

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - I

IA NO. 5729 OF 2025

IN

CP (IB) NO. 2205 OF 2019

In the matter of:

***Section 60(5)(b) of the Insolvency and Bankruptcy Code, 2016
(Code) and Rule 11 of The National Company Law Tribunal Rules
2016***

Yogen Vaman Vemekar & Ors **.... Applicant**
Versus
Mr. Satish Kumar Gupta & Ors **.... Respondent**

In the matter of:

State Bank of India **...Financial Creditor**
Versus
Jet Airways (India) Ltd. **...Corporate Debtor**

Order pronounced on 10.07.2026

Coram:

Sh. Prabhat Kumar **Sh. Sushil Mahadeorao Kochey**
Member (Technical) **Member (Judicial)**

Appearances:

For the Applicant **: Adv. Sowmya Saikumar,**
For Respondent **: Adv. Malhar Zatakia, a/w**
Adv. Vasudha Jain, Adv. I. Agarwal

BRIEF FACTS:

1. The present Interlocutory Application is filed on 28.11.2025 by Mr. Yogen Vaman Vemekar (for self and 99 others) under Section 60(5)(b) of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 11 of the National Company Law Tribunal Rules, 2016 for seeking following reliefs:

- (a) *Declare that the Applicants, constitute 'workmen' within the meaning of Section 53(1)(b) read with Section 3(36) of the Insolvency and Bankruptcy Code, 2016, and that, the Applicants seconded to Jet Airways to be treated as part of the unified Jet Airways group workforce, with their dues to be processed and distributed under the liquidation waterfall in accordance with their ranking under Section 53 and other allied provisions of the Code.*
- (b) *Direct Respondent No.1 (Liquidator) to accept, adjudicate, and admit the claims of the Applicants as part of the claims to be distributed under the liquidation of Jet Airways (India) Ltd., with parity of treatment to similarly placed Jet Airways (India) Ltd. 's workmen, and to update the list of stakeholders accordingly.*
- (c) *Direct Respondent No. 1 to provide a time-bound schedule (e.g., 30 days) for verification and admitting the claims of the Applicants supported by documentary annexures, to communicate speaking orders to each Applicant, and to file a consolidated compliance affidavit before this Hon'ble Tribunal thereafter.*

- (d) *Direct disclosure of the assets of Respondent No.2 and Respondent No. 3 auctioned by the Respondent No. 1 in an affidavit till date since the commencement of the liquidation proceedings;*
 - (e) *Pending adjudication, restrain Respondents from disbursing any liquidation proceeds that could affect satisfaction of admitted claims represented by the Applicant herein; in the alternative, direct creation of an escrow/reserve sufficient to meet such claims upon adjudication;*
 - (f) *Pass such other order(s) as this Hon'ble Tribunal may deem fit in the interest of justice and equity.*
2. The Applicant and 99 other individuals, who have appointed the Applicant as their Authorized Signatory for reevaluating and admitting the claims, are the employees of the Respondent No. 3, M/s Jet Lite (India) Limited ('Jet Lite') and claims that their employer had seconded their employment to its holding company, namely M/s Jet Airways (India) Ltd.
 3. The Respondent No. 1 is the Liquidator of Respondent No. 2 i.e. Jet Airways (India) Limited ('Corporate Debtor'), appointed by this Tribunal vide Order dated 26.11.2024.
 4. Prior to this, the Corporate Insolvency Resolution Process ("CIRP") under IBC commenced on 20.06.2019, and the Corporate Debtor was resolved in terms of Resolution Plan approved by CoC on 17.10.2020 followed by approval of this Tribunal vide order dated 22.6.2021. However, upon the failure to implement the failure to implement approved resolution plan, on 7.11.2024, the Hon'ble

Supreme Court directed the Corporate Debtor to be liquidated, and this Tribunal passed order for liquidation on 26.11.2024.

