

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.1705 of 2023
& I.A. No. 6137 of 2023

(Arising out of Order dated 26.09.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Court Room No.1, Mumbai Bench in MA No.3387/2019 in C.P.(IB)/2205/(MB)/2019)

IN THE MATTER OF:

Jet Aircraft Maintenance Engineers
Welfare Association
Through its Authorised Representative
Having its Registered Office At: Jamewa, A-101,
Laxmi Palace Society, Shahaji-Raje Road,
Vile-Parle- East, Mumbai-400057, Maharashtra ... Appellant

Versus

Mr. Ashish Chhawchharia
Resolution Professional of
Jet Airways (India) Ltd. Global One, 3rd Floor,
252 LBS Marg, Kurla (West),
Mumbai, Maharashtra, 400 070. ... Respondents

Present:

For Appellant : Mr. Vikas Mehta, Ms. Anshula Grover, Mr. Mayan Prasad, Mr. Kartik Pandey, Ms. Nitika Grover, Advocates.

For Respondent : Mr. Arun Kathpalia, Sr. Advocate with Mr. Raghav Chadha, Mr. Dhiraj Kumar Totala, Mr. Nishant Upadhyay, Mr. Ankit Pal and Mr. Ajay Raj, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed challenging the order dated 26.09.2023 passed by National Company Law Tribunal, Court Room No.1, Mumbai Bench in MA No.3387 of 2019 filed by the Appellant/ Applicant. The Adjudicating

Authority by the impugned order has dismissed the Application. Aggrieved by which order this Appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:

- (i) Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor Jet Airways (India) Ltd. (“**Jet Airways**”) commenced by order dated 20.06.2019. Operations of Jet Airways were stopped since April 2019. Claims were filed by the workmen, employees and other stake holders.
- (ii) The Interim Resolution Professional (“**IRP**”) prepared an Asset Preservation Team to ensure various compliances required on behalf of the Corporate Debtor. On the recommendation of the Head of Department of various Department a team was constituted, which also consisted of 103 employees. The 103 employees, who were part of Asset Preservation Team, insisted for some lumpsum payment for working in the Asset Preservation Team. Due to various uncertainties, certain lumpsum payment was made with the approval of Committee of Creditors (“**CoC**”) to 103 employees. Subsequently, 103 employees also left the Asset Preservation Team.

(iii) The Resolution Professional (“**RP**”) published the third List of Creditors in which claim of 103 employees, several management personnel was reflected as NIL. Despite the fact that their claims was reflected in the previous second List of Creditors, the Appellant filed MA No.3387 of 2019 praying for following reliefs:

- “a. That this Hon’ble Tribunal be pleased to pass an Order directing the Resolution Professional to file an affidavit unambiguously stating exactly what settlements were arrived at with the 98 employees listed in Exhibit A annexed above regarding claims, what payments were made to them, and why the said payments were made. And also unambiguously state whether or not he intends to settle the claims of the said employees out of CIRP costs/during the Resolution Process.
- b. That this Hon’ble Tribunal be pleased to pass an Order holding the Resolution Professional personally liable for any illegal payments made to the said 98 employees. And be directed not to make any further payments towards the claims of any of the said employees.”

(iv) It is to be noted that Resolution Plan submitted by Jalan Fritsch Consortium was approved by the CoC, which Plan was also approved by the Adjudicating Authority on 22.06.2021. Order of Adjudicating Authority was challenged by the Appellant. In this Tribunal in Company Appeal (AT) (Insolvency) NOo.752 of 2021, which was partly allowed by this Tribunal by order dated 21.10.2022, holding that workmen and employees are entitled to

their provident fund and gratuity minus amount already earmarked in the Resolution Plan.

