



**NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**  
**COURT NO. 1**

ITEM No.1  
**IA/308(MP)2023**  
in  
**IA/280(MP)2022**  
in

**TP 152 of 2019 [CP(IB) 99 of 2019]**

**Proceedings under Section 60(5)(c) of IBC, 2016 r.w. Rule 11 of NCLT Rules, 2016**

**IN THE MATTER OF:**

Hotline Glass Ltd Majdoor Sangh, through Shri Ashish Tiwari .....**Applicant**  
V/s

Jigar Pradipchandra Shah, RP of Hotline Glass Ltd .....**Respondent**

**Order delivered on 20/11/2024**

**Coram:**

Chitra Ram Hankare, Hon'ble Member(J)  
Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

**IA/308(MP)2023 in IA/280(MP)2022**

This case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

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**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

A. Bhadauria

-sd-

**CHITRA RAM HANKARE**  
**MEMBER (JUDICIAL)**



**THE ADJUDICATING AUTHORITY**  
**NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**

**IA/308/MP/2023 in IA/280/MP/2022**  
**In**  
**TP/152/MP/2019, CP(IB)/99/2019**

**In the matter of: IA/308/MP/2023 in IA/280/MP/2022**

*(Application under section 60(5) of the Insolvency and Bankruptcy Code, 2016  
r.w. Rule 11 of the NCLT Rules, 2016)*

**Hotline Glass Limited Majdoor Sangh  
Through,**

**Mr. Ashish Tiwari**

Address: 22, Shri Krishna Colony,  
Padav, Gwalior,  
Madhya Pradesh- 474002

**.....Applicant**

**Versus**

**Mr. Jigar Pradipchandra Shah**

Resolution Professional of  
Hotline Glass Limited  
Address: B-801, Gopal Place,  
Near Shiromani Complex,  
Nehru Nagar Cross Road, Ahmedabad  
Gujarat- 380015

**.....Respondent**

**In the main matter of: TP/152/MP/2019, CP(IB)/99/2019**

*(Application under section 7 of the Insolvency and Bankruptcy Code, 2016)*

**Stressed Assets Stabilization Fund**

**.....Financial Creditor**

**Versus**

**Hotline Glass Limited**

**.....Corporate Debtor**

**Order Pronounced On: 20.11.2024**



**Coram: Chitra Ram Hankare, Member (J)**  
**Kaushalendra Kumar Singh, Member (T)**

**Appearance:**

For Applicant: Ld. PCS Mr. Pratik Tripathi

For Respondent: Ld. Adv. Ms. Hirva Dave a.w.

Ld. Adv. Mr. Jaimin R. Dave &

Mr. Jigar Pradipchandra Shah (RP in person)

**JUDGMENT**

1. This present application has been filed on 10.10.2023, by Hotline Glass Limited Majdoor Sangh (Applicant) through Mr. Ashish Tiwari (Authorized representative), under section 60(5) of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 11 of the NCLT Rules, 2016, against Mr. Jigar Pradipchandra Shah, Resolution Professional (RP) of the corporate debtor i.e., Hotline Glass Limited, seeking directions to set aside the order of the resolution professional rejecting the claim of the applicant and to direct the resolution professional to admit the claim of the applicant.

2. The averments made by the applicant in the present application and as argued by the learned PCS are summarized as under:

(i) The applicant is the association of labours who were working in Hotline Glass Limited. The corporate debtor was put into Corporate Insolvency Resolution Process (CIRP) by the Adjudicating Authority vide order dated 13.03.2020.

(ii) The corporate debtor has illegally closed its factory in the year 2007 and various workmen/employees have not been paid salary, hence, the employees have informed the Labour Commissioner, Indore whereby the Labour Commissioner had issued three Revenue Recovery Certificate (RRC) No. 52/18/three/7/14680-86 dated 22.06.2007, RRC No. 4/16/three/8/6576-82 dated 05.03.2008, and RRC No. 2/16/three/2023/4181-87 dated 03.02.2023 under the power vested in section 33 C (1) of Industrial Dispute Act, 1947 for Rs 26,05,548/-, Rs 54,42,943/- and Rs 30,33,819/- respectively against the corporate



debtor. Said RRCs have been issued for recovery of unpaid salary from the period January 2007 to March 2007, April 2007 to December 2007 and January 2008 to March 2009.

