IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No. 305- IA/833(AHM)2026
In
CP(IB) 14 of 2018

Under Sec 60(5) of IBC 2016 r/w Rule 11 NCLT Rules, 2016

IN THE MATTER OF:

Wind World India Employees Union
........Applicant

V/s

Mr. Ravi Sethia RP of Wind World (India) Limited & Anr
....Respondents

Order delivered on: 27/07/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

O R D E R
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-Sd-
SANJEEV SHARMA
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT–I, AHMEDABAD

IA/833(AHM)2026
In
CP(IB) 14 of 2018

(Application under Section 60(5) of the IBC, 2016 r/w Rule 11 of the NCLT, Rules, 2016)

MEMO OF PARTIES

M/s. Wind World India Employees Union, Daman
Registration No. 01/2015/1094,
Registered under the Trade Union Act, 1926,
Having its Office At:
C/o Kishor B. Patel,
Bhandarwad Falia, House No. 147/3,
Bhimpore, Char Rasta, Nani Daman (U.T.)
Email Id.: windworldindia11@gmail.com

.... Applicant

VERSUS

1. **Mr. Ravi Sethia**
Resolution Professional of
M/s. Wind World (India) Limited
Having its Office at:
Building No. 10, Tower C,
8th Floor, DLF Cyber City,
Phase II, Gurgaon, Haryana, 122002.
Email Id: rpwwil@bsraffiliates.com
ravisethia@kpmg.com

The Committee of Creditors of
M/s. Wind World (India) Limited
through Omkara Asset Reconstruction Private Limited,
To be served through the Resolution Professional of
M/s. Wind World (India) Limited,
Having its Office at:
Building No. 10, Tower C,

8th Floor, DLF Cyber City,
Phase II, Gurgaon, Haryana, 122002.

.... Respondents

In the Matter of: *M/s. Wind World (India) Limited [CP(IB) 14 of 2018]*

IDBI Bank Limited
Registered Office at:
IDBI Tower,
WTC Complex,
Cuff Parade,
Mumbai – 400005

... Financial Creditor

VERSUS

M/s. Wind World (India) Limited
Having address at:
Plot No.33, Daman Patalia Road,
Bhimpore, Daman – 396210.

... Corporate Debtor

Order Pronounced On: 27.07.2026

C O R A M :
SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E :

For the Applicant	:	Mr. Krishal H. Patel, Adv.
For the Respondents	:	Ms. Neha Naik, Adv. for R-1 Mr. Devang Nanavati, Sr. Adv. a. w. Mr. Siddharth Sinha, Adv. for R-2

O R D E R
(*Per*: Bench)

1. This application has been filed on 22.05.2026 (through e-mode) by **Trade Union of M/s. Wind World (India) Limited**, (hereinafter as, "the **Applicant**") under Section 60(5) of the IBC, 2016 r/w Rule 11 of the NCLT, Rules, 2016 seeking following reliefs: -

MAIN/FINAL RELIEF:

a. *to admit and allow the Application;*
b. *to direct Respondent No.1 to verify the Claims submitted by Shri Yogesh Patel, General Secretary of Applicant dated 01.12.2025 in Form E on behalf of the Workmen and Employees of the Corporate Debtor;*
c. *to quash and set aside the uncommunicated decision of Respondent No.1 partially rejecting the claim of the Applicant submitted by Shri Rajendra Dineshbhai Mangela, Joint Secretary of Applicant dated 02.04.2018 in Form E on behalf of the Workmen and Employees of the Corporate Debtor and direct the Respondents to accept the Claims of Applicant and further direct the Resolution Applicant to pay the same in full;*
d. *to direct the Resolution Applicant to pay all the sums due to the Workmen and Employees of Applicant towards Provident Fund, Pension and Gratuity;*
e. *to condone the delay, if any, in submitting Claim with proof within stipulated time and direct Respondents to accept the claim with proof;*
f. *to pass any other and further Orders and/or directions as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the present case.*

INTERIM RELIEF:

a. *to direct Respondents to accept the claim subject to outcome of present Petition;*
b. *to stay the further proceedings of I.A. (Plan) No.7 of 2026 filed in Company Petition (I.B.) No. 14 of 2018;*
c. *to pass any other consequential Orders or directions as this Hon'ble Tribunal may deem fit and proper in the facts of the case.*

2. The Applicant has placed the facts through the I.A. and documents in the following manner: -

2.1. It is submitted that the present Interlocutory Application has been preferred by M/s. Wind World Employees Union, Daman, a registered Trade Union representing the workmen and employees of M/s. Wind World (India) Limited (Corporate Debtor), through its authorised representative, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking appropriate directions against the Resolution Professional in relation to the adjudication of the claims of the workmen and employees.

