned NCLT were in contravention of the existing laws and the Principles of Natural Justice, that they were absolutely kept in the dark as no proper information was imparted to them as regards to the proceedings of CIRP and the CoC meetings and that no effective opportunity was accorded to them or any other workmen while fixing the admitted claim.

9. Based on the above contentions, the Appellants have sought that the impugned order dated 29.01.2021 passed in IA(IBC)/21/KOB/2021 in TIBA/03/KOB/2019 be set aside.

10. As per the reply of the Resolution Professional, he contends that,

(a) The PF and gratuity claims raised by the Appellants are admitted in full.

(b) He has also admitted all other eligible claims of the Appellants, and that at no point of time, the Appellants had challenged the same before Learned Adjudicating Authority.

(c) The claims against the gratuity, PF and other dues of the workmen were put in equal footing as that of secured Financial Creditor and were allocated 35.13% of admitted dues, while the claims of the employees in respect of said dues were paid @ 16.31% on par with unsecured financial creditors, which is more than what would have been paid had the formula outlined in section 53 of the Code been strictly followed.

11. In the said impugned order, the following directions were issued: -

ORDER

i. The Application filed by the RP is allowed. The Resolution Plan submitted by the Resolution Applicant M/s KINFRA annexed to the Application is hereby approved except the Reliefs and concessions sought under Chapter XIII. The Resolution Application attached with this order shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State

Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.

iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

iv. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred under para 8(F) above.

v. The moratorium declared under Section 14 of the Code shall cease to have effect from this date.

vi. This Bench hereby discharges Shri Kumar Rajan from the duties of Resolution Professional and the RP is directed to handover all records, premises/ factories/documents to Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through Resolution

Professional to finalise the further line of action required for starting of the operation.

vii. The directions embodied and period of implementation provided herein above shall be effective from the date of this Order.

viii. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Tribunal.

ix. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Miscellaneous Application, if required, in connection with implementation of this Resolution Plan.

x. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.

12. Today, when the matter was taken up for consideration, the Learned Counsel for the Appellants have submitted that, the issue stands covered by the Judgment rendered in the batch of Company Appeals with the leading **Comp App (AT) (CH) (Ins) No.29/2021,** as decided by this Appellate Tribunal on 08.02.2023, in the matters of ***Comp App (AT) (CH) (Ins) No.29/2021, Mrs. C.G. Vijayalakshmi Vs Shri Kumar Rajan, the Resolution Professional & 3 Ors.,*** In the said batch of Appeals, the challenge was given to the order of approval of the same Resolution Plan as is the case here on similar grounds, that is, the dues of workmen and employees in form of PF, gratuity and other retirement benefits such as leave

encashment have not been provided for in full in the resolution plan, that the Corporate Debtor has been undervalued and there is no value maximisation and that the SRA is only interested in utilising the land.

13. The said batch of Company Appeals was considered by this Tribunal and decided by the Judgment of 08.02.2023 by making the following observations, and the Appeal was concluded as under: -

> *"27. Limited enquiry which can be made by the 'Adjudicating Authority'/this Tribunal while examining the 'Plan' is to see whether the 'Plan' complies with requirements as provided for in Section 30(2) of the Code. The minimum that is required to be paid to Operational Creditors under a 'Resolution Plan' said to be under Section 30(2)(b) of the Code as being the amount to be paid to such creditors in the event of liquidation of the Corporate Debtor under Section 53. We are conscious of the fact that the Hon'ble Apex Court in '**Ebix Singapore Private Limited' Vs. 'Committee of Creditors of Educomp Solutions Ltd.'**[20] has held that the Resolution Applicant has no jurisdiction to withdraw from the 'Resolution Plan' or modify the 'Plan'. The 'Adjudicating Authority' has ample jurisdiction only to interfere with the 'Resolution Plan' in the event that the 'Plan' violates, or does not adhere to any of the provisions of Section 30(2) of the Code. It is categorically mentioned by the Resolution Professional that the Secured Financial Creditors and workmen were treated equally under the Plan with the allocation of 35.13 % of the admitted claim amounts and therefore the claims of workmen were fully considered.*

*28. Having regard to the ratio of the Judgement in **'Jet Aircraft Maintenance Engineers Welfare Association' (Supra)** of this Tribunal, **upheld by the Hon'ble Apex Court, this Tribunal is of the earnest view that 'PF' and 'Gratuity' is to be paid in full as per the provisions of EPF and NP Act, 1952 and payment of Gratuity Act, 1972. Since admittedly the amounts paid are only 35.13% having treated them as 'Secured Creditors', we are of the considered view that indeed there was a violation of the provisions of Section 30(2) of the Code, with respect to the payment of 'PF' and 'Gratuity' only.***