(iii) The applicant has also filed a writ petition bearing No. 8244/2021 before the Hon'ble High Court of Madhya Pradesh, Gwalior being aggrieved by the inaction of the respondents (Collector and ors.) in the writ petition, on not receiving/paying the amount of Rs 54,42,943/- as directed by the Deputy Labour Commissioner, Indore vide its RRC dated 05.03.2008. Hon'ble High Court vide its order dated 08.04.2021 directed the Collector to implement RRC within three months from the date of receipt of the order.

(iv) The respondents therein in the said writ petition had failed to comply with the abovementioned order dated 08.04.2021, therefore the applicant filed a contempt petition bearing No. 2432/2021 before the Hon'ble High Court, which is pending.

(v) The applicant was not in knowledge of the CIRP initiated against the corporate debtor, hence, the applicant could not file the claim before the respondent within time.

(vi) The RP has not accepted the claim form by stating that he has not received any claim from the applicant during CIRP, prior to the last date of submission of claim as per public announcement and even prior to the submission of resolution plan before the Adjudicating Authority for approval.

(vii) The details of claim form submitted by the applicant before the RP is as under:

S. No.	Name of the claimant	Form	Date of submission	Date of email	Amount of claim
1.	Bhoora Lal Rai	D	03.07.2023	03.07.2023	10,23,856/-
2.	Ajay Kumar Saxena	D	03.07.2023	05.07.2023	8,59,857/-
3.	Arun Nigam	D	30.06.2023	05.07.2023	9,86,929/-



4.	Ashish Tiwari	D	03.07.2023	05.07.2023	10,35,019/-
5.	Bhuvneshwar Prasad Dixit	D	04.07.2023	NA	6,24,429/-
6.	Hukum Chandra Arya	D	02.07.2023	03.07.2023	8,90,341/-
7.	Manoj Kumar Awasthi	D	01.07.2023	06.07.2023	10,10,378/-
8.	Rishikesh Sharma	D	01.07.2023	NA	8,30,388/-
9.	Virendra Singh Bais	D	29.06.2023	05.07.2023	10,51,625/-
	<b>TOTAL</b>				83,12,822/-

(viii) The applicant then approached this Adjudicating Authority to consider the claim form as the applicant with *bona fide* reason has failed to submit their claim on time. This Adjudicating Authority vide order dated 11.08.2023 has condoned the delay in filing the claim before the RP and directed the RP to examine the claim and take a decision as per the law.

(ix) The RP had raised a query at the time of verifying claim and the applicant has given a reply to the query raised by the RP. However, the RP without considering the reply given by the applicant has erroneously rejected the claim of the applicant by stating that the claim filed by the applicant is time barred. The claim of two applicants namely Manoj Kumar Awasthi and Rishikesh Sharma has neither been admitted nor rejected by the RP till date.

(x) The amount claimed by the applicant is not time barred, as Limitation Act, 1963 is not applicable to the proceedings of Industrial Dispute Act, 1947. The Hon'ble Apex Court in the matter of "*Nityanand M Joshi Versus Life Insurance Corporation and Sai Prabhakar Versus Joint Director Sericulture*" clearly held that the Limitation Act, 1963 is not applicable to the proceedings of Industrial Dispute Act, 1947. Therefore, there is no limitation for claiming amount arising from RRC. It is also submitted that the Hon'ble High Court vide its order dated



08.04.2021 directed the respondent No. 2/Collector to implement the RRC, so from such order it can be clearly ascertained that there is no time limit for execution of RRC. Therefore, the respondent herein has rejected the claim of the applicant on the basis of time barred claim, which is totally wrong and unlawful in the eyes of law.

(xi) The Hon'ble Apex Court in the matter of '*Kotak Mahindra Bank versus A Balakrishnan*' has clearly held that a claim arising out of a recovery certificate would be a financial debt within the meaning of clause (8) of section 5 of the Code. Consequently, the holder of recovery certificate would be a financial creditor within the meaning of clause (7) of section 5 of the Code.

(xii) It is further submitted that by virtue of section 6 of the Revenue Recovery Act, 1890, the claim on the property of corporate debtor has been created by issuance of the RRC, therefore the applicant must be treated as secured creditor under section 3(30) of the Code, because the security interest has been created in favour of the applicant.

(xiii) Applicant in their claim form has claimed amount from three different RRCs, as well as their salary from year 2009 till the CIRP commencement date and payment of gratuity and earned leave. The applicant herein requests the Adjudicating Authority to allow the claim of the applicant arising from three different RRCs and outstanding payment of Gratuity. As the amount claimed by the applicant from year 2009 till CIRP commencement date is disputed, therefore, the applicant is not claiming such aforesaid amount in the present application.

