

Ranjeet Singh vs M/S Karan Motors Private Limited on 18 August, 2021

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 719 of 2020

[Arising out of order dated 18.02.2020 in CP (IB)-703/ND/2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench -V]

IN THE MATTER OF:

Ranjeet Singh

S/o Sh. Nikka Ram

R/o 24-A, New Guru Hari Kishan Nagar,

Nilothi Extension, West Delhi,

Delhi-110041.

....Appellant.

Versus

M/s Karan Motors Private Limited,

Office Flat No. 118,

First Floor, Kirti Shikhar Building,

Plot No. 11, District Centre,

Janakpuri, New Delhi-110058.

...Respondent.

WITH

Company Appeal (AT) (Insolvency) No. 721 of 2020

[Arising out of order dated 18.02.2020 in CP (IB)-702/ND/2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench -V]

IN THE MATTER OF:

Shally Sati

D/o Sh. Hansa Dutt Sati

R/o H.No. 7/14, Street No. 14,

D-Block, Kamalpur, Kamalvihar,

Santhagar Burari, Delhi-110084.

....Appellant.

Versus

M/s Karan Motors Private Limited,

Office Flat No. 118,

First Floor, Kirti Shikhar Building,

Plot No. 11, District Centre,

Janakpuri, New Delhi-110058.

...Respondent.

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WITH

Company Appeal (AT) (Insolvency) No. 722 of 2020

[Arising out of order dated 18.02.2020 in CP (IB)-705/ND/2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench -V]

IN THE MATTER OF:

Deepa Sati

D/o Sh. Hansa Dutt Sati

R/o H.No. 7/14, Street No. 14,

D-Block, Kamalpur, Kamalvihar,

Santnagar Burari, Delhi-110084.

....Appellant.

Versus

M/s Karan Motors Private Limited,

Office Flat No. 118,

First Floor, Kirti Shikhar Building,

Plot No. 11, District Centre,

Janakpuri, New Delhi-110058.

...Respondent.

WITH

Company Appeal (AT) (Insolvency) No. 723 of 2020

[Arising out of order dated 18.02.2020 in CP (IB)-706/ND/2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench -V]

IN THE MATTER OF:

Hansa Dutt Sati,

S/o Sh. K.N. Sati

R/o H.No. 7/14, Street No. 14,

D-Block, Kamalpur, Kamalvihar,

Santnagar Burari, Delhi-110084.

....Appellant.

Versus

M/s Karan Motors Private Limited,

Office Flat No. 118,

First Floor, Kirti Shikhar Building,

Plot No. 11, District Centre,

Janakpuri, New Delhi-110058.

...Respondent.

Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020

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WITH

Company Appeal (AT) (Insolvency) No. 728 of 2020

[Arising out of order dated 18.02.2020 in CP (IB)-743/ND/2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench -V]

IN THE MATTER OF:

Asha Devi,

W/o Sh. Ranjeet Singh,
R/o 24-A, New Guru Hari Kishan Nagar,
Nilothi Extension, West Delhi,
Delhi-110041.

....Appellant.

Versus

M/s Karan Motors Private Limited,
Office Flat No. 118,
First Floor, Kirti Shikhar Building,
Plot No. 11, District Centre,
Janakpuri, New Delhi-110058.

...Respondent.

Present:

For Appellant: Ms. Shrey Vardhan Rateria and Mr. Rahul Kumar,
Advocates.

For Respondent: Mr. Chandra Shekhar Gupta, Advocate.

Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020

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JUDGMENT

(18th August, 2021) Justice Anant Bijay Singh;

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Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020 A The Appeal

1. All these Appeals are arising out of the common order dated 18.02.2020 passed by the Adjudicating Authority (National Company Law tribunal), New Delhi Bench-V, whereby the Ld. Adjudicating Authority has passed following orders:

"XXIV. For the reasons discussed above, we are of the considered view that since the admitted principal amount has already been paid by the Corporate Debtor, therefore there is no occurrence of default and no debt is due. Hence, all the present applications are not liable to be accepted. Accordingly, all the present applications- IB- 702/ND/2019, IB-706/ND/2019, IB-703/ND/2019, IB-

743/ND/2019 and IB-705/ND/2019 are hereby dismissed. However, we hereby permit all the Operational Creditors/Petitioners to get the cheques of admitted principal amount from the office of Registrar, NCLT, New Delhi where Corporate Debtor has deposited the same."

2. All these Appeals were heard together and disposed of by common judgment.

B The Facts of these Appeals The facts giving rise to these Appeals are under:

Company Appeal (AT) (Insolvency) No. 719 of 2020 (Ranjeet Singh Vs. M/s Karan Motors Pvt. Ltd.)
Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020

3. The Appellant- 'Ranjeet Singh' was employed with the Respondent- 'M/s Karan Motors Private Limited' since 2007.

ii) In the year 2013, the Respondent without having reason skipped the salary of the Appellant for the period January 2013 to June 2013 and again in the year 2014 the Respondent did not pay the salary of the Appellant for the period May 2014 to September 2014.

iii) Further case is that in the year 2017 the Respondent again failed to pay the salary for the period of April 2017 to September 2017.

iv) Since February 2013 the Appellant has been requesting the Respondent to clear the outstanding salary but the Respondent simply kept on shirking away from its obligations on the pretext of one excuse or the other.

v) Due to non-payment of salary the Appellant started facing financial hardship and therefore stopped going to the Respondent company since end of September 2017 and finally tendered his

resignation on 03.10.2018.

vi) That in order to recover the said outstanding amount the Appellant - 'Operational Creditor' even sent a legal notice through his Counsel on 04.10.2017, despite that the Respondent did not release the said amount.

vii) Thereafter, the Appellant-Operational Creditor filed Application bearing CP(IB)-703/ND/2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short IBC) before NCLT, Delhi wherein the Appellant claimed the salary for the period of January 2013 to June 2013; May 2014 to September 2014; April 2017 to September 2017, gratuity, interest @ of 18% from the date of default till realization of amount. Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020 Company Appeal (AT) (Insolvency) No. 721 of 2020 (Shally Sati Vs. M/s Karan Motors Pvt. Ltd.)

4. The Appellant- 'Shally Sati' was employed with the Respondent- 'M/s Karan Motors Private Limited' since 2013.

ii) In the year 2014, the Respondent without having reason skipped the salary of the Appellant for the period May 2014 to September 2014.

iii) Further case is that in the year 2017 the Respondent again failed to pay the salary for the period of April 2017 to September 2017.

iv) Since June 2014 the Appellant has been requesting the Respondent to clear the outstanding salary but the Respondent simply kept on shirking away from its obligations on the pretext of one excuse or the other.

v) Due to non-payment of salary the Appellant started facing financial hardship and therefore stopped going to the Respondent company since end of September 2017 and finally tendered her resignation on 22.10.2017.

vi) Thereafter, the Appellant-Operational Creditor filed Application bearing CP(IB)-702/ND/2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 before NCLT, Delhi wherein the Appellant claimed the salary for the period of May 2014 to September 2014; April 2017 to September 2017, interest @ of 18% from the date of default till realization of amount.

Company Appeal (AT) (Insolvency) No. 722 of 2020 (Deepa Sati Vs. M/s Karan Motors Pvt. Ltd.)