2.2. It is submitted that the Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor was initiated pursuant to the admission of C.P. (IB) No. 14 of 2018 under Section 7 of the Code by this Adjudicating Authority vide order dated 20.02.2018, whereby moratorium was declared and Mr. Shailen Shah was appointed as the Interim Resolution Professional. Thereafter, a public announcement in

Form A dated 23.02.2018 was issued inviting claims from creditors on or before 08.03.2018.

2.3. It is submitted that prior to commencement of CIRP, the workmen of the Corporate Debtor had been governed by the Human Resource Policy of the Company and a Memorandum of Supplementary Settlement dated 31.10.2013, executed between the Corporate Debtor and its permanent workmen governing various service benefits including increments, allowances, gratuity, leave encashment and other employment benefits.

2.4. It is submitted that owing to non-payment of salaries and other dues, the Applicant Union had filed C.N.P.W.A. No. 1 of 2018 before the Conciliation Authority under the Payment of Wages Act, 1936 on 23.01.2018, claiming an amount of Rs.4,28,45,708/-. The Learned Commissioner, vide order dated 01.03.2018, directed payment of the aforesaid amount within ten days. Subsequently, attachment proceedings were initiated and notice dated 23.03.2018 was issued by the Mamlatdar. The said order was stayed by the Learned Principal District Judge, Daman vide order dated 10.08.2018, which was thereafter challenged before the Hon'ble Bombay High Court in Writ Petition No.10994 of 2018. By order dated 23.10.2018, the Hon'ble High Court directed demarcation of the assets of the Corporate Debtor for securing the claim amount.

The said order was challenged before the Hon'ble Supreme Court in SLP No.30252 of 2018, wherein interim stay was granted on 20.11.2018 and the proceedings continue to remain pending with various subsequent orders dated 16.01.2019, 03.04.2019, 27.03.2023, 01.05.2023, 30.08.2024, 11.12.2024, 10.02.2025, 04.04.2025, 18.07.2025 and 08.08.2025.

2.5. It is submitted that pursuant to the public announcement, the Applicant Union initially submitted its claim in Form E dated 07.03.2018, followed by a revised Form E dated 02.04.2018 on account of an inadvertent error in calculation. It is alleged that the Resolution Professional failed to admit the entire claim of the workmen and employees and did not provide any bifurcation of the admitted and rejected portions of the claim. The claims pertaining to bonus, gratuity, leave encashment, notice pay and retrenchment compensation were stated to have been either rejected or treated as not payable on the ground that the employer-employee relationship continued to subsist.

2.6. It is submitted that the Applicant relies upon the judgment of the Hon'ble NCLAT dated 21.10.2022 in ***Jet Aircraft Maintenance Engineers Welfare Association v. Ashish Chhawchharia & Ors., (2022) ibclaw.in 861 NCLAT*** as affirmed by the Hon'ble Supreme Court vide order dated 30.01.2023, to contend that provident fund, pension and gratuity dues of workmen are excluded from the liquidation estate and are required to be paid in full.

2.7. It is submitted that during the CIRP, the Committee of Creditors had approved the Resolution Plan of the Suraksha Consortium in its 13th CoC Meeting held on 16.11.2018. However, the said Resolution Plan came to be rejected by this Adjudicating Authority vide order dated 24.08.2022 passed in IA No.476 of 2018. Thereafter, IA No.1145 of 2025 seeking re-run of the CIRP was allowed by this Adjudicating Authority vide order dated 07.11.2025, permitting recommencement of the CIRP process.

2.8. It is submitted that pursuant to the re-run of the CIRP, the Applicant Union again submitted a fresh Form E dated 01.12.2025 along with all supporting documents claiming wages, gratuity, retrenchment compensation, notice pay and other statutory dues payable as on October, 2025. The said claim was dispatched by Speed Post on 01.12.2025 and forwarded to the Resolution Professional through email dated 02.12.2025. It is further submitted that despite receipt of the said claim, the Resolution Professional neither adjudicated the claim nor communicated any decision thereon to the Applicant.

2.9. It is submitted that on 19.02.2026, the Committee of Creditors approved the Resolution Plan submitted by the consortium comprising Inox Neo Energies Limited and Authum Investment & Infrastructure Limited. According to the Applicant, the claim in Form E had already been submitted prior to the meeting convened for consideration and approval of the Resolution Plan, yet the Resolution Professional failed to discharge his statutory obligation of deciding the Applicant's claim before placing the Resolution Plan for voting.