5. The case of the Applicants is as follows:

- i. The Applicants were originally employees of Respondent No. 3, a wholly owned subsidiary of the Respondent No. 2/Corporate Debtor. According to the Applicants, pursuant to secondment orders issued in the year 2008, they were transferred to and continuously worked under the direct supervision, control and management of the Respondent No. 2 till cessation of operations in April 2019. The Applicants contend that the secondment was not for any fixed period and that they were fully integrated into the business and operational structure of the Respondent No. 2.
- ii. The Applicants submit that Respondent No. 2 and Respondent No. 3 functioned as a single integrated enterprise having common management, common directors, shared human resource systems, common operational control, unified branding and substantial financial and operational interdependence. It is further submitted that the Respondent No. 2 exercised effective control over their duties, deployment and service conditions and therefore constituted their real employer notwithstanding their original appointment with Respondent No. 3.
- iii. The Applicants further submit that substantial amounts towards salary arrears, gratuity, leave encashment and other employment-related dues remain unpaid. According to the

Applicants, despite filing claims before the Resolution Professional during CIRP and thereafter before the Respondent No. 1, their claims were rejected on the ground that they were employees of Respondent No. 3 and not of the Respondent No. 2.

- iv. The Applicants contended that the rejection of their claims is arbitrary and contrary to the factual employer-employee relationship existing between them and the Respondent No. 2. It is their case that the tests of control, supervision, integration and economic dependence clearly establish that the Respondent No. 2 was their actual employer. Reliance is placed on various judicial precedents concerning employer-employee relationships, secondment arrangements and the doctrine of substantive consolidation.
 - v. The Applicants further submit that while the assets and business interests of Respondent No. 3 have been considered as part of the overall group structure for the benefit of creditors, the corresponding liabilities towards employees have been ignored. According to the Applicants, such treatment results in discrimination and unjust exclusion of their claims from the liquidation process.
6. The Applicants submitted that, pursuant to the directions of this Tribunal, they have placed on record their respective bank statements by way of affidavit dated 08.02.2026 and additional affidavit dated 06.03.2026, evidencing that salaries were directly credited by Respondent No. 2 into their bank accounts till 2019. It was contended that the said documentary evidence, coupled with the

secondment records already on record, establishes that the Applicants were working under the direct control, supervision and employment of Respondent No. 2 and therefore their claims ought to be admitted in the liquidation proceedings of the Corporate Debtor/Respondent No. 2.

7. In rejoinder dated 29.04.2026, the Applicants denied the contentions of the Respondent No. 1/Liquidator and reiterated that although they were originally employees of Respondent No.3, they were seconded to Respondent No. 2 in 2008 for an indefinite period and continued to work exclusively under the direct control, supervision and management of the Corporate Debtor till cessation of its operations in 2019. It was contended that the Applicants were fully integrated into the Corporate Debtor's business, received salary payments and employment-related communications from the Corporate Debtor, were issued authorisation and experience certificates by the Corporate Debtor, and therefore the Corporate Debtor was their real and substantive employer notwithstanding the nomenclature of secondment.

SUBMISSIONS OF THE RESPONDENT NO. 1:

8. The Respondent No. 1 has filed its Limited Preliminary Affidavit in Reply dated 10.01.2026 opposed the present Application and submitted that the claims raised by the Applicants are wholly misconceived and are not maintainable in the liquidation proceedings of the Respondent No. 2. The case of the Respondent is as under:

- i. The Applicants are admittedly employees/workmen of Respondent No. 3 and not of Respondent No. 2. The claims of Respondent No. 3's employees had earlier been lodged before the erstwhile Resolution Professional during the Corporate Insolvency Resolution Process of the Corporate Debtor/Respondent No. 2. However, such claims were rejected as Respondent No. 3 and Respondent No. 2 are separate and distinct legal entities and, therefore, claims pertaining to employees of Respondent No. 3 could not be admitted in the CIRP of Respondent No. 2.
- ii. The Respondent No.1 further submits that upon commencement of liquidation, some of the Applicants again lodged their claims before the Liquidator/Respondent No. 1. The Liquidator informed the Applicants that their claims could not be admitted since their names did not appear in the employee records of the Corporate Debtor/ Respondent No. 2 and because they were employees of Respondent No. 3 and not of Respondent No. 2.
- iii. It is the case of the Respondent No.1 that, under settled principles of company law, a holding company and its subsidiary possess independent and distinct legal personalities. Merely because Respondent No. 3 is a subsidiary of the Respondent No. 2 does not entitle its employees to seek admission of their claims in the liquidation estate of the Respondent No. 2.
- iv. The Respondent No.1 contends that he has been appointed only for conducting the liquidation process of Respondent