5. The Appellant- 'Deepa Sati' was employed with the Respondent- 'M/s Karan Motors Private Limited' since 2011.

Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020

ii) In the year 2014, the Respondent without having reason skipped the salary of the Appellant for the period May 2014 to September 2014.

iii) Further case is that in the year 2017 the Respondent again failed to pay the salary for the period of April 2017 to September 2017.

iv) Since June 2014, the Appellant has been requesting the Respondent to clear the outstanding salary but the Respondent simply kept on shirking away from its obligations on the pretext of one excuse or the other.

v) Due to non-payment of salary the Appellant started facing financial hardship and therefore stopped going to the Respondent company since end of September 2017 and finally tendered her resignation on 22.10.2017.

vi) Thereafter, the Appellant-Operational Creditor filed Application bearing CP(IB)-705/ND/2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 before NCLT, Delhi wherein the Appellant claimed the salary for the period of May 2014 to September 2014; April 2017 to September 2017, gratuity, interest at the rate of 18% from the date of default till realization of amount.

Company Appeal (AT) (Insolvency) No. 723 of 2020 (Hansa Dutt Sati Vs. M/s Karan Motors Pvt. Ltd.)

6. The Appellant- 'Hansa Dutt Sati' was employed with the Respondent- 'M/s Karan Motors Private Limited' since 2010.

ii) In the year 2014, the Respondent without having reason skipped the salary of the Appellant for the period May 2014 to September 2014.

iii) Further case is that in the year 2017 the Respondent again failed to pay the salary for the period of April 2017 to September 2017. Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020

iv) Since June 2014, the Appellant has been requesting the Respondent to clear the outstanding salary but the Respondent simply kept on shirking away from its obligations on the pretext of one excuse or the other.

v) Due to non-payment of salary the Appellant started facing financial hardship and therefore stopped going to the Respondent company since end of September 2017 and finally tendered her resignation on 22.10.2017.

vi) That in order to recover the said outstanding amount the Appellant- 'Operational Creditor' even sent a legal notice through his Counsel on 04.10.2017 despite that the Respondent did not release the said amount.

vii) Thereafter, the Appellant-Operational Creditor filed Application bearing CP(IB)-706/ND/2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 before NCLT, Delhi wherein the

Appellant claimed the salary for the period of May 2014 to September 2014; April 2017 to September 2017, gratuity, interest at the rate of 18% from the date of default till realization of amount.

Company Appeal (AT) (Insolvency) No. 728 of 2020 (Asha Devi Vs. M/s Karan Motors Pvt. Ltd.)

7. The Appellant- 'Asha Devi' was employed with the Respondent- 'M/s Karan Motors Private Limited' since 2012.

ii) In the year 2013, the Respondent without having reason skipped the salary of the Appellant for the period January 2013 to June 2013.

iii) Further case is that in the year 2014 the Respondent did not pay the salary of the Appellant for the period May 2014 to September 2014.

iv) In the year 2017, the Respondent again failed to pay the salary for the period of April 2017 to September 2017.

Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020

v) Since February 2013, the Appellant has been requesting the Respondent to clear the outstanding salary but the Respondent simply kept on shirking away from its obligations on the pretext of one excuse or the other.

vi) Due to non-payment of salary the Appellant started facing financial hardship and therefore stopped going to the Respondent company since end of September 2017 and finally tendered her resignation on 03.10.2018.

vii) Thereafter, the Appellant-Operational Creditor filed Application bearing CP(IB)-743/ND/2019 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 before NCLT, Delhi wherein the Appellant claimed the salary for the period of January 2013 to June 2013; May 2014 to September 2014; April 2017 to September 2017, gratuity, interest at the rate of 18% from the date of default till realization of amount.

8. The Ld. Adjudicating Authority after hearing the parties passed the common order on 18.02.2020 and dismissed all the Applications filed by the Appellant - 'Operational Creditor' under Section 9 of the IBC. Hence these Appeals.

