

INSOLVENCY AND BANKRUPTCY CODE

CA. Pravin Navandar, CA. Mukund Mall

Supreme Court Judgement - order dated April 19, 2022

--Sunil Kumar Jain and others Vs. Sundaresh Bhatt and others

Whether the dues payable to the employees even for the period when they were working under the Corporate Insolvency Resolution Process are to be treated as cost of running the business by the Interim Resolution Professional payable in terms of Section 5(13) or to be treated as wages and any unpaid dues owed to employees payable under Section 53 of the Code.

Summary of the Judgement:

Appeal against NCLAT order which dismissed appeals against NCLT order denying relief to appellant workmen/employees with regard to their claim relating to salary, which they claimed for the period involving CIRP - Partly allowed, The Supreme Court held that - (i) That the wages/salaries of the workmen/employees of the Corporate Debtor for the period during CIRP can be included in the CIRP costs provided it is established and proved that the Interim Resolution Professional/Resolution Professional managed the operations of the corporate debtor as a going concern during the CIRP and that the concerned workmen/employees of the corporate debtor actually worked during the CIRP and in such an eventuality, the wages/salaries of those workmen/employees who actually worked during the CIRP period when the resolution professional managed the operations of the corporate debtor as a going concern, shall be paid treating it and/or considering it as part of CIRP costs and the same shall be payable in full first as per Section 53(1)(a) of the IB Code; (ii) considering Section 36(4) of the IB code and when the provident fund, gratuity fund and pension fund are kept out of the liquidation estate assets, the share of the workmen dues shall be kept outside the liquidation process and the concerned workmen/employees shall have to be paid the same out of such provident fund, gratuity fund and pension fund, if any, available and the Liquidator shall not have any claim over such funds.

The Supreme court clarified that the wages and salaries of all other workmen/employees of the Corporate Debtor during the CIRP who actually have not worked and/or performed their duties when the Corporate Debtor was a going concern, shall not be included automatically in the CIRP costs. Such dues will be governed by Section 53(1)(b) and Section 53(1) (c) of the Insolvency and Bankruptcy Code, the bench comprising Justices MR Shah and Aniruddha Bose observed.