NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

17.07.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)
ARUN BAROKA, MEMBER (TECHNICAL)
INDEVAR PANDEY, MEMBER (TECHNICAL)

Company Appeal (AT) (Ins) No.72 of 2025

Subir Mukherjee **...Appellant**
Ex-Employee of Duncans Industries Limited (In CIRP)

Vs

Ram Ratan Modi **...Respondent**
Resolution Professional of Duncans Industries Limited

(Arising out of Order dated 04.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench) in I.A. No. 868 of 2021 (IA 868) in C.P. (IB) No. 184/KB/2018).

For Appellant: Mr. Rishav Banerjee, Mr. Supriyo Gole, Ms. Anoushka Dey, Ms. Aishwarya Awasthi, Advocates

For Respondents : Mr. Joy Saha, Sr. Advocate, Mr. Amit Kasera, Ms. Urmila, Advocates for R-1

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

1. The appellant herein was the former director of the corporate debtor, who now challenges an Order, dated 04.09.2024, dismissing his application in I.A.868 of 2021, which he had taken out for treating his claim for payment of gratuity and leave encashment dues as part of

CIRP costs. The Adjudicating Authority however, has held that he is entitled to be paid only in terms of the Resolution Plan.

FACTS

2. The relevant facts are:

a) On 05.03.2020, the CD was admitted to CIRP. The appellant claims that he had been in the employ of the CD for over 25 years and superannuated on 30.04.2021, after the commencement of CIRP. The appellant was entitled to receive gratuity and other retiral dues from the CD.

b) While so, pursuant to the public announcement of IRP, dated 11.03.2020, the appellant submitted his Claim, dated 12.03.2020, for ₹.83,58,444. This was partially admitted by the Resolution Professional to the extent of ₹44,16,729. According to the appellant the refusal to admit the balance was not supported by any justifiable reasons.

c) After his superannuation, the appellant began his repeated communications, including email correspondence dated 05.06.2021 and subsequent follow-ups, but the appellant was not paid his statutory dues. Thereafter, vide email dated 09.08.2021, the Corporate Debtor’s officials computed the appellant’s final settlement at ₹55,92,893/-. However, the said admitted dues were not released by the Resolution Professional.

d) Aggrieved by the non-payment, the appellant has filed I.A. No. 868 of 2021 for a direction to the Resolution Professional for payment of gratuity, leave encashment and interest thereon.

e) During the pendency of this application, the Resolution Professional revised and admitted the gratuity component of the terminal benefits of the appellant to ₹52,82,114. Still, he failed to disburse the same, contending that the said dues would be dealt with only in accordance with the provisions of the Code and upon approval of the Resolution Plan.

3. While so, on 04.10.2024 the learned Adjudicating Authority rejected the appellant's plea for treating his claims of gratuity and leave encashment as CIRP costs and held that they could only be dealt with in terms of the Resolution Plan, principally on the ground that that appellant's claim does not fall within the definition of CIRP costs under Sec.5(13) of the Code. Subsequently, the Adjudicating Authority vide its order dated 18.10.2024 approved the resolution plan.

Arguments

4. The Learned Counsel for the Appellant argued:

a) The appellant, having rendered more than 25 years of continuous service to the Corporate Debtor, became statutorily entitled to gratuity and other retiral dues upon superannuation, which are not in the nature of ordinary claims but constitute statutory rights and are required to be honoured within the timeline. Indeed, the resolution professional has admitted substantial part of the gratuity claim of the appellant. Reliance was placed on the ratio in ***Sunil Kumar Jain Vs Sundaresh Bhatt*** [(2022) 7 SCC 540].

b) The failure of the corporate debtor to maintain a separate gratuity fund cannot operate to defeat the statutory entitlement of the Appellant and any such lapse cannot be used as a ground to deny or postpone payment of gratuity dues;

c) Deferring payment of admitted gratuity dues under the guise of implementation of the Resolution Plan is wholly arbitrary and contrary to settled law, since statutory dues are required to be paid in priority and cannot be made contingent upon uncertain future events. Reliance was placed on the ratio ***Stesalit Limited Vs Union of India*** [2025 SCC OnLine Cal 1708].

d) Despite the admitted computation of dues, failure of the Adjudicating Authority to direct payment of gratuity and requiring the appellant to wait till the implementation of the resolution plan causes grave prejudice to the appellant, and it defeats the objective of safeguarding employees' dues under the insolvency framework.