2.10. It is submitted that despite repeated communications, the Resolution Professional failed to decide the Applicant's claim, assign reasons for non-admission or rejection thereof, or communicate any order as mandated under the provisions of the Code and the applicable CIRP Regulations. The Applicant contends that such inaction is arbitrary, contrary to the principles of transparency and fairness governing the insolvency process, and has resulted in serious prejudice to the workmen and employees represented by the Applicant Union.

3. In compliance of order dated 02.06.2026, the R-1/RP e-filed Affidavit-of-Reply on 08.06.2026 and on 17.06.2026 vide Inward No. D-4612 stating the following:

3.1. It is submitted that the present Application is wholly misconceived, not maintainable and liable to be dismissed as the erstwhile Resolution Professional had acted strictly in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and the CIRP

Regulations while admitting and verifying the claims of the workmen and employees.

3.2. It is submitted that the Application itself is not maintainable as it has been instituted by a person having no authority to represent the Applicant Union. It is stated that though the Application has been signed by Mr. Vitthal Gawade claiming to be the General Secretary of the Union, he had ceased to hold such office pursuant to the resolutions passed by the Executive Committee of the Union in its meetings held on 22.12.2024 and 29.12.2024, whereby Mr. Yogesh G. Patel was appointed as the General Secretary. The said change was communicated by Mr. Kishore B. Patel, President of the Union, to the HR Manager of the Corporate Debtor vide letter dated 20.01.2025. Accordingly, it is contended that Mr. Vitthal Gawade lacked the authority or locus to institute the present Application and, therefore, the same deserves to be dismissed in limine.

3.3. It is submitted that the Applicant has sought, inter alia, directions to verify the Form E dated 01.12.2025, to quash the alleged partial rejection of the claim submitted vide Form E dated 02.04.2018, and to direct payment of provident fund, pension and gratuity dues. The Respondent has opposed each of the said reliefs on facts and in law.

3.4. It is submitted that the Insolvency Commencement Date of the Corporate Debtor is 20.02.2018, being the date on which C.P. (IB) No. 14/7/NCLT.AHM.2018 under Section 7 of the IBC was admitted. It is contended that under the CIRP Regulations, workmen and employees are entitled to submit claims only in respect of dues which had accrued and become payable as on the Insolvency Commencement Date.

3.5. It is submitted that the Form E dated 01.12.2025, submitted by Mr. Yogesh G. Patel, itself acknowledges that the calculations have been prepared up to October, 2025 and include wages, gratuity, retrenchment compensation and notice pay calculated up to the said period. It is, therefore, contended that the said claim includes dues arising long after the Insolvency Commencement Date of 20.02.2018, which are outside the scope of claims admissible under the CIRP.

3.6. It is submitted that the claims of the workmen and employees as on the Insolvency Commencement Date had already been submitted through Form E dated 02.04.2018 by Mr. Rajendra Dineshbhai Mangela, Joint Secretary of the Applicant Union, and the same had already been verified and adjudicated by the erstwhile Resolution Professional. Consequently, the subsequent Form E dated 01.12.2025, claiming an amount of Rs.2,51,62,87,993/-, is stated to be impermissible under the IBC as it seeks to introduce enhanced claims extending up to October, 2025, including gratuity, retrenchment compensation and notice pay payable to employees who continue to remain in service.

3.7. It is submitted that the Applicant's earlier Form E dated 02.04.2018 claimed an aggregate amount of Rs.58,70,29,282/-, out of which claims to the extent of Rs.8,49,94,123/- were admitted after due verification and reflected in the List of Creditors maintained by the Corporate Debtor. The balance claim of Rs.50,20,35,159/- was not admitted as it comprised contingent claims towards leave encashment, gratuity, notice pay and retrenchment compensation, which had not become due and payable as on 20.02.2018, the employees continuing in service on the Insolvency Commencement Date.

3.8. It is further submitted that the non-admitted claims also included bonus for FY 2016-17, which had already been paid to the eligible workmen at the statutory rate of 8.33%. It is, therefore, contended that no outstanding claim towards bonus survived for admission and the reasons for non-admission were duly reflected in the claim statement uploaded on the website of the Corporate Debtor.

3.9. It is submitted that the allegation regarding non-communication of the decision on admission or rejection of claims is misconceived. It is contended that under Regulation 13(1) of the CIRP Regulations, as applicable in 2018, the Resolution Professional was only required to verify the claims and publish the List of Creditors on the website of the Corporate Debtor, and there existed no statutory obligation to individually communicate admission, rejection or reasons thereof to each creditor or workman. The Respondent asserts that all statutory requirements were duly complied with.

3.10. It is submitted that the allegation that the Employees' Co-operative Society had not submitted any claim is factually incorrect. It is stated that Enercon India Employees Co-operative Credit Society Limited had submitted a claim for Rs.5,81,43,166/-, which was fully admitted under Claim No. B/F24/249.