*29. As regards the other allegations, raised by the Appellant with respect to undervaluation and the scope and performance of SRA in taking over the unit are sans evidence and this `Tribunal', does not find any other `material irregularity', in the `Approval' of the 'Resolution Plan'. Rest of the prayers are declined and this `Tribunal', does not find any other case / issue for interfering with the `Order' of the 'Adjudicating Authority', approving the 'Resolution Plan', **except for issuing this `direction' to the `Successful Resolution Applicant', to make payment of unpaid 'Provident Fund' and 'Gratuity Fund' and 'pending dues' to the `Workmen' / `Employees', till the date of `Corporate Insolvency Resolution Process', after deducting the amount already paid towards `Provident Fund', in the 'Resolution Plan', as per the principles laid down in 'Jet Aircraft maintenance Engineers Welfare Association' (Supra),** upheld by the Hon'ble Supreme Court in* **Civil Appeal No. 407/2023** *dated 30.01.2023, which is the law of the land and is binding on all 'Courts' & 'Tribunals' of India."*

14. Thus, the said Appeal **[CA (AT) (CH) (Ins) No.29/21]** was allowed in part to the extent it pertained to entitlement and payment of provident fund and gratuity to the workmen and the employees of the Corporate Debtor, i.e., M/s. Hindustan Newsprint Limited and the SRA was directed to pay the PF and gratuity in full in accordance with the ratio of Jet Aircrafts Maintenance Engineers Welfare Association (Supra). In the light of the observation as extracted above, this present Company Appeal will stand covered by the Judgment as rendered in the matters of **Mrs. C.G. Vijayalakshmi**, as decided on 08.02.2023.

15. The issue pertaining to obligation to pay the provident fund and gratuity dues in full was once again considered by this Appellate Tribunal in ***Comp App (AT) (CH) (Ins) No.268/2021, Central Board of Trustees Vs Shri Kumar Rajan***, in which the order under challenge was the same order which was challenged in the matters of **Mrs. C.G. Vijayalakshmi** and which is being challenged in the instant Appeal. In the said Appeal, a coordinate bench of this Appellate Tribunal on 21.06.2023, while making an elaborate reference to the implications of the Judgment of ***Jet Aircraft Maintenance Engineers Welfare Association Vs Ashish Chhawchharia, Resolution Professional of Jet Airways (India) Limited and Ors.,*** as reported in ***(2022) SCC OnLine NCLAT 418*** and extracting the relevant part as contained in para 117, 118 & 119 from the Judgment rendered on 22.10.2022 in **Jet Airways (Supra)**, allowed the Company Appeal with a direction to include

PF and Gratuity in full in the Resolution Plan. For the purpose of brevity, paras 2 and 3 of the said Judgment are extracted hereunder: -

> *"2. Initially, the Claim Petition under Form F was filed for Rs. 23,74,92,674/- (Rupees Twenty Three Crores Seventy Four Lakhs Ninety Two Thousand Six Hundred and Seventy Four Only) before the 'Interim Resolution Professional' ("IRP") on 26/02/2020. Thereafter a revised claim in Form F was filed for Rs.30,46,31,880/- (Rupees Thirty Crore Forty Six Lakhs Thirty One Thousand Eight Hundred and Eighty Only) on 21/10/2020 and the same was also admitted by the RP. It is submitted that the EPFO would have to be paid in priority to all other claims and that even in Liquidation Proceedings, the EPFO is outside the waterfall mechanism provided under Section 53 of the Code. However, the RP intimated them that they are entitled to only 35.13% of the total admitted claim of Rs. 30,46,31,880/- (Rupees Thirty Crore Forty Six Lakhs Thirty One Thousand Eight Hundred and Eighty Only). This Tribunal in **'Jet Aircraft Maintenance Engineers Welfare Association Vs. Ashish Chhawchharia, Resolution Professional of Jet Airways (India) Ltd. & Ors.'** reported in **[(2022) SCC OnLine NCLAT 418]** dated 21/10/2022 has observed as follows:*
>
> > *117. In the appeal filed by the Regional Provident Fund Commissioner, it has been pleaded that the claim was filed by the Appellant for an amount of Rs.24,40,65,594/- towards damages under Section 14B of Employees' Provident Funds &Miscellaneous Provisions Act 1952, as per the order dated 17.10.2018. It is further mentioned that interest under Section 7Q was also levied of Rs.12,85,92,763/-, which amount was paid by the establishment. The amount which was claimed by the Appellant was fully admitted by the*

Resolution Professional. List of Creditors mentions the admitted amount of the Appellant. The Appellant has filed his claim in Form B, which Form B is at page 102 to 104 of the Appeal. The Appellant's claim was not in the nature of workmen dues. The claim was also with regard to damages imposed under Section 14B of the 1952 Act. The Appellant was treated as Operational Creditor by the Resolution Professional, hence, the Appellant was allocated a fixed amount of Rs.15,000/- which was allocated to all Operational Creditors except the workmen.