- (v) MA No.3387 of 2019 after listing on several occasion, came for consideration by the Adjudicating Authority and by the impugned order, the same has been rejected. The Adjudicating Authority noticed the submission of the Applicant and those of RP and held that Application is devoid of merit. The submission of parties has been noticed in paragraphs 3 to 6 of the order, which is as follows:

- “3) Counsel for the Resolution Professional submits that after taking over the Corporate Debtor, the Resolution Professional prepared a team called “Asset Preservation Team” to preserve the value of the property of the Corporate Debtor.
- 4) It is further submitted that the Respondent approached the heads of department and employee associations to discuss the scope of work that would be absolutely necessary during the CIRP Period. The selection of team members in each department was made by the respective heads of department/employee associations and was based on the expertise of each employee in their area of responsibility.
- 5) Further, it is submitted that those Employees which were part of the Asset Preservation Team have been paid and rest of the employees were not part of the said team; hence, they were not entitled to any payment after commencement of Corporate Insolvency Resolution Process. Further, no employee, including those forming

part of Assets Prevention Team, have been paid any dues towards pre-CIRP claim.

- 6) Counsel for Applicant submits that there are some Employees who were part of the Asset Preservation Team and still they have not been paid. However, Ld. Counsel for the Resolution Professional submits that this contention is incorrect and they were only engaged as part of the Asset Preservation Team and accordingly, they have been paid as agreed in terms of their engagement as part of Asset Prevention Team, however, even these employees can not claim payment of Pre-CIRP dues, which are to be paid in accordance with the Plan, if any approved in this case.”

- (vi) Challenging the order, rejecting the Application, this Appeal has been filed.

3. We have heard Shri Vikas Mehta, learned Counsel appearing for the Appellant and Shri Arun Kathpalia, learned Senior counsel appearing for Respondent.

4. Shri Vikas Mehta, learned Counsel submits that settlement, which was entered with 103 employees have not been placed by the Respondent even in this Appeal. Further 103 employees were paid lumpsum payment and by virtue of Resolution Plan, all employees and workmen are entitled for payment and giving lumpsum payment to 103 employees is arbitrary and unreasonable. It is submitted that Respondents are obliged to bring settlement, as the settlement with 103 employees was not in accordance with

law. Any payment to 103 employees towards arrears of salary shall amount to double payment to them.

5. The Appeal was heard and noticing the submission of learned Counsel for the Appellant on 02.07.2024, following order was passed by this Tribunal:

“02.07.2024: Learned Counsel for the Appellant submits that 103 persons who were the part of the assets preservation team has been made lump sum payments and they had also agreed to waive their pre-CIRP dues to the said extent.

2. Learned Sr. Counsel Mr. Arun Kathpalia submits that the lump sum payment as well as the waiver of the dues there were two independent aspects.

3. Learned Counsel for the Appellant submits that in event the 103 persons are again made payment out of the amount earmarked for the workman and employees there will be double payment to 103 employees.

4. Learned Counsel for the Respondent seeks time to obtain instructions on the above.

As prayed, list this appeal on 10th July, 2024.”

6. In response to the order dated 02.07.2024, an additional affidavit has been filed by the RP, wherein in paragraphs 2 to 5, following has been pleaded:

“2. I say that in terms of the waiver given by the said members of the Asset Preservation Team ("APT"), i.e., 103 employees/workmen, who in terms of the waiver agreed to give up their claim towards their unpaid salaries and consequently shall not be entitled to get payments from the approved Resolution Plan of Jet Airways.

3. Further, I say that the said 103 APT members can claim their dues only towards provident fund and gratuity dues which they shall be entitled to receive in accordance with the judgement of this Tribunal dated October 21, 2022 in CA (AT)(Ins) 752 of 2021.
4. I say that an amount of approximately INR 5.4 crore was paid to the said 103 APT members as lump sum payment in the circumstances and for the reasons already set out in the affidavit in reply ("Reply") dated March 13, 2024, filed by answering Respondent. The total claim waived off by the said 103 APT members is approximately INR 7.9 crores.
5. In view of the above, I hereby clarify that in view of this waiver, there shall be no payment to the said 103 APT members at the time of distribution of monies during the implementation of the approved Resolution Plan of Jet Airways. The names of the said 103 APT members have already been set out at Annexure A to the Reply. A copy of the aforementioned list of the said 103 APT members has been hereto annexed and marked Annexure -A."

7. The observation of the Appellant that 103 employees, who have made certain lumpsum payment shall be entitled to double payment has been clearly dispelled by the affidavit filed by the RP, who is the Chairman of the Monitoring Committee constituted for implementation of the Resolution Plan. We have no reason to doubt the statement made in the affidavit that 103 employees, who have been paid lumpsum payment and have agreed to give up their claim of unpaid salary and consequently shall not be entitled to get payments from the approved Resolution Plan. The interest of other workmen

regarding their entitlement, the Resolution Plan is in no way affect their right, which is clear by the affidavit filed by the Respondent.