3.11. It is further submitted that the Resolution Plan submitted by the Consortium of Inox Neo Energies Limited and Authum Investment & Infrastructure Limited specifically provides under Clauses 6.2.2 and 6.2.7 for payment in full of unpaid provident fund, pension, gratuity and employee state insurance dues that were due and payable as on the Insolvency Commencement Date, to the extent required under applicable law. It is, therefore, contended that the relief sought in Prayer Clause D already stands incorporated in the approved Resolution Plan and no separate direction is warranted.

3.12. It is submitted that, in the aforesaid circumstances, the Application is devoid of merit and seeks to introduce claims not permissible under the statutory framework governing the CIRP. The Respondent contends that the erstwhile Resolution Professional acted strictly in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016, the CIRP Regulations and the Resolution Plan, and accordingly prays for dismissal of the present Application with costs.

4. In compliance with order dated 02.06.2026, the Applicant filed its Affidavit-of-Rejoinder on 18.06.2026 vide Inward No. D-5011 stating the following:

4.1. It is submitted that the Resolution Professional has exceeded the statutory powers conferred under the Insolvency and Bankruptcy Code, 2016 by assuming an adjudicatory role while scrutinising and verifying the claims of the workmen.

4.2. It is contended that the Resolution Professional is only required to collate and verify claims and has no authority to adjudicate upon or determine the entitlement of creditors. The alleged rejection and determination of claims are stated to be arbitrary, contrary to the scheme of the Code and the CIRP Regulations, and therefore unsustainable in law.

4.3. It is submitted that the Resolution Professional has himself admitted in Paragraphs 15 and 19 of the Reply that the employees continue to remain in the employment of the Corporate Debtor and that their services have never been terminated. In view of such admissions, it is contended that the employer-employee relationship has continued uninterruptedly and the employees continue to remain on the payroll of the Corporate Debtor. Consequently, the employees are entitled to claim salary, wages and all consequential statutory and contractual benefits, including the claims submitted through Form E dated 01.12.2025.

4.4. It is submitted that the Resolution Professional has failed to place on record the relevant extracts of the approved Resolution Plan relating to the claims of the workmen and employees. The Applicant has therefore requested this Tribunal to direct the Resolution Professional to produce the relevant portions of the Resolution Plan and has reserved its right to file an additional affidavit upon production thereof.

4.5. It is submitted that the objection regarding the authority of Mr. Vitthal Gawade to institute the present proceedings is wholly misconceived.

4.6. It is stated that the Annual General Body Meeting of the Applicant Union was duly held on 01.03.2026, wherein elections were conducted in accordance with the amended Constitution of the Union and Mr. Vitthal Gawade was duly elected as the General Secretary for a term of two years.

4.7. It is further submitted that the election of the office bearers was communicated through letter dated 17.03.2026 to the Resolution Professional by email dated 06.04.2026 and by Speed Post, simultaneously to the HR Department of Wind World (India) Limited by email dated 06.04.2026 and Speed Post, and necessary intimation was also submitted before the Office of the Registrar of Trade Unions on 13.05.2026. Accordingly, it is contended that Mr. Vitthal Gawade was duly authorised and competent to represent the Applicant Union and institute the present proceedings.

4.8. It is submitted that the Respondents were fully aware of the aforesaid communications and election of the office bearers but deliberately suppressed the same while alleging lack of authority, with an intention to mislead this Tribunal and divert attention from the merits of the dispute.

4.9. It is submitted that the contention of the Resolution Professional that workmen can submit claims only in respect of dues accrued up to the Insolvency Commencement Date is contrary to the provisions of the Insolvency and Bankruptcy Code, 2016 and Regulation 9 of the CIRP Regulations.

4.10. It is asserted that no such restriction exists under the statutory framework and that the true interpretation of the Regulations supports consideration of the claims preferred by the Applicant.

4.11. It is submitted that the claim dated 01.12.2025 for Rs.2,51,62,87,907/- comprises several independent heads of claim, including illegal shutdown salary for the period November 2017 to October 2025, bonus for FY 2016-17, leave encashment, provident fund contributions of both employer and employee for different periods commencing from September 2014, lay-off deduction salary, Employees' Co-operative Society dues, Mediclaim, three months' notice pay, gratuity and retrenchment compensation.

4.12. It is contended that several components of the claim relate to periods prior to the Insolvency Commencement Date and therefore the Respondent's contention that the entire claim pertains to post-CIRP dues is factually incorrect.