No. 2 and not that of Respondent No. 3. Consequently, the liquidation proceedings of the Respondent No. 2 cannot encompass claims arising against its subsidiary companies. The Applicants, therefore, cannot be regarded as creditors or stakeholders of the Respondent No. 2.

- v. It is further submitted that Regulation 19 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 permits only the employees and workmen of the Corporate Debtor to submit proof of claim in the liquidation process. Accordingly, the Respondent No. 1 is empowered to verify and admit only those claims, which pertain to employees/workmen of the Corporate Debtor and not claims of employees of a separate legal entity such as Respondent No. 3.
- vi. The Respondent No. 1 submits that since the Applicants are employees of Respondent No. 3, their dues cannot be adjudicated or admitted in the liquidation proceedings of Respondent No. 2. The Respondent No. 1 has, therefore, rightly rejected the claims of the Applicants and the present Application is devoid of any legal basis and deserves to be dismissed.
9. The Respondent No. 1/Liquidator, by way of an Additional Affidavit dated 24.04.2026, submitted that the Applicants were merely seconded employees of Respondent No. 3 and that the secondment letters specifically provided that all existing terms and conditions of their employment would remain unaltered. It was contended that the Applicants continued to remain on the payroll of Respondent No. 3,

their salary slips, Form-16s and employee benefit expenses were maintained and accounted for by Respondent No. 3, and no document evidencing termination of employment with Respondent No. 3 or fresh appointment by Respondent No. 2 has been produced. Accordingly, it was submitted that no employer-employee relationship existed between the Applicants and the Respondent No. 2/Corporate Debtor and, therefore, their claims cannot be admitted in the liquidation proceedings of the Respondent No. 2/Corporate Debtor.

10. We have heard the Learned Counsel for the Applicants and for the Liquidator and have perused the material available on record.
11. The admitted position emerging from the record is that the Applicants were employees Respondent No. 3, which is a separate corporate entity and a wholly owned subsidiary of Respondent No. 2. The Applicants rely upon the secondment orders issued in the year 2008, bank statements showing salary credits from Respondent No. 2, authorization certificates, experience certificates and other documents to contend that Respondent No. 2 became their real employer. On the other hand, the Respondent No. 1/Liquidator has relied upon the salary records, Form-16s, Balance Sheets and payroll records maintained by the Respondent No. 3 to contend that the Applicants continued to remain employees of Respondent No. 3.
12. Upon consideration of the rival submissions, we observe that the secondment letters placed on record specifically provide that the services of the Applicants were seconded to Respondent No. 2 and further stipulate that all other existing terms and conditions of employment would remain unaltered. Thus, the very documents

relied upon by the Applicants demonstrate continuation of their original employment with Respondent No. 3 and do not evidence transfer of employment to Respondent No. 2. The applicants continue to had their lien on Respondent No. 2 in so far as their employment contract was concerned and it was Respondent No. 2 who continued to remain liable and responsible to pay the salary and benefits to the applicants.