8. The learned Counsel for the Appellant submits that settlement with 103 employees is required to be brought on the record, which needs to be examined by this Tribunal. The RP in his reply affidavit filed in this Appeal has clearly explained the reasons and background under which the lumpsum payments were made to the 103 employees. The affidavit in reply dated 13.03.2024 has been filed by the Respondent, wherein in paragraphs 15 to 20 and 23, following have been pleaded:

“15. Accordingly, between June 20, 2019, and July 10, 2019, the Respondent approached the heads of department and employee associations to discuss the scope of work that would be absolutely necessary during the CIRP period. The Respondent requested them to identify and form a team of employees that were essential for the preservation of assets and management of the Corporate Debtor as well as provide support during the ongoing CIRP. The selection of team members in each department was made by the respective heads of department / engineering associations and was inter alia based on the expertise of each employee in their area of responsibility / responsibilities, such as (i) regulatory/statutory requirement; (ii) ability to handle teams across different verticals; (iii) access to data required to execute the task; (iv) ranking in the organization in order to comprehend the CIRP and manage teams to execute the task; and (v) their ability to discuss future organization prospects with a potential resolution applicant and support business

plans. Additionally, the heads of department and engineering associations assisted the Respondent in identifying members of the APT *inter alia* based on the following criteria:

- i. Expertise in the role identified for preservation of aircrafts, engine, property and other assets;
 - ii. Technical expertise where applicable;
 - iii. Compliance to DGCA and BCAS
 - iv. Personnel who would be required for Corporate Debtor to continue/ retain its air operator certificate (post holders);
 - v. Cost and availability & willingness of the individual;
16. During the above meetings, preliminarily, approximately 301 employees of the Corporate Debtor were identified as key personnel by the heads of department and engineering associations. These identified key personnel were necessary to preserve the assets of the Corporate Debtor. On account of the poor financial situation of the Corporate Debtor, the Respondent proposed that all the members of the APT would be required to take a substantial haircut and would be paid amounts ranging from 30% to 70% of their monthly salary. The terms proposed by the Respondent, acting on behalf of the Corporate Debtor, were communicated to the identified employees by the heads of department. However, as the Corporate Debtor had not paid its employees dues (including those of the identified APT) prior to the insolvency commencement date ie. June 20, 2019, 103 employees from the APT expressed their unwillingness to continue working for the Corporate Debtor, through their respective heads of department. The Respondent requested the heads of departments to inform these 103 employees that in the event

that they agreed to assist the Respondent in the preservation of assets of the Corporate Debtor, regular payments would be made towards their negotiated salaries during the CIRP period. However, despite this, the heads of department informed the Respondent that 103 employees were not agreeable to the Respondent's proposal and threatened to discontinue work, despite such assurances. The heads of department further informed the Respondent that the above 103 employees had put forth a condition that they would work as a part of the APT, only if they were incentivized for the same as there was no certainty of their future with the Corporate Debtor.

17. Therefore, on June 22, 2019, with the *bona fide* intention of (i) maximizing the value of the Corporate Debtor assets; and (ii) protecting the interest of all stakeholders, the Respondent held a meeting with the representative (heads of respective departments/ senior most employee from the respective departments) of the 103 unwilling members of the APT. At the meeting, after several rounds of negotiations, the Respondent was constrained to consider making a one-time lump sum payment to at least these 103 employees to ensure that they continue to work and assist the Respondent during the CIRP of the Corporate Debtor and to preserve the value of its assets.
18. On July 16, 2019, the Respondent also discussed the above issue with the financial creditors of the Corporate Debtor at the first meeting of the Committee of Creditors ("CoC"). These payments were proposed to be included in the budget for operation costs to run and safeguard the assets of the Corporate Debtor. The budget including these lump sum payments was approved as CIRP cost by the CoC in the e-voting concluded on July 19, 2019 by a majority of 81.06%.

In fact, the Respondent has at all times kept the CoC and this Hon'ble Tribunal updated of all the developments in this regard.