4.13. It is submitted that the workmen have continuously remained in service without termination, retrenchment, resignation or discharge from November 2017 till October 2025, and have continued on the muster roll and payroll of the Corporate Debtor throughout the said period. In view of the subsisting employer-employee relationship, it is contended that salary, wages, gratuity and other statutory and contractual benefits continue to accrue in favour of the employees and cannot be denied merely because the Insolvency Commencement Date has intervened.

4.14. It is submitted that the Resolution Professional cannot simultaneously admit that the employment of the workmen has never been terminated and yet deny salary and employment-related benefits accruing during such continuing employment. Such a stand is stated to be self-contradictory, arbitrary and contrary to settled principles governing employer-employee relations.

4.15. It is submitted that the earlier Form E dated 02.04.2018 comprising claims aggregating to Rs.58,69,96,102/- included claims towards salary from November 2017 to 08.03.2018, bonus, leave encashment, gratuity, three months' notice pay, retrenchment compensation, Mediclaim, Employees' Co-operative Society dues and lay-off deduction salary. The Applicant contends that the Resolution Professional has incorrectly asserted that the disallowed amount of Rs.50,20,35,159/- pertained only to leave encashment, gratuity, notice pay and retrenchment compensation, whereas the claim consisted of several independent heads of dues.

4.16. It is submitted that the erstwhile Resolution Professional admitted claims only to the extent of Rs.8,49,94,123/- without disclosing the specific heads admitted, the claims rejected or excluded, or the basis and calculations adopted while partially admitting the claims. It is therefore contended that such partial admission is arbitrary, opaque and incapable of verification.

4.17. It is submitted that gratuity, leave encashment, notice pay and retrenchment compensation are statutory and service-related benefits which accrue by virtue of employment and cannot be treated as contingent claims payable only upon termination of service. Reliance has been placed upon the judgment of the Hon'ble NCLAT in **Jet Aircraft Maintenance Engineers Welfare Association *(supra)***, wherein it has been recognised that unpaid provident fund, gratuity and leave encashment constitute admissible claims under the Code.

4.18. It is submitted that the Resolution Professional has failed to furnish any explanation for excluding claims relating to Mediclaim and lay-off deduction salary, despite such claims forming part of the original claim submitted by the Applicant.

4.19. It is submitted that payment of the statutory minimum bonus of 8.33% does not discharge the liability of the Corporate Debtor to pay the balance bonus of 13.67%, as the established practice was payment of bonus at 22%. Accordingly, the claim towards the differential amount of bonus continues to survive for consideration.

5. In compliance with the order dated 19.06.2026, the Applicant filed its Written Submission on 22.06.2026 vide Inward No. D-5088.

6. In compliance with the order dated 19.06.2026, the Respondent/RP filed its Written Submission on 22.06.2026 vide Inward No. D-5081.

7. We have heard the Learned Counsel appearing for the Applicant and the Learned Counsel appearing for the Respondents at length. We have also carefully perused the pleadings, including the Application, the Affidavit-in-Reply, the Affidavit-in-Rejoinder, the Written Submissions filed by the respective parties, the documents placed on record, the claim forms, the relevant provisions of the Insolvency and Bankruptcy Code, 2016 and the CIRP Regulations framed thereunder, the Resolution Plan approved by the CoC and submitted to this Adjudicating Authority for approval, and the judicial precedents relied upon by the parties. Upon

giving our thoughtful consideration to the rival submissions and the material available on record, the following issues arise for our consideration and determination: -

i. **Issue No. I:** Whether the Resolution Professional was under obligation to verify the fresh claims filed in Form E on 01.12.2025 and take a decision on its admissibility?

ii. **Issue No. II:** Whether the Resolution Professional was justified in not admitting the claims towards Provident Fund, Gratuity, Leave Encashment, Retrenchment Compensation, Notice Pay and Bonus while verifying the claims submitted in Form E dated 02.04.2018?

iii. **Issue No. III:** Whether the workmen and employees who continued to render services during the Corporate Insolvency Resolution Process are entitled to salary for the said period and, if so, whether such payment is liable to be treated as CIRP Cost?

8. **Findings on Issue No. (I):** Whether the Resolution Professional was under obligation to verify the fresh claims filed in Form E on 01.12.2025 and take a decision on its admissibility?

8.1. The Applicant has claimed that it filed Form E on 01.12.2025 on behalf of the workmen and employees of the Corporate Debtor (Pages 590 to 633) and this claim was lodged much prior to the date of meeting of crudities convened for voting on resolution plan on 19.02.2026. The Resolution Professional has failed to either admit or reject the same.