118. Challenge to the Resolution Plan by the Appellant is on the ground that Section 11 of the 1952 Act requires priority over all other dues and further Section 36(4)(a)(iii) excludes provident fund dues from the liquidation estate of the Corporate Debtor. We have already dealt with provisions of Section 36(4)(a)(iii) in foregoing paras of this judgment. Now, we, need to look into Section 11 of 1952 Act. The Section 11 of the 1952 Act provides for priority of payment of contributions over other debts. Learned counsel for the Appellant has relied on judgment of the Hon'ble Supreme Court in "Maharashtra State Cooperative Bank Limited vs. Assistant Provident Fund Commissioner & Others, (2009) 10 SCC 123". The Hon'ble Supreme Court dealing with Section 11 of 1952 Act laid down following in Para 67:

> *"67. The expression "any amount due from an employer" appearing in sub-section (2) of Section 11 has to be interpreted keeping in view the object of the Act and other provisions contained therein including sub-section (1) of Section 11 and Sections 7A, 7Q, 14B and 15(2)*

> *which provide for determination of the dues payable by the employer, liability of the employer to pay interest in case the payment of the amount due is delayed and also pay damages, if there is default in making contribution to the Fund. If any amount payable by the employer*
>
> *becomes due and the same is not paid within the stipulated time, then the employer is required to pay interest in terms of the mandate of Section 7Q. Likewise, default on the employer's part to pay any contribution to the Fund can visit him with the consequence of levy of damages."*

119. The above judgment lays down that any amount due from employer appearing in subsection (2) of Section 11 also covers the amount determined under Section 14B and there cannot be any quarrel to the preposition as laid down by the Hon'ble Supreme Court in the above case. The priority for payment of debt under Section 11 of the 1952 Act has to be looked into in view of the mechanism which is specifically provided under Section 53(1) of the Code. We have already dealt the provision of Section 36(4)(a)(iii) of the Code and held that provident fund dues are not subject to distribution under Section 53(1) of the Code. The issue is fully covered by three member bench judgment of this Tribunal in "Tourism Finance Corporation of India Ltd. vs. Rainbow Papers Ltd. & Ors." (Supra). In view of foregoing discussion, we hold that provident

> *fund dues were entitled to be paid in full. In view of the judgment of Supreme Court in "Maharashtra State Cooperative Bank Limited vs. Assistant Provident Fund Commissioner & Others" (Supra), the claim of Appellant was to be satisfied in full, otherwise breach of provision of Section 30(2)(e) would have occurred. We, thus, are inclined to issue direction to the Successful Resolution Applicant to make payment of the admitted claim of the Appellant towards provident fund dues to save the plan from invalidity."*

3. In the aforenoted Judgment a clear direction was given to the 'Successful Resolution Applicant' to make payment of the admitted Claims towards Provident Fund dues and the same was upheld by the Hon'ble Apex Court in Civil Appeal No. 407/2023, dated 30/01/2023. The Hon'ble Apex Court has laid down that the share of workmen dues shall be kept outside the 'Liquidation assets and the concerned workmen / Employees shall have to be paid the same, out of such Provident fund, Gratuity Fund, if any available. The words, 'if any available', cannot be read to mean that the workmen and empolyees are not entitled for Provident fund, Gratuity Fund, Pension fund, if not available with the Liquidator. As ratio of the Judgement in ***'Jet Aircraft Maintenance Engineers Welfare Association Vs. Ashish Chhawchharia, Resolution Professional of Jet Airways (India) Ltd. & Ors.*** *(Supra) of this Tribunal was upheld by* ***the Hon'ble Apex Court, this Tribunal is of the earnest view that both Provident Fund and Gratuity Fund is to be paid in full as per the Provisions of 'EPF and NP Act, 1952' and 'Payment of Gratuity Act, 1972'****. This Tribunal in the matter of* ***'Mrs. C.G. Vijayalakshmi Vs. Shri. Kumar***

> ***Rajan, Resolution Professional of Hindustan Newsprint Limited (Corporate Debtor) & Ors. and Batch matters',*** *in* ***Company Appeal (AT) (Ins) No. 29, 44, 56 to 58 & 62 to 86 of 2021,*** *while allowing the Appeals of the same Corporate Debtor and dealing with the same issue has observed as follows:*
>
> > *".....Since admittedly the amounts paid are only 35.13% having treated them as 'Secured Creditors', we are of the considered view that indeed there was a violation of the provisions of Section 30(2) of the Code, with respect to the payment of 'PF' and 'Gratuity' only.""*

16. In continuation thereto, the co-ordinate bench of this Tribunal too had dealt with the similar issue in the batch of Company Appeals with the leading Company Appeal being ***Comp App (AT) (CH) (Ins) No.305/2021, Muraleedharan V.N Vs M/s. Hindustan Newsprint Limited***, which too is akin to the instant case and while following the view expressed by the earlier two coordinate benches, almost took a similar view and reiterating the conclusions drawn by the Judgment of **Mrs. C.G. Vijayalakshmi (Supra)**, allowed the said Company Appeal.

17. Owing to the above and because of the fact that the issue involved herein and the facts and circumstances being identical, and the order under challenge being the same having no variance at all, the instant Company Appeal too would stand allowed, under the same terms and conditions as that were laid down in the matters of Mrs. C.G. Vijayalakshmi (supra), which has

been subsequently relied upon by the coordinate benches for deciding akin matters, which is that the eligible PF and gratuity amount due to the Appellants are to be paid in full and the rest of the admitted dues are to be paid as proposed in the approved resolution plan. There will be no orders on the pending interlocutory applications, if any.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

VG/MS/AK