
(2023) 04 NCLT CK 0034

In the National Company Law Tribunal

Case No : IA No 759 Of 2022 In CP (IB) No.315/Chd/Hry/2019

Workmen Of Vikas WSP Limited Vs Vikas WSP Ltd ?

Date of Decision : 19-04-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 32(2)(b), 53(1), 36(4)(b)(iii), 53(1)(b), 60(5)
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Regulation 14(1)

Citation : (2023) 04 NCLT CK 0034

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Gaurav Bhardwaj, GS Sarin, Darshan Singh Anand

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

IA No. 759/2022

1. The present application is filed by 520 Workmen of Vikas WSP Limited through their Authorized Representative Mr. Ranveer Singh (hereinafter referred to as the applicant); against Mr. Darshan Singh Anand, Resolution Professional of Vikas WSP Limited (herein referred to as Resolution Professional/Respondent No. 1 and 2) and Committee of Creditors (Respondent No. 3) and Employees Provident Fund Organisation (Respondent No. 4) under Section 60(5) of Insolvency and Bankruptcy Code, 2016.

2. It is prayed by the applicant to direct the Resolution Professional to accept and admit the claims of applicant i.e. for Rs. 57,43,51,846/- excluding the PF Claims and to direct the RP to reformulate the claim/ liability of the Corporate Debtor before inviting any resolution plan and to grant interim stay on insolvency proceedings and to grant any relief which the Court may deem fit.

3. The brief facts as submitted in the application are that:-

i. The Corporate Insolvency Resolution Process has been initiated against the Corporate Debtor on 02.02.2022. The workmen, 520 in number have filed their claims through their Authorized Representative vide Form E dated 16.02.2022 which was duly delivered within the stipulated time to the Interim Resolution Professional.

ii. After submission of the claim the Resolution Professional has instructed the applicant to submit a fresh/ revised Form E and in terms of the said request revised calculation sheet dated 25.03.2022 excluding the calculation of Provident Fund has been submitted to IRP which is attached as Annexure A4 of the application.

iii. The Resolution Professional has rejected a large part of the claim submitted by the workmen and the intimation for the rejection/ non-admittance of the claim is attached as Annexure A5 of the application.

iv. It is averred that the Resolution Professional has divided the claims into 3 categories i.e. 'admitted', 'contingent claim' and 'not-admitted claim'. It is mentioned by the Resolution Professional that 'bonus and dharna period wages being part of ongoing litigation have been considered as contingent claim due to the amounts being subjudice' and the another claim has been rejected stating that the gratuity is not payable and the interest on wages, allowances, the bonus has not been admitted after a layoff on 29.01.2021. Nine workers have been completely excluded, and no claim has been admitted from them.

v. The Resolution Professional has arbitrarily and illegally rejected the claims, and it is also stated that 'gratuity is not taken as payable at this stage of Resolution.' The applicant has also submitted the relevant document pertaining to the legal proceedings pending for adjudication before the Labour Court challenging the illegal lay off is attached as Annexure A6 of the application. The claims after the lay off by the company on 29.01.2021 shall be admitted and be made the part of their dues. The Corporate Debtor is also not providing the requisite data to the Employees Provident Fund Organisation pertaining to the Workmen and the component of the Provident Fund is also not admitted by the RP.

4. The respondent has filed its reply by Diary No 01016/1 dated 16.11.2022 and written submissions by Dairy No. 1016/3 dated 09.03.2023 stating that the Resolution Professional has furnished the valid reason for not admitting the claim of workmen which is reproduced below :-

S. No.

Particulars

Amount in Rs.

Remarks

1.

Admitted

9,26,82,171

Dues of Wages upto January 2021

without interest after deducting PF and ESI dues as per law.

2.

Contingent Claim

9,63,56,098

Bonus and Dharna Period Wages being part of ongoing litigation were considered a Contingent Claim due to the amounts being sub-judice before the Labour Court.

3.

Not Admitted

38,53,13,577

i. 9 Workmen* as named below who had taken full and final have been excluded from consideration.

ii. Besides the Gratuity is not taken as payable at this stage of Resolution

iii. Besides the interest on wages/bonus/allowances has not been admitted

iv. The Wages, Allowance, Bonuses and interests thereon have not been admitted after the layoff by the company on 29th January 2021.