8.2. Regulation 9(2) of the IBBI (Resolution Process for Corporate Persons) provides for submission of claims by workmen and employees in Form E (for numerous workmen and employees of the Corporate Debtor). This Form refers to the corporate debtor being indebted to persons at the insolvency commencement date. Further, Form A, being public announcement made under Regulation 6 of the Regulations calling for the claims from the creditors within 14 days from the appointment of the interim resolution professional. These claims are to be submitted by all creditors including employees and workmen as dues to the Corporate Debtor as on the insolvency commencement date.

8.3. The claim of the Applicant that the same were filed prior to the meeting of the Committee of Creditors and therefore should dhave been considered by the Resolution Professional. It appears that the Applicant is drawing support from the newly inserted Regulation 13 (1B) (w.e.f 18.09.2023) which provide for receipt of claim up to seven days before the meeting of the creditors for voting on the resolution plan. The extended time is provided for submission of claims as required by Regulation 12(1). However, such claims have to be on the insolvency commencement date.

8.4. Form E appearing on pages 590 to 633 shows that the claims are made for total amount due up to October 2025. These claims included in Fomr E submitted on 02.04.2018 and also further claims from the insolvency commencement date to October 2025. We are not inclined to agree with the Applicant that the RP should have considered claims up to October 2025. The CIRP commenced on 20.02.2018 and the claims as outstanding on 20.02.2018 could only be considered by the RP for admission or rejection. Therefore Issue No.1 is decided against the Applicant. However, it made clear that any dues of provident fund, gratuity, and ESIC which were due on the insolvency commencement date but for which claims were not filed has to be paid in full out of the disbursements provided in the Resolution Plan.

9. **Findings on Issue No. (II):** Whether the Resolution Professional was justified in not admitting the claims towards Provident Fund, Gratuity, Leave Encashment, Retrenchment Compensation, Notice Pay and Bonus while verifying the claims submitted in Form E dated 02.04.2018?

9.1. The Applicant has contended that while verifying the claims submitted by the workmen and employees pursuant to Form E dated 02.04.2018 (Pages 324 to 358 of the Application), the erstwhile Resolution Professional admitted claims only to the extent of Rs.8,49,94,123/- and declined to admit the remaining claims of Rs 50,20,35,159 , including statutory dues towards Provident Fund and Gratuity. According to the Applicant, such rejection is contrary to the provisions of the Insolvency and Bankruptcy Code, 2016 and the law declared by the Hon'ble National Company Law Appellate Tribunal in ***Jet Aircraft Maintenance Engineers Welfare Association v. Ashish Chhawchharia, RP of Jet Airways (India) Ltd. & Ors., (2022) ibclaw.in 861 NCLAT***.

9.2. Per contra, the Resolution Professional has submitted that gratuity, leave encashment, retrenchment compensation and notice pay had not crystallised as on the Insolvency Commencement Date since the services of the employees had never been terminated. It has further been submitted that the claims were verified strictly in accordance with the provisions of the Code and the CIRP Regulations then in force.

9.3. Having considered the rival submissions, this Adjudicating Authority is of the considered view that the controversy relating to Provident Fund and Gratuity is no longer *res integra*. The Hon'ble NCLAT in

***Jet Aircraft Maintenance Engineers Welfare Association* (supra)**, while interpreting Sections 18, 36(4)(a) and 53 of the Insolvency and Bankruptcy Code, 2016, has categorically held that unpaid Provident Fund and Gratuity dues payable up to the Insolvency Commencement Date enjoy statutory protection and are liable to be paid in full, in addition to 24 months' workmen dues under Section 53(1)(b) of the Code. The said judgment has attained finality as the same was re-affirmed by the Hon'ble Apex Court in the appeal filed against the said order in **Civil Appeal No. 407 OF 2023 *(Jalan Fritsch Consortium vs. Regional Provident Fund Commissioner & Anr.)*.**

9.4. The Hon'ble NCLAT has specifically held that while gratuity becoming payable after the Insolvency Commencement Date cannot be admitted merely because the employer-employee relationship continued, the employees are unquestionably entitled to payment of Provident Fund and Gratuity dues accrued till the Insolvency Commencement Date. Therefore, the Resolution Professional is under a statutory obligation to correctly determine and admit such dues while verifying the claims.

9.5. The Resolution Professional has submitted that the Applicant filed claims in Form E dated 02.042018 (Page 324 of the Application) for Rs 58,70,29,282. The RP admitted claims of Rs 8,49,94,123 and claims of Rs

50,20,94,159 were not admitted and the reasons for not admitting the claims have been set out on the website of the Corporate Debtor.

9.6. The RP submitted (Page 10 of the Rejoinder) that the said claims comprised under nine heads (pages 2 and 3 of the written submission) and claims of salary from November 2017 to 8 March 2018 of Rs 8,99,94,123 was admitted. The reasons for not admitting the remaining claims are stated in the submission.

