

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi -110 001

20th April, 2022

Subject: Judgment¹ dated 19th April, 2022 of the Hon'ble Supreme Court of India in the matter of Sunil Kumar Jain and Ors. Vs. Sundaresh Bhatt and Ors. [Civil Appeal No. 5910 of 2019]

The Hon'ble Supreme Court in its judgment dated 19th April, 2021 while considering the issue with respect to wages/salaries of the workmen/employees during the corporate insolvency resolution process (CIRP) period and the amount due and payable to them towards Pension, Gratuity and Provident Fund, made following important observations:

Sl. No.	Issue / Theme	Observation / Ruling	Para / Page No.
1.	Treatment of wages/salaries of workmen/employees during CIRP period	(a) When the corporate debtor (CD) is being managed as a going concern during the CIRP period, the wages/salaries of such workmen/employees who actually worked, during that period shall be included in the CIRP costs. (b) In case of liquidation of the CD, dues towards the wages and salaries of such workmen/employees who actually worked when the CD was a going concern, are entitled to have the first priority and must be paid in full as per Section 53(1)(a) of the Code. (c) While considering the claims of the concerned workmen/employees towards the wages/salaries payable during CIRP, it has to be first established and proved that during CIRP, the CD was a going concern and that the concerned workmen/employees actually worked during such period. (d) The wages and salaries of all other workmen/employees of the CD during the CIRP who actually have not worked and/or performed their duties when the CD was a going	9/28 9/28; 11/31 9/28-29 9/29

¹ Prepared by Legal Division for the sole purpose of creating awareness and must not be used as a guide for taking or recommending any action or decision, commercial or otherwise. One must do its own research or read the original text of the judgment or seek professional advice if it intends to take any action or decision using the material covered here.

Sl. No.	Issue / Theme	Observation / Ruling	Para / Page No.
		concern, shall not be included automatically in the CIRP costs and shall have to be governed by Section 53(1)(b) and Section 53(1)(c) of the Code.	
2.	Pre- CIRP wages and salary of workmen/employees	The wages and salaries of the workmen/employees of pre-CIRP period will have to be governed as per the priorities mentioned in Section 53(1) of the Code.	12/32
3.	Dues of the workmen/employees towards Provident Fund, Gratuity Fund and Pension Fund	The dues of the workmen/employees on account of provident fund, gratuity and pension are governed by Section 36(4) of the Code and are not to be treated as liquidation estate. Section 53(1) of the Code shall not be applicable to such dues, which are to be treated outside the liquidation process and liquidation estate assets and the Liquidator shall have no claim over such dues.	13/32-33
4.	Conclusion	<p>(a) The wages/salaries of the workmen/employees of the CD for the period during CIRP can be included in the CIRP costs provided it is established and proved that the IRP/RP managed the operations of the CD as a going concern during the CIRP and that the concerned workmen/employees of the CD actually worked during the CIRP period.</p> <p>(b) As 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.</p>	<p>14/33</p> <p>14/34</p>