C Submissions on behalf of the Appellants Submissions on behalf of the Appellant in Company Appeal (AT) (Insolvency) No. 719 of 2020 (Ranjeet Singh)

9. The Learned Counsel for the Appellant during the course of oral argument and in his Written Submissions and also in Additional Written Submissions has stated that the Respondent is firstly challenging the Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020

maintainability of all these present Appeals as time barred. It is submitted that the Respondent has filed the order dated 23.03.2020 passed by Hon'ble Supreme Court as Annexure- R/2 at page 31 of the Reply Affidavit in the case of Suo Motu Writ Petition (Civil) No(s). 3 of 2020 "in re -cognizance for extension of limitation" read as under:

" This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction. Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020 Issue notice to all the Registrars General of the High Courts, returnable in four weeks."

10. It is further submitted that in view of the aforesaid directions passed by the Hon'ble Supreme Court these Appeals are not time barred and not hit by limitation Act. Hence, the present Appeals are within limitation.

11. The Learned Counsel for the Appellant during the course of oral argument and in his Written Submissions and also in Additional Written Submissions has stated that the Ld. Adjudicating Authority while passing the impugned order overlooked the claim of salary for the month of January 2013 to June 2013; May 2014 to September 2014.

ii) It is further submitted that the non-payment of salary is recurring cause of action and relied upon a judgment passed by Hon'ble High Court of Himachal Pradesh in CWP-2411/2019 (Jagdish Chand Vs State of Himachal Pradesh & Ors.) wherein Hon'ble High Court, while deciding bunch of petitions, viewed that non-payment of salary is recurring cause of action and hence cannot be time barred.

iii) It is further submitted that the Ld. Adjudicating Authority have erred holding that in absence of any claim between the parties the Appellant cannot claim interest at the rate of 18%. Further referred to Section 3(11) of the IBC definition have been given in the IBC "a liability or obligation in respect of claim which is due from any person..."

iv) It is further submitted that the Ld. Adjudicating Authority has failed to consider gratuity and salary falls within this definition but this aspects of the matter not considered by the Ld. Adjudicating Authority. Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020

v) It is further submitted that the Hon'ble Supreme Court in the case of "JK Jute Mill Mazdoor Morcha Vs Juggilal Kamlatpat Jute Mills Company 2019 (11) SCC 332" wherein viewed that if workmen have not been paid their wages and/or salary by company, they would certainly be a creditor. This judgment was also not considered by the Ld. Adjudicating Authority, so the impugned order is fit to be set aside.

vi) It is further submitted that the Section 2 (a) of the Interest Act, 1978 says "Court" includes a tribunal and an arbitrator" further Section 3 of the Act stipulates the power of Court to allow interest in Section 3 of the Act reads as under:

"3. Power of Court to allow interest-

i). In any proceedings for recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages..."

vii) It is further submitted that the Courts, Appellate Tribunal can also invoke its inherent power as enshrined in Rule 11 of the NCLAT Rules 2016 and grant the interest to the Appellant. So based on these submissions the impugned order should be set aside and the Appeal should be allowed.

Submissions on behalf of the Appellant in Company Appeal (AT) (Insolvency) No. 721 of 2020 (Shally Sati)

12. The Learned Counsel for the Appellant during the course of oral argument and his Written Submissions as also Additional Written Submissions have stated that the Ld. Adjudicating Authority while passing Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020 the impugned order overlooked the claim of salary for the month of May 2014 to September 2014.

ii) It is further submitted that the non-payment of salary is recurring cause of action and relied upon a judgment passed by Hon'ble High Court of Himachal Pradesh in CWP-2411/2019 (Jagdish Chand Vs State of Himachal Pradesh & Ors.) wherein Hon'ble High Court, while deciding bunch of petitions, viewed that non-payment of salary is recurring cause of action and hence cannot be time barred.

iii) It is further submitted that the Ld. Adjudicating Authority have erred holding that in absence of any claim between the parties the Appellant cannot claim of interest at the rate of 18%. Further referred to Section 3(11) of the IBC definition have been given in the IBC "a liability or obligation in respect of claim which is due from any person..."

iv) It is further submitted that the Ld. Adjudicating Authority has failed to consider that gratuity and salary falls within this definition but this aspects of the matter not considered by the Ld. Adjudicating Authority.