9.7. The RP has submitted that regarding provident fund dues as on the insolvency commencement date, the statutory dues submitted by the EPFO of Rs 14,20,83,078 and admitted includes the amount claimed by the Applicant towards provident fund dues.

9.8. The Resolution Professional has drawn our attention to the Clauses 6.2.2 and 6.2.7 of the Resolution Plan approved by the CoC and the same is extracted below:

Clause 6.2.2

"(a) Towards Operational Creditors (Workmen and Employees): Rs. 25,00,00,000 (Indian Rupees Twenty-Five Crores) or such other higher amount equivalent to the Minimum Entitlement of Operational Creditors (applicable to such Operational Creditors). It is clarified that this payment shall be utilised to discharge the obligations of the Company under the Employees Provident Fund & Miscellaneous Provisions Act, 1952, Payment of Gratuity Act, 1972 and Employees' State Insurance Act, 1948 or other similar legislations;"

Clause 6.2.7

"RA-1 proposes to make payment in full of all unpaid provident fund, pension, gratuity, and employee state insurance dues that were due and payable as on the Insolvency Commencement Date, to the extent required under Applicable Law, either directly, or indirectly from the Corporate Debtor, to the extent such payments have not already been made by the Corporate Debtor as on the Implementation

Date. Notwithstanding anything contained herein, such necessary payments to be made under this Clause 6.2.7 shall form part of the Total Outlay and the Operational Creditors' Payment shall be proportionately reduced, to ensure that the Total Outlay proposed under this Resolution Plan is not increased. It is clarified that with effect from the Implementation Date, any provident fund and gratuity liabilities arising towards the employees of the Corporate Debtor shall be paid by Corporate Debtor as and when they become due and payable in accordance with Applicable Law."

9.9. Revised Form H filed on 14.07.2026 (Diary No. D5813) provides that a claim of Rs 56,339,790 made towards PF of workmen dues was admitted in full and the plan provides for payment of Rs 89,792,559 which is more than the claimed amount. The reasons for enhanced amount are provided in notes (b) and (c) of the Form H. This payment will be made in priority as per the decision in case of Jet Airways.

9.10. Regarding PF dues of employees, Form H notes that a claim of Rs 85,731,110 was admitted in full and the plan provides for payment of Rs 131,776,944 which is more than the admitted amount and the reasons for increased amount are given in notes (b) and (c). The notes (b) and (c) of the Revised Form are extracted below:

(b) While the total amount proposed in the Resolution Plan for Workmen and Employees including PF, ESIC, gratuity dues is INR 25 Crores, clause 6.2.2 of Resolution Plan states the Minimum Entitlement of Operational Creditors is higher than the amounts being offered to the Operational Creditors under this Resolution Plan, the amount payable to the Operational Creditors under this Resolution Plan will be increased to the Minimum Entitlement of Operational Creditors, and the Financial Creditors' Payment will be deducted by the amount so increased for payment to the Operational Creditors, such that there will be no increase' in the Total Outlay.

(c) The total realisable value towards Provident Fund dues of INR 221,569,503 (i.e. INR 89,792,559 for workmen + INR 131,776,944 for employees) is inclusive of principal amount of INR 153,050,143 (i.e. INR 620,24,618 for workmen and INR 91,025,524 for employee) as per books of Corporate Debtor and interest and damages of INR 68,519,360 as calculated by RP. It is to be noted that the interest and damage figure may undergo change upon finalization. Further it is to be noted that Provident Fund dues will paid in priority in terms of the Jet Airways Judgement. Gratuity as and when finally settled will be paid in full as per the Jet Airways judgment.

9.11. Accordingly, Issue No. (ii) is answered by holding that the Resolution Plan sufficiently and properly take into account the payment of claims of the employees and workmen as per the provisions of the Code and Regulations and the Resolution Professional shall ensure that the same are duly paid as provided in the Resolution Plan in accordance with law after giving due effect to the judgment of the Hon'ble NCLAT in ***Jet Aircraft Maintenance Engineers Welfare Association*** **(supra)**.

10. **Findings on Issue No. (III):** Whether the workmen and employees who continued to render services during the

Corporate Insolvency Resolution Process are entitled to salary for the said period and, if so, whether such payment is liable to be treated as CIRP Cost?

10.1. The Applicant has contended that although the Corporate Debtor was admitted into Corporate Insolvency Resolution Process on 20.02.2018, the services of several workmen and employees were never terminated and they continued to discharge their duties for operating and maintaining the Corporate Debtor as a going concern. It has been submitted that despite rendering services during the CIRP, the concerned workmen and employees have not been paid their salaries for the period during which they actually worked. According to the Applicant, such dues cannot be treated as ordinary operational debt and deserve to be paid in priority.