Total Claimed

57,43,51,846

5. It is further submitted that the claims of 9 workmen have not been admitted as they have already submitted their full and final to the Corporate Debtor, and the rest of the claim cannot be calculated due to legal complications. The resolution professional has not admitted the claim of Rs. 38,53,13,577/- on the ground of the workers w.e.f 29.01.2021, and the same has been duly considered by the competent authority, i.e. the Labour Department of Rajasthan and no violation has been found in laying off the workers by the Ld. Authority. The PF department has separate authority to claim the PF dues, and the claims of PF dues cannot be decided by the Resolution Professional.

6. The applicant has filed its rejoinder by Diary No. 1016/2 dated 14.02.2023, wherein the submissions made in the application are reiterated.

7. We have heard learned counsel for the applicant and respondents and have perused the record carefully.

8. In the present case, The RP is directed to calculate the payment of the full amount of Provident Fund and Gratuity till the date of commencement of Insolvency in line with the judgement of Hon'ble NCLAT, New Delhi in the matter of Jet Aircraft Maintenance Engineers Welfare Association (JAMEWA) Vs. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Ors. (2022) ibclaw.in 861 NCLAT wherein it has been held that

"71. In view of the aforesaid discussion, we arrive at following conclusions:

(i) The workmen and employees are entitled for payment of full amount of provident fund and gratuity till the date of commencement of the insolvency which amount is to be paid by the Successful Resolution Applicant consequent to approval of the Resolution Plan in addition to the 24 months workmen dues as the workmen is entitled to under Section 53(1)(b) of the Code. It is made clear that in addition to part amount of provident fund and gratuity as proposed in Resolution Plan to workmen, Successful Resolution Applicant is obliged to make payment of balance unpaid amount of provident fund and gratuity to workmen and employees.

72. Our answer to Question II and III is as follows:

(i) The workmen and employees are entitled to receive the amount of provident fund and gratuity in full since they are not part of the liquidation estate under Section 36(4)(b)(iii).

(ii) The workmen are entitled to receive their dues from the Corporate Debtor for period of 24 months as per provision of Section 53(1)(b) at least to minimum liquidation value envisaged under Section 32(2)(b) read with Section 53(1)."

9. It is noted that the Resolution Professional has included several payments to be made to the workers under the head 'Contingent Liability' for the reasons being subjudice before the learned Labour Court. In this connection, a reference is made to the provisions of Regulation 14(1) of IBBI (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 which is reproduced under:

" 14. Determination of amount of claim.

(1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him."

10. We are also conscious of the judgement passed by the Hon'ble Supreme Court in the case of Fourth Dimension Solutions Limited vs Ricoh India Limited and others, bearing Civil Appeal No. 5908 of 2021, decided on 21.01.2022, wherein the Hon'ble Apex Court allowed an operational creditor, whose claims were uncertain due to pending arbitration, to proceed with arbitration proceedings even after the approval of the Resolution Plan. In the said case, the appellant had contended that the entire claim of the appellant was deliberately

avoided by the RP on the basis of the pending arbitration proceedings without verifying the claim by corroborating with the available records/documents. The Hon'ble Apex Court relied on the factual position highlighted in the NCLAT's decision that the appellant's claim was admitted as 'Nil' due to the pending arbitration proceedings. The Hon'ble Apex Court proceeded to dispose of the appeal and restated the fact that the parties are at liberty to pursue all claims entitled to them in the proceedings pending at the relevant time.

11. Keeping in view the aforementioned provisions, the RP is directed to make the best estimate of the claims under litigation and put up the same for consideration of the CoC. While making the best estimate, appropriate recognition criteria and measurement bases are to be applied as per the Accounting Standard (AS-29) prescribed by the Ministry of Corporate Affairs, and sufficient information is to be disclosed in the notes to these financial statements to enable beneficiaries to understand their nature, timing and amount. With regard to the claims made on behalf of 9 workmen, no case has been made out by the applicant to rebut the contention of the Resolution Professional that they have taken full and final payment from the Corporate Debtor. Hence, no interference in this regard is called for.

12. The Resolution Professional is directed to consider the above claims within three weeks of this order and place on record the compliance of this order on affidavit in IA No. 1538/2022 pertaining to the approval of the Resolution Plan.

13. In view of the aforesaid discussions, IA No.759/2022 is partly allowed with the aforesaid directions and is disposed of accordingly.