(xiv) The details of the amount arising from three RRCs mentioned above read as under:

S.No.	Name	RRC dated 22.06.2007	RRC dated 05.03.2008	RRC dated 03.02.2023	Total
1.	Bhoora Lal Rai	5,963/-	55,667/-	89,445/-	1,49,075/-
2.	Ajay Kumar Saxena	5,036/-	45,324/-	75,540/-	1,25,900/-



3.	Arun Nigam	5,786/-	52,074/-	86,790/-	1,44,650/-
4.	Ashish Tiwari	6,009/-	54,081/-	90,135/-	1,50,225/-
5.	Bhuvenshwar Prasad Dixit	4,571/-,	41,139/-	46,065/-	91,775/-
6.	Hukum Chandra Arya	5,215/-	46,935/-	78,225/-	1,30,375/-
7.	Manoj Kumar Awasthi	5,883/-	52,947/-	88,245/-	1,47,075/-
8.	Rishikesh Sharma	5,212/-	44,208/-	66,180/-	1,15,600/-
9.	Virendra Sing Bais	6,123/-	55,107/-	91,845/-	1,53,075/-
<b>Total</b>		49,798/-	4,45,482/-	7,12,470/-	12,07,750/-

(xv) Gratuity is the right of the applicant, so the applicant is hereby claiming gratuity amount as well. The calculation of the gratuity amount according to section 4 of Payment of Gratuity Act, 1972 as follows:

S.No.	Name	Date of appointment	Last drawn salary as per RRC-3	No. Of years and calculation	Amount
1.	Bhoora Lal Rai	31.05.1996	5,963/-	12 Years & 10 Months 5963*15*12.83/26	44,138/-
2.	Ashish Tiwari	19.09.1995	6,009/-	13 Years & 6 Months 6009*15*13.5/26	46,801/-
3.	Ajay Saxena	18.09.1997	5,036/-	11 Years & 6 months 5036*15*11.5/26	33,412/-
4.	Arun Nigam	01.09.1996	5,786/-	11 Years & 6 months 5786*15*11.5/26	38,388/-
5.	Manoj Awasthi	10.05.1996	5,883/-	12 Years & 10 Months 5883*15*12.83/26	43,545/-
6.	Virnedra Singh Bais	01.05.1996	6,123	12 Years & 10 months 6123*15*12.83/26	45,322/-
7.	Hukum Chandra Arya	17.01.1997	5,215/-	12 Years & 2 months 5215*15*12.16/26	36,585/-
<b>Total</b>					2,88,191/-



(xvi) It is submitted that appointment letter of Mr. Arun Nigam has been misplaced, therefore, it is kindly requested to consider his claim of gratuity in the interest of justice.

3. In this context, defence placed by the respondent in its affidavit in reply are summarized here as under:

(i) After due deliberation and examination of the claims, documents and records available, the respondent herein, vide E-mail dated 09.09.2023, had rejected the claims of the workmen after enumerating the following reasons:

*“We have gone through all such documents,*

- 1. Your claim amount is from 2007.*
- 2. The operation of the factory was closed in 2007 because of obsolete technology and non-viability of the project.*
- 3. No case is going on with any of the courts.*
- 4. The CIRP was admitted by Hon. NCLT on 13.03.2020.*
- 5. In CIRP provision, no time limit is specified for admission of claim but however, the time barred is not considered. You have calculated claim from 01.01.2007 till 13.03.2020. There was no electricity connection, or security to the factory. The factory was completely closed. Further, there is no evidence of attendance sheet, communications, etc. if you are claiming that you were working in the factory. Hence, the claim amount from 2007 till 2020 is also wrongly calculated considering the salary for all these years.*
- 6. Further, section 53 of the Code specifies that workers claim till 24 months before the liquidation commencement date has to be considered.*

*Hence, considering the claim is as time-barred as it is for the year 2007, we reject your claim.”*

(ii) Admittedly, a total claim of Rs 83,12,822/- is filed before the respondent. A bare perusal of the claim forms produced by the





applicant in annexure A/7 (page no. 112 to 152) of the amended application would clearly reveal that no bifurcation of such claim is given by any of the workmen under their respective claim forms.