19. It is pertinent to note that even if the Respondent had failed to obtain a waiver and/or such concession, given the circumstances prevailing, the Respondent would in any event have had to make such lump sum payments which had been sanctioned by the CoC as a part of CIRP costs. In fact, the Respondent has been able to extract a benefit for the Corporate Debtor by obtaining a waiver from the claims of the relevant members of the APT. The Respondent submits that it is this waiver and/or concession obtained from the 103 employees that is mischaracterized as a payment of pre-CIRP dues of the said employees. In addition to the above, the said APT members are free to approach the successful resolution applicant to seek payment of their dues arising for the pre-CIRP period outside the scope of the resolution plan amount

20. The Appellant inter alia makes three erroneous allegations in the present Appeal, first, that the APT was formed arbitrarily and preferential payments were made to the 103 members of the APT, second, that the lump sum payments made to the 103 members of the APT was in settlement of their pre-CIRP dues and, third, that the claims of the 103 members of the APT were included in the list of creditors, and hence the said members of the APT would be doubly paid as compared to other employees/ workmen.

23. Insofar as the lump sum payments made to the 103 unwilling members of the APT is concerned, the Respondent was constrained to incentivize the said members of the APT

to continue to work for the Corporate Debtor as their services were not avoidable and squarely mandatory for the preservation and maximisation of value of the assets of the Corporate Debtor which is primarily the objective of the Code. Additionally, it is submitted that at the time of initiating CIRP, the Hon'ble Adjudicating Authority in the Admission Order specifically mentioned that the Respondent and the CoC ought to take every possible effort to expedite the matter and try to finalize the resolution plan on a fast track mode. The aforesaid was considering the fact that CIRP of the Corporate Debtor was of national importance as it was one of the largest private sector airlines in India. The Respondent has at all times taken steps towards conducting the CIRP in a timebound manner in accordance with applicable provisions of the Code. From the initiation of the CIRP, the Respondent has undertaken various steps to preserve the assets of the Corporate Debtor in the interest of all stakeholders.”

9. In paragraph 36, the RP has specifically pleaded that there will be no double payment to 103 employees. Paragraph 36 of the reply is as follows:

“D. No double payment to the 103 members of the APT

36. The Appellant has stated that while the claims of the 103 members of the APT were admitted in the 2nd List of Creditors published by the Respondent on August 7, 2019. However, in the 3th List of Creditors issued on September 06, 2019 due to some error, the claim amount and admitted amount of certain employees were reflected as 'nil'. However, this error was immediately rectified by the Respondent by publishing the List of Creditors version 3A on September 06, 2019 itself. The Respondent in its reply in M.A. 3387 of 2019

has clearly stated that the claims were either admitted or under verification and as such, an updated version of the List of Creditors (being version 3A) was published on the website of the Corporate Debtor on September 6, 2019 itself, and included all the claims of the 103 members of the APT. The Respondent craves leave to refer and rely on a copy of the List of Creditors (version 3A) as and when required.”

10. When we look into the pleadings made in this Appeal, we are of the view that the prayers made by the Appellant in their MA No.3387 of 2019 were not liable to be allowed. Whatever prayers have been made has been clearly categorically explained in the reply affidavit of Respondent filed in this Appeal, as well as before the Adjudicating Authority. There is no occasion for holding RP personally liable for any payment made to 103 employees. It is pleaded by the RP that the payments, which have been made, were made with the approval of the CoC. Any payment after CIRP having been made by the RP with the approval of CoC, no personal liability can be fastened on the RP. We, thus, are satisfied that prayers made by the Appellant in the Application, could not have been allowed and in view of the affidavit filed by the RP, the apprehension that Appellants’ 103 employees shall receive double payment has also been clarified and those 103 employees shall not be entitled to be made any payment as per the Resolution Plan towards their unpaid salary. Whereas, 103 employees shall also be entitled for payment of gratuity and provident fund as per the judgment of this Tribunal dated 21.10.2022.

11. We, thus, are of the view that there is no ground has been made out to interfere with the order passed by the Adjudicating Authority, rejecting MA No.3387 of 2019 filed by the Appellant. With the observations and clarifications as above, the Appeal is dismissed. IAs, if any, pending in the Appeal, are also disposed of. There shall be no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

19th July, 2024

Ashwani