13. Significantly, no material has been placed on record evidencing termination of employment by Respondent No. 3 or issuance of fresh appointment letters by Respondent No. 2. In the absence of any novation or transfer of contract of employment, the legal relationship between the Applicants and Respondent No. 3 cannot be said to have come to an end merely because the Applicants were deputed or seconded to work with the parent company.
14. The records relied upon by the Respondent No. 1/Liquidator further indicate that the Applicants continued on the payroll of Respondent No. 3, that statutory employment benefits were accounted for by Respondent No. 3 and that Form-16s were issued by Respondent No. 3.
15. The fact that salaries have been credited from the account of Respondent No. 2 on few occasions, or that the Applicants worked under the supervision and operational control of Respondent No. 2 during the period of secondment, cannot by itself create a contract of employment between the Applicants and the Corporate Debtor, and such arrangements are not uncommon within a group structure and do not, in the absence of clear evidence of transfer of employment, result in substitution of the original employer. Also, the direct

payment by the Corporate Debtor to the Applicants during subsistence of secondment arrangement if any, was debited to the account of Respondent No. 3 in the books of Corporate Debtor in order to settle compensation payable by the Corporate Debtor to Respondent No. 3 pursuant to such arrangement as is discernible from the Form 16 issued by Respondent No. 2 under Income Tax Law in relation to tax deducted at source from salaries of applicants, wherein Respondent No. 2 has certified the amount of salary paid by them to the applicants, whether it was paid by the Corporate Debtor or Respondent No. 2. Further, the Applicants never disputed the fact of their employment in Form 16 and filed their tax returns on the basis of their employment with Respondent No. 2. Hence, the privity of contract in relation to employment remained with Respondent no. 2, and the Corporate Debtor had no obligation to pay salary or benefits accruing to employees, except on behalf of Respondent No. 2 in discharge of Respondent No.2's obligation towards the applicants.

16. These documents support the stand of the Liquidator that the Applicants remained employees of the Respondent No. 3 notwithstanding their deployment with Respondent No. 2. The factum of issuance of Form-16 by Respondent No. 3 to the Applicants and discharge of statutory obligation under Labour Laws qua Applicants by the Respondent No. 3 conclusively proves that the relationship of employer- employee between the Applicants and Respondent No. 3 continued to subsist. In our considered view the Applicants could not claim being an employment of two legal entities.

17. It is relevant to refer to the decision in case of ***Centrica India Offshore (P) Limited v. CIT, 2014:DHC:2172-DB***, the SLP against which was dismissed by Hon'ble Supreme Court in case of ***Centrica India Offshore Pvt. Ltd. [TS-642-SC-2014]*** upholding the Hon'ble High Court decision that real employer continued to be foreign companies and deputed employees' work could not be regarded as stewardship. This decision was followed by Hon'ble Delhi High Court in case of ***Ernst And Young U.S. LLP [TS-903-HC-2026(DEL)]*** observing as follows :

65. From the above, it is noted that in Centrica India Offshore Pvt. Ltd. (supra) the relevant stipulation in the agreement with the seconded employees meant;

(i) the seconded employees retained their entitlement to participate in the overseas entities, retirement and social security plans and other benefits in terms of its applicable policies, and the salary was properly payable by the overseas entities, which claimed the money from CIOP;

(ii) The agreement did not reveal that CIOP can terminate the seconded agreement;

(iii) There is no entitlement or obligation, spelt out, whereby CIOP has to bear the salary / cost of these employees;

(iv) The secondees cannot in fact sue CIOP for default in payment of their salary;

(v) All direct costs of such seconded employee's basic salary and other compensation, cost of participation in overseas entities' retirement and social security plans and other

benefits in accordance with its applicable policies and other costs were ultimately paid by the overseas entities;

(vi) CIOP was given the right to terminate the secondment.

The services of the secondee vis-à-vis the overseas entities – the original and subsisting employment relationship – could not be terminated;

(vii) The employment relationship with the foreign entities remained independent and beyond the control of CIOP; and

(viii) ”.