(iii) The applicant herein *suo-moto* reduced the claim of the workmen to the extent of RRCs issued by the Learned Labour Commissioner, Indore dated 22.06.2007, 05.03.2008 and 03.02.2023. Thus, now merely a total amount of Rs 12,07,750/- is claimed by the applicant. The said fact itself indicates that the workmen have duly agreed with the decision of the respondent that they are not entitled to claim an amount of Rs 83,12,822/- and hence, their claims are rejected on valid grounds by the respondent.

(iv) Not a single workman has worked in the said factory as it was completely closed after February 2007. Therefore, there exists no evidence such as attendance sheet, any communication etc. in support of the workmen, so as to establish that the workmen were actually working in the said factory of the corporate debtor.

(v) The RRC dated 22.06.2007 and 05.03.2008, based on which the workmen have filed their claims, are issued by the Learned Labour Commissioner in year 2007 and 2008. Subsequent to this, there is nothing to indicate that the workmen have perused their claims for such an elongated period of time, and/or the same are acknowledged by the corporate debtor.

(vi) Reliance placed by the applicant on the judgement of the Hon'ble Supreme Court for demonstrating that the provisions of the Limitation Act, 1963 are not applicable to the proceedings of Industrial Dispute Act, 1947 is highly irrelevant, in so far as the present proceedings are under the provisions of the Code and not under the Industrial Dispute Act, 1947.

(vii) Further, with regards to the RRC dated 03.02.2023 issued by Learned Labour Commissioner, it is submitted that the said RRC itself is invalid and in contravention of the provision of the Code, as the same



is issued during subsistence of moratorium under section 14 of the Code.

(viii) Not only that, even the order dated 08.04.2021 of Hon'ble High Court of Madhya Pradesh, Gwalior in WP no. 8244/2021, which is time and again relied upon by the applicant, is passed during the subsistence of moratorium. Even otherwise, the said order dated 08.04.2021 passed by Hon'ble High Court categorically records this:

*“Accordingly, this petition is disposed of by directing the respondent no. 2/Collector Bhind to implement the RRC within three months from the date of receipt of this order provided that there is no stay on orders of Labour Court/Industrial Court by higher Forum or there is no legal impediment. If there exists any legal impediment, the respondent no.2/Collector shall pass a detailed order and communicate the same to the petitioner. In absence of any such impediment, the RRC shall be executed within aforesaid time.”*

Under the circumstances, the reliance placed by the applicant herein on the said judgment is highly misconceived and unwarranted.

(ix) The claim for gratuity amounts to the tune of Rs 2,88,191/-. The applicant has claimed the amount of gratuity for the first time in the present application. No such claim has ever been filed by the applicant before the respondent.

(x) The contention of the applicant that the workmen may be treated as secured financial creditor for an amount of Rs 12,07,750/- in light of judgment passed by the Supreme Court of India is highly non-genuine and unjustifiable. In the said case the person/bank in whose favour recovery certificate was issued was a financial creditor and the issue under determination before the Hon'ble Supreme Court was with respect to the period of limitation i.e. whether holder of recovery certificate would be entitled to initiate CIRP. Mere issuance of RRC shall not *ipso facto* make the workmen a financial creditor and that too a secured financial creditor.



(xi) If it is to be presumed that the claim of the applicant of Rs 12,07,750/- as well as Rs 2,88,191/- totaling to Rs 14,95,941/- is to be admitted, then also considering the provisions of the resolution plan approved by the COC, they shall be entitled to an amount of 0.20% of their total claim. Thus, in such scenario, the workmen, in total, shall become entitled to receive a sum of Rs 2,992/- under the approved resolution plan.

4. In this context, rejoinder placed by the applicant and submission made therein are summarized here as under:

(i) Applicant never agreed with the decision of the respondent in rejecting the claim. Moreover, the applicant in para 18 of the application clearly stated that the applicant is claiming the claim amount only to the tune of Rs 12,07,750/- for RRC amount and Rs 2,88,191/- for Gratuity amount looking to the present situation, as the resolution plan is already been approved by the COC.

(ii) How the respondent came to know that the factory was closed in 2007 and no work was done, no electricity connection, no security, if he has all these records and information in possession then why he is not aware of the claim of the workers. How he ignored the claim of workman and the order of the Labour Tribunal and High Court. The attendance sheets are the records, responsibility of the corporate debtor and are in the possession of the corporate debtor qua the respondent and not the applicant.

(iii) The RRC issued by the Labour Commissioner is itself an execution proceeding under which the applicant has nothing to do whereas the government official will be going to take action on the basis of such RRC.