10.2. Per contra, the Resolution Professional has contended that claims arising subsequent to the Insolvency Commencement Date cannot be admitted as insolvency claims under the Corporate Insolvency Resolution Process. It has been submitted that the claims submitted by the Applicant include wages extending beyond the Insolvency Commencement Date and therefore are not liable to be admitted as claims under the Insolvency and Bankruptcy Code, 2016.

10.3. Having heard the Learned Counsel appearing for the parties and upon careful consideration of the pleadings and the material placed on record, this Adjudicating Authority is of the considered opinion that the controversy relating to payment of salary during the Corporate Insolvency Resolution Process is no longer *res integra.*

10.4. The Hon'ble Supreme Court in ***Sunil Kumar Jain & Ors. v. Sundaresh Bhatt & Ors., (2022) ibclaw.in 23 SC***, while considering the entitlement of workmen and employees to salary for the period during which the Corporate Debtor remained under CIRP, has categorically held that where the Interim Resolution Professional or Resolution Professional continues the operations of the Corporate Debtor as a going concern and the workmen or employees actually render services during such period, the wages and salaries payable for the period of such employment constitute Insolvency Resolution Process Costs within the meaning of Section 5(13) of the Insolvency and Bankruptcy Code, 2016. The Hon'ble Supreme Court further clarified that such wages are not liable to be treated as pre-CIRP operational debt and are required to be dealt with in accordance with the provisions governing CIRP Costs.

10.5. At the same time, the Hon'ble Supreme Court has also observed that such entitlement cannot be claimed as a matter of course by every employee merely because the employer-employee relationship continued after the Insolvency Commencement Date. The burden lies upon the Resolution Professional to verify that such services were utilized for preserving and maintaining the Corporate Debtor as a going concern.

10.6. In the present case, the Applicant has specifically pleaded that the services of the workmen and employees were never terminated and that several employees continued to discharge their duties during the Corporate Insolvency Resolution Process. Whether each employee had actually worked during the CIRP and the period for which such services were rendered are matters requiring factual verification based upon attendance records, wage registers, muster rolls, deployment records and other contemporaneous documents maintained by the Corporate Debtor.

10.7. This Adjudicating Authority is of the considered view that the Resolution Professional, being entrusted with the management of the affairs of the Corporate Debtor during the CIRP must have maintained records for the same. Further, the costs incurred in running the Corporate Debtor as a going concern during the CIRP period is the insolvency resolution cost and requires to be paid in priority to other payments under the Resolution Plan. The Resolution Plan approved by the CoC and filed for approval before this Adjudicating Authority provide for the payment of CIRP cost in full.

11. The Resolution Professional in his Affidavit filed on 10.07.2026 in IA (Plan) 10 of 2026 has submitted the following: -

I say that the Corporate Debtor has been maintained as a going concern throughout the Corporate Insolvency Resolution Process (**CIRP**) period. Accordingly, the CIRP cost being dynamic is being incurred from the Insolvency Commencement Date and is being paid from the cash of the Corporate Debtor. Any CIRP cost that remains as on the date that the Resolution Plan is approved by this Hon'ble Tribunal (NCLT Approval Date) will be paid from the cash of the Corporate Debtor in priority to payments to any creditors by the Resolution Applicant. The

CIRP cost is not presently crystallised and the exact amount will be crystallised as on NCLT Approval Date.

5. In terms of Section 53 of the Insolvency and Bankruptcy Code, 2016 (**IBC**), the CIRP Costs are required to be paid in priority over all other claims. Therefore, while the liquidation value of the Corporate Debtor is known, the exact amount available for distribution under the waterfall mechanism contemplated under Section 53 can only be determined upon ascertainment of the unpaid CIRP Costs which will be upon the NCLT Approval Date. In view of this, only approximate / expected amounts can be indicated by way of this present affidavit on a best estimate basis by the Resolution Professional for assistance of this Hon'ble Tribunal.

12. Based on the facts of the case and issues discussed above, we hold that the unpaid dues, if any, of any of the employees or workmen, who worked for the corporate debtor during the CIRP period will require to be paid in full as CIRP cost.

13. We have referred to the IA (Plan) 10 of 2026 while deciding this Application as the issue is closely connected and the effect of this Application is required to be checked in the Resolution Plan approved by the CoC. Reference has been made to ensure that the dues of the employees and workmen are properly provided in the Plan, Form H and Affidavits filed by the CoC and the Resolution Professional.

14. Accordingly, the present Application **IA/833(AHM)2026 in CP(IB) No.14 of 2018** is **disposed of** in terms of this Order. There shall be no order as to costs.

-Sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

Jeel Pathak/LRA