v) It is further submitted that the Hon'ble Supreme Court in the case of "JK Jute Mill Mazdoor Morcha Vs Juggilal Kamlapat Jute Mills Company 2019 (11) SCC 332" wherein viewed that if workmen have not been paid their wages and/or salary by company, they would certainly be a creditor. This judgment was also not considered by the Ld. Adjudicating Authority, so the impugned order is fit to be set aside.

vi) It is further submitted that the Section 2 (a) of the Interest Act, 1978 says "Court" includes a tribunal and an arbitrator" further Section 3 of Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020 the Act stipulates the power of Court to allow interest in Section 3 of the Act reads as follow:

"3. Power of Court to allow interest-

i). In any proceedings for recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages..."

vii) It is further submitted that the Courts, Appellate Tribunal can also invoke its inherent power as enshrined in Rule 11 of the NCLAT Rules 2016 and grant the interest to the Appellant. So based on these submissions the impugned order is set aside and the Appeal be allowed.

Submissions on behalf of the Appellant in Company Appeal (AT) (Insolvency) No. 722 of 2020 (Deepa Sati)

13. The Learned Counsel for the Appellant during the course of oral argument and his Written Submissions as also Additional Written Submissions have stated that the Ld. Adjudicating Authority while passing the impugned order overlooked the claim of salary for the month of May 2014 to September 2014.

ii) It is further submitted that the non-payment of salary is recurring cause of action and relied upon a judgment passed by Hon'ble High Court of Himachal Pradesh in CWP-2411/2019 (Jagdish Chand Vs State of Himachal Pradesh & Ors.) wherein Hon'ble High Court, while deciding bunch of petitions, viewed that non-payment of salary is recurring cause of action and hence cannot be time barred.

Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020

iii) It is further submitted that the Ld. Adjudicating Authority have erred holding that in absence of any claim between the parties the Appellant cannot claim of interest at the rate of 18%. Further referred to Section 3(11) of the IBC definition have been given in the IBC "a liability or obligation in respect of claim which is due from any person..."

iv) It is further submitted that the Ld. Adjudicating Authority has failed to consider that gratuity and salary falls within this definition but this aspects of the matter not considered by the Ld. Adjudicating Authority.

v) It is further submitted that the Hon'ble Supreme Court in the case of "JK Jute Mill Mazdoor Morcha Vs Juggilal Kamlatpat Jute Mills Company 2019 (11) SCC 332" wherein viewed that if workmen have not been paid their wages and/or salary by company, they would certainly be a creditor. This judgment was also not considered by the Ld. Adjudicating Authority, so the impugned order is fit to be set aside.

vi) It is further submitted that the Section 2 (a) of the Interest Act, 1978 says "Court" includes a tribunal and an arbitrator" further Section 3 of the Act stipulates the power of Court to allow interest in Section 3 of the Act reads as follow:

"3. Power of Court to allow interest-

i). In any proceedings for recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages..."

Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020

vii) It is further submitted that the Courts, Appellate Tribunal can also invoke its inherent power as enshrined in Rule 11 of the NCLAT Rules 2016 and grant the interest to the Appellant. So based on these submissions the impugned order is set aside and the Appeal be allowed.

Submissions on behalf of the Appellant in Company Appeal (AT) (Insolvency) No. 723 of 2020 (Hansa Dutt Sati)

14. The Learned Counsel for the Appellant during the course of oral argument and his Written Submissions as also Additional Written Submissions have stated that the Ld. Adjudicating Authority while passing the impugned order overlooked the claim of salary for the month of May 2014 to September 2014.

ii) It is further submitted that the non-payment of salary is recurring cause of action and relied upon a judgment passed by Hon'ble High Court of Himachal Pradesh in CWP-2411/2019 (Jagdish Chand