(iv) The RRC bearing No. 2/16/three/2023/4181-87 is not a fresh order passed during moratorium whereas the action against the corporate debtor has been taken well within year 2009 which can be ascertained from the show-cause notice dated 12.08.2009. As the



applicant requested the labour department to give them a copy of RRC but the record of such RRC has been misplaced, therefore, a fresh RRC has been issued. There are no new proceedings initiated against the corporate debtor in the year 2023 and no fresh order has been passed.

(v) The moratorium is not applicable on the Writ jurisdiction of Hon'ble High Court under Article 226 of the Constitution of India. The Hon'ble NCLAT in the matter of *Canara Bank versus Deccan Chronic Holdings Limited* clearly held that the power of Hon'ble High Court under Article 226 of the Constitution of India cannot be curtailed by any other Act.

5. We have heard the learned counsel and learned PCS appearing for respective sides and have perused the relevant documents available on record. It is noted that the applicant being workmen of the corporate debtor had approached the Labour Commissioner for the unpaid salary. Learned Labour Commissioner on the basis of proceedings had issued two RRCs dated 22.06.2007 and 05.03.2008 in favour of the applicant amounting to Rs 26,05,548/- and Rs 54,42,943/- respectively. One more RRC was issued by the Learned Labour Commissioner dated 03.02.2023 amounting to Rs 30,33,819/- in favour of the applicant. The corporate debtor in the present case was admitted into CIRP by this Adjudicating Authority vide order dated 13.03.2020 and a resolution plan has already been approved by the CoC, which is pending for approval from this Adjudicating Authority. The applicant belatedly submitted their claims of Rs 83,12,822/- to the resolution professional of the corporate debtor, the same was rejected, vide email dated 09.09.2023 of the resolution professional on the ground that the claims made by the applicant pertain to the year 2007 and the same is barred by limitation. The applicant being aggrieved by the order of the resolution professional had preferred the present application before this Bench.

6. In defense, the resolution professional has taken several pleas which include that the claim of the applicant is barred by limitation; that the provision of the Industrial Disputes Act cannot be applied on the Limitation Act; that the applicant cannot be treated as financial creditors and more



specifically as secured financial creditor; and that the applicant has not produced any proof to justify their claims from the year of 2007 as the factory was closed from February 2007.

7. After considering the above facts and circumstances, it is clear that the claims made by the applicant include the salary amount from the year 2007, gratuity amount, and amount as per the RRCs issued by the Learned Labour Commissioner. However, later the applicant restricted their claims to only the three RRCs amount of Rs 12,07,750/- and the gratuity amount of Rs 2,88,191/-. RP's contention that the claim pertains to year 2007 and is barred by limitation is not acceptable, as the limitation act provides limitations for filing an appropriate application before a Tribunal or Court and does not specify a period to file a claim before the resolution professional in case of initiation of CIRP. Hence, in the present case the issue of rejection of the claim by the resolution professional on the basis that the claim made by the applicant are belated claims and barred by limitation can be overlooked and can be condoned, as the action for such claim was already taken by the applicant in time and the delay in execution of such RRC was on the part of the Government official appointed for execution of such RRC and the applicant cannot be held responsible for such delay on the part of execution. Further, it is the responsibility of an employer to make a provision with regards to the part of the gratuity amount payable towards the employees/workmen, so as to the part of the gratuity claim concerned that should be considered by the resolution professional.

8. Nevertheless, we note that the successful resolution applicant in the resolution plan approved by the CoC in the present case of the corporate debtor, has proposed an amount of Rs 50,000/- for the payment towards the operational creditor. Accordingly, the applicant will get a nominal amount with respect to their claim.

9. Be that as it may, we allow the claims of the applicant to the extent of RRCs issued by the Learned Labour Commissioner and the gratuity amount and set aside the order dated 09.09.2023 of the resolution professional rejecting the claims of the applicant. We direct the resolution professional to



consider the claims of the applicant as it is not time-barred and take due steps to have a provision in the resolution plan in accordance with the provisions as contained in section 30(2)(b) and 30(4) of the Code.

10. Hence, we pass the following order:

**ORDER**

The application i.e. IA/308/MP/2023 in IA/280/MP/2022 in TP/152/MP/2019 [CP(IB)/99/2019] is **partly allowed** and stands **disposed of**.

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**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

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**CHITRA RAM HANKARE**  
**MEMBER (JUDICIAL)**

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