5. Per Contra, the learned counsel for the respondent/the resolution professional contended:

a) the present appeal is wholly misconceived and seeks to incorrectly classify statutory and contractual dues of the appellant, namely gratuity and leave encashment, as part of the CIRP cost, which is impermissible under Section 5(13) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 31 of the CIRP Regulations, 2016.

The scope of CIRP cost is limited and does not extend to terminal benefits payable upon cessation of employment.

b) gratuity, being a statutory retiral benefit, is payable from the gratuity fund, if maintained by the Corporate Debtor. In the absence of such a fund, the same constitutes a statutory due which is required to be provided for in the resolution plan and cannot, by any stretch of interpretation, be treated as CIRP cost. Similarly leave encashment is purely a contractual obligation arising out of the terms of employment and does not fall within the ambit of CIRP cost under Section 5(13) of the Code, nor is it an excluded asset under Section 36(4). Accordingly, such claim is required to be dealt with only in accordance with the waterfall mechanism under Section 53 of the Code.

c) The resolution plan, which came to be approved by the Adjudicating Authority subsequent to the passing of the impugned Order, specifically provides for payment of gratuity to the extent of ₹25 crores, and therefore the Appellant's admitted gratuity claim can be satisfied under the said plan. The Successful Resolution Applicant, is responsible for the implementation of the plan, and has not been impleaded as a party to the present appeal. In the absence of the SRA, no effective or enforceable relief can be granted, and the present appeal is liable to be dismissed on this ground.

d) it is well settled that the Resolution Professional acts merely as a facilitator of the CIRP process and cannot be fastened with liability to make payments to creditors. The RP has duly discharged his statutory duties by verifying and admitting the claims in accordance with law, and no direction for payment can be issued against the RP, particularly after approval of the resolution plan;

e) the Appellant, by seeking treatment of his dues as CIRP cost, is effectively attempting to secure preferential payment over other similarly situated creditors, which is contrary to the scheme of the Code.

Discussion & Decision

6. The issue in controversy is short and straight forward: whether the gratuity and the encashable leave of an employee should be part of CIRP costs. It is not in dispute that the appellant has been an employee of the corporate debtor before and after the commencement of CIRP, that he has superannuated during the CIRP, and that the resolution professional did not reject the amount claimed as gratuity payable to the appellant. It is about when it has to be paid. Unfortunately, the corporate debtor did not maintain any Gratuity fund to support its employees for the appellant to fee more secured. And, the strategy of the appellant makes evident his underlying anxiety: If his claim of gratuity is made of CIRP cost he will not only be entitled to the actuals but also receive the same in priority.

7. Sec.5(13) defines insolvency resolution process costs as below:

"*insolvency resolution process cost means –*

a) The amount of any interim finance and the costs <u>incurred</u> in raising such finance;

b) *The fees payable to any person acting as a resolution professional;*
c) *Any costs* incurred *by the resolution professional in running the business of the corporate debtor as a going concern;*
d) *Any costs* incurred *at the expense of the government to facilitate the insolvency resolution process; and*
e) *Any other costs as may be specified by the Board;*

An analysis of the definition informs that the legislature has opted for a narrower definition when it used the word '*means*', which implies nothing which is not stated to mean an insolvency resolution process costs within the definition can be read into it. Secondly, except in (b) which deals with remuneration payable to the resolution professional, those in (a),(c) and (d) are expenses actually incurred by the resolution professional. Therefore, IRP cost essentially means those costs which are actually incurred by the resolution professional during the insolvency resolution process, but slated for deferred payment to be paid first in the order of priority when payment happens as per Sec.53 formula. Very obviously, the obligation to pay gratuity is not an expense which the resolution professional has actually incurred. Indeed, it accrues to an employee as an aspect of his terminal benefit and hence cannot even be equated to the salary payable to an employee during an insolvency resolution process.

8. To conclude, we find that the appellant's claim is misconceived and cannot be sustained in law. Accordingly, the appeal is dismissed as devoid of merits. No costs.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

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