Vs State of Himachal Pradesh & Ors.) wherein Hon'ble High Court, while deciding bunch of petitions, viewed that non-payment of salary is recurring cause of action and hence cannot be time barred.

iii) It is further submitted that the Ld. Adjudicating Authority have erred holding that in absence of any claim between the parties the Appellant cannot claim of interest at the rate of 18%. Further referred to Section 3(11) of the IBC definition have been given in the IBC "a liability or obligation in respect of claim which is due from any person..."

iv) It is further submitted that the Ld. Adjudicating Authority has failed to consider that gratuity and salary falls within this definition but this aspects of the matter not considered by the Ld. Adjudicating Authority. Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020

v) It is further submitted that the Hon'ble Supreme Court in the case of "JK Jute Mill Mazdoor Morcha Vs Juggilal Kamlatpat Jute Mills Company 2019 (11) SCC 332" wherein viewed that if workmen have not been paid their wages and/or salary by company, they would certainly be a creditor. This judgment was also not considered by the Ld. Adjudicating Authority, so the impugned order is fit to be set aside.

vi) It is further submitted that the Section 2 (a) of the Interest Act, 1978 says "Court" includes a tribunal and an arbitrator" further Section 3 of the Act stipulates the power of Court to allow interest in Section 3 of the Act reads as follow:

"3. Power of Court to allow interest-

i). In any proceedings for recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages..."

vii) It is further submitted that the Courts, Appellate Tribunal can also invoke its inherent power as enshrined in Rule 11 of the NCLAT Rules 2016 and grant the interest to the Appellant. So based on these submissions the impugned order is set aside and the Appeal be allowed.

Submissions on behalf of the Appellant in Company Appeal (AT) (Insolvency) No. 728 of 2020 (Asha Devi)

15. The Learned Counsel for the Appellant during the course of oral argument and his Written Submissions as also Additional Written Submissions have stated that the Ld. Adjudicating Authority while passing Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020 the impugned order overlooked the claim of salary for the month of January 2013 to June 2013; May 2014 to September 2014.

ii) It is further submitted that the non-payment of salary is recurring cause of action and relied upon a judgment passed by Hon'ble High Court of Himachal Pradesh in CWP-2411/2019 (Jagdish Chand Vs State of Himachal Pradesh & Ors.) wherein Hon'ble High Court, while deciding bunch of petitions, viewed that non-payment of salary is recurring cause of action and hence cannot be time barred.

iii) It is further submitted that the Ld. Adjudicating Authority have erred holding that in absence of any claim between the parties the Appellant cannot claim of interest at the rate of 18%. Further referred to Section 3(11) of the IBC definition have been given in the IBC "a liability or obligation in respect of claim which is due from any person..."

iv) It is further submitted that the Ld. Adjudicating Authority has failed to consider that gratuity and salary falls within this definition but this aspects of the matter not considered by the Ld. Adjudicating Authority.

v) It is further submitted that the Hon'ble Supreme Court in the case of "JK Jute Mill Mazdoor Morcha Vs Juggilal Kamlatpat Jute Mills Company 2019 (11) SCC 332" wherein viewed that if workmen have not been paid their wages and/or salary by company, they would certainly be a creditor. This judgment was also not considered by the Ld. Adjudicating Authority, so the impugned order is fit to be set aside.

vi) It is further submitted that the Section 2 (a) of the Interest Act, 1978 says "Court" includes a tribunal and an arbitrator" further Section 3 of Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020 the Act stipulates the power of Court to allow interest in Section 3 of the Act reads as follow:

"3. Power of Court to allow interest-

i). In any proceedings for recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages..."

vii) It is further submitted that the Courts, Appellate Tribunal can also invoke its inherent power as enshrined in Rule 11 of the NCLAT Rules 2016 and grant the interest to the Appellant. So based on these submissions the impugned order is set aside and the Appeal be allowed. D Submissions on behalf of the Respondent- 'Corporate Debtor'

16. Learned Counsel for the Respondent during the course of argument, and also in its Written Submissions submitted that the present Appeals are time barred in terms of the provisions of Section 61(2) of the IBC as same are not filed within statutory period of 30 days from the date of impugned order i.e. 18.02.2020 and the time of 30 days was expired on 20.03.2020 but the Appeals were filed on 18.08.2020 after 174 days and after deducting 30 days' time there is delay of 144 days in filing the present Appeals.

17. It is further submitted that proviso of Section 61 of the IBC gives the power to NCLAT to condone the delay, if the Appeal is filed beyond 30 days further only period of 15 days will be given, but here the Appeals have been Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020 filed after delay of 129 days and no Interlocutory Application has been filed for condonation of delay.

18. Learned Counsel for the Respondent in Company Appeal (AT) (Insolvency) No. 719 of 2020 further submitted that the claims of the Appellant are time barred and disputed. The Appellant had made following claims before the Adjudicating Authority as under:

ii) It is further submitted that the Respondent - 'Corporate Debtor' has already made payment of Rs. 4,02,166/- (admitted amount) during proceedings before the Adjudicating Authority which is duly accepted and acknowledged by the Appellant and rest of the claim (claim and interest) of Rs. 18,91,343/- is time barred and rightly rejected by the Ld. Adjudicating Authority.

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iii) It is further submitted that IBC cannot be a way for recovery of dues which is a time barred claim.

iv) It is further submitted that the claim of Gratuity of Rs. 2,57,942/- is also not due and payable. The claim for gratuity can be decided by the Competent Authority under the Gratuity Act for which the Appellant has not approached the appropriate authority.

v) It is further submitted that the Appellant was employed with the Respondent as in-charge of production in the Machine Shop and during employment Appellant indulged in the activities which shows that Appellant deliberately and intentionally caused losses to the Corporate Debtor and suffered by the Corporate Debtor towards quality, loss of business of several lacs besides loss of reputation in international market. The Respondent - Corporate Debtor actually suffered substantial losses and damages of Rs. 31,33,992.50.

vi) It is further submitted that the Appellant without permission, authorization and intimation remained absent w.e.f. 03.10.2018 without giving charge to any other person and thus caused loss of production, quality, defects and delay in deliveries and losses.

19. Learned Counsel for the Respondent in Company Appeal (AT) (Insolvency) No. 721 of 2020 further submitted that the claims of the Appellant are time barred and disputed. The Appellant had made following claims before the Adjudicating Authority are hereunder:

Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020

ii) It is further submitted that the Respondent - 'Corporate Debtor' has already made payment of Rs. 1,37,837/- (admitted amount) during proceedings before the

Adjudicating Authority which is duly accepted and acknowledged by the Appellant and rest of the claim (claim and interest) of Rs. 2,83,246/- is time barred and rightly rejected by the Ld. Adjudicating Authority.

iii) It is further submitted that IBC cannot be a way for recovery of dues which is a time barred claim.

iv) It is further submitted that the Appellant is daughter of Mr. Hansa Dutt Sati (Appellant in Appel No. 723 of 2020) who was In-Charge of production in the Foundry. The said Mr. Hansa Dutt Sati (father) falsely represented that the Appellant is properly qualified and competent to work as designer and thus by using his influence and position, got the Appellant appointed on salary higher than in usual course, whereas the present appellant was not deserving.

Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020

v) It is further submitted that the Appellant without permission, authorization and intimation remained absent w.e.f. 23.09.2017 without giving charge to any other person and has caused loss of production, quality, defects and delay in deliveries and losses.