18. In the present case, it is not claimed by the Applicants that they, after secondment, had not retained their entitlement to participate in the Respondent No. 2, retirement and social security plans and other benefits in terms of its applicable policies, and the salary was properly payable by Respondent No. 2, which claimed the money from Corporate Debtor; there is no entitlement or obligation, spelt out, whereby Corporate Debtor has to bear the salary / cost of these employees. Further, the Applicants cannot in fact sue Corporate Debtor for default in payment of their salary. All direct costs of their basic salary and other compensation, cost of participation in overseas entities' retirement and social security plans and other benefits in accordance with its applicable policies and other costs were ultimately borne by Respondent No. 2; and the Corporate Debtor didn't have right to was given the right to terminate the secondment. The services of the secondee vis-à-vis the Respondent No. 2 – the original and subsisting employment relationship – could not be terminated. Accordingly, the principle laid down in Centrica India Offshore (P) Limited equally applies to this case even though

the said decision was rendered in the context of taxability of original employer out of such secondment arrangement under Income Tax Law.

19. As regards reliance of the Applicants on the identity card issued by the Corporate Debtor to the Applicants, we are of considered view that those identity card are commonly required to facilitate such individual to discharge the duties assigned to him and such identity card carries the standard declaration.
20. This Tribunal is also unable to accept the contention that the claims of employees of a subsidiary company can be admitted in the liquidation of the holding company merely on the basis of operational integration or secondment. For a claim, there has to be an obligation of corporate debtor towards the claimant, however in the absence of any such obligation to the applicants on part of corporate debtor, the claim of Applicants even do not fall within the definition of ‘claim’ as provided in section 3(6) of IBC because the Applicants had no right to payment from the Corporate Debtor. Under the Insolvency and Bankruptcy Code, 2016, the liquidation estate of a Respondent No. 2 is distinct and the Liquidator/ Respondent No. 1 is empowered to admit only those claims which are legally enforceable against the Respondent No. 2.
21. It is further noted that Section 3(36) of the IBC provides that “Workman” shall have the same meaning as assigned to it in Section 2(s) of the Industrial Disputes Act, 1947, and said Section 2(s) excludes persons employed in administrative or managerial roles, or in a supervisory capacity drawing wages exceeding Rs. 20,000/- per month. On the perusal of the list of the Applicants appended herein,

it is noted that all these individuals have drawn amount in excess thereof and may have been engaged in supervisory, administrative or managerial roles, as their title suggests. Accordingly, these persons cannot held to be workman under the provisions of 2(s) of Industrial Disputes Act, 1947.

22. In the case of ***Hussianbhai Calicut vs. Alath Factory Thezhailali, Kozikode and Ors., (1978) 4 SCC 257***, it is noted that Hon’ble Court recognized the indirect employer as employer holding that “*He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like, may be resorted to when labour legislation casts welfare obligations on the real employer, based on [Articles 38, 39, 42, 43](#) and [43-A](#) of the Constitution. The court must be astute to avoid mischief and achieve the purpose of the law and not be misled by the maya of legal appearances.*” However, the principles laid down in the said decision are distinguishable, as in the present case, Respondent No. 2 was not a contractor but was a subsidiary of the Corporate Debtor engaged in Airline Operation as well. The Respondent No. 2 was not a myriad to avoid social

obligations under Labour Law casted upon it. On the contrary, it is not disputed that the Respondent No. 2 had discharged its statutory obligations qua applicants under the labour laws.

23. Further, the decision in the case of *General Manager, U.P. Cooperative Bank vs. Achchey Lal & Anr, 2025 SCC Online SC 2096* supports the case of liquidator for the reasons explained above. Nonetheless, the said decision was rendered to adjudicate whether the termination of contracted employees was legal.

24. Accordingly, this Bench is of the considered view that the Applicants have failed to establish that they became employees or workmen of Respondent No. 2. Consequently, the Respondent No. 1/Liquidator was justified in declining to admit the claims of the Applicants in the liquidation process of Respondent No. 2.

25. Hence, the reliefs sought in the present Application cannot be granted. Accordingly, the present Application **IA (I.B.C)/MB/5729/2025** is dismissed and disposed of.

-Sd/-

Prabhat Kumar
Member (Technical)
Vipul Ghate

-Sd/-

Sushil Mahadeorao Kochey
Member (Judicial)