20. Learned Counsel for the Respondent in Company Appeal (AT) (Insolvency) No. 722 of 2020 further submitted that the claims of the Appellant are time barred and disputed. The Appellant had made following claims before the Adjudicating Authority are hereunder:

ii) It is further submitted that the Respondent - 'Corporate Debtor' has already made payment of Rs. 1,45,476/- (admitted amount) during proceedings before the Adjudicating Authority which is duly accepted and acknowledged by the Appellant and rest of the claim (claim and interest) of Rs. 3,66,775/- is time barred and rightly rejected by the Ld. Adjudicating Authority.

Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020

iii) It is further submitted that IBC cannot be a way for recovery of dues which is a time barred claim.

iv) It is further submitted that the claim of Gratuity of Rs. 53,654/- is also not due and payable. The claim for gratuity can be decided by the Competent Authority under the Gratuity Act for which the Appellant has not approached the appropriate authority.

v) it is further submitted that the Appellant is daughter of Mr. Hansa Dutt Sati (Appellant in Appel No. 723 of 2020) who was In-Charge of production in the Foundry. The said Mr. Hansa Dutt Sati (father) falsely represented that the Appellant is properly qualified and competent to work as designer and thus by using his influence and position, got the Appellant appointed on salary higher than in usual course, whereas the present appellant was not deserving.

vi) It is further submitted that the Appellant was not attending office but her father by misusing his position, malafidely shown her as working and thus kept on drawing salary for which the Appellant did not work. That due to negligence and wrong workings by her father, it caused loss of business of several lacs besides loss of reputation in international market. The Respondent-'Corporate Debtor' actually suffered substantial losses and damages of Rs. 31,33,992.50.

vii) It is further submitted that the Appellant without permission, authorization and intimation remained absent w.e.f. 03.10.2018 without giving charge to any other person and has caused loss of production, quality, defects and delay in deliveries and losses. Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020

21. Learned Counsel for the Respondent in Company Appeal (AT) (Insolvency) No. 723 of 2020 further submitted that the claims of the Appellant are time barred and disputed. The Appellant had made following claims before the Adjudicating Authority are hereunder:

ii) It is further submitted that the Respondent - 'Corporate Debtor' has already made payment of Rs. 3,81,222/- (admitted amount) during proceedings before the Adjudicating Authority which is duly accepted and acknowledged by the Appellant and rest of the claim (claim and interest) of Rs. 9,50,597/- is time barred and rightly rejected by the Ld. Adjudicating Authority.

iii) It is further submitted that IBC cannot be a way for recovery of dues which is a time barred claim.

iv) It is further submitted that the claim of Gratuity of Rs. 1,83,912/- is also not due and payable. The claim for gratuity can be decided by the Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020 Competent Authority under the Gratuity Act for which the Appellant has not approached the appropriate authority.

v) it is further submitted that the Appellant was employed with the Respondent-'Corporate Debtor' In-charge of production in the Foundry. He indulged in the activities, deliberately and intentionally to cause losses suffered by the Corporate Debtor with respect to quality and loss of business of several lacs besides loss of reputation in international market. The Corporate Debtor actually suffered substantial losses and damages on account of quality and timely completion of delivery schedule.

vi) It is further submitted that the Appellant had earlier caused notice dated 04.10.2017 which was replied by the Corporate Debtor vide dated 09.10.2017 disputing claim by the Appellant stating nothing due and payable besides cautioning that the Appellant will be liable to compensate for the damages and loss suffered by the Respondent. The Respondent-

'Corporate Debtor' actually suffered substantial losses and damages of Rs. 31,33,992.50.

vii) It is further submitted that the Appellant without permission, authorization and intimation remained absent w.e.f. 23.09.2017 without giving charge to any other person and has caused loss of production, quality, defects and delay in deliveries and losses.

22. Learned Counsel for the Respondent in Company Appeal (AT) (Insolvency) No. 728 of 2020 further submitted that the claims of the Appellant are time barred and disputed. The Appellant had made following claims before the Adjudicating Authority are hereunder:

Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020

ii) It is further submitted that the Respondent - 'Corporate Debtor' has already made payment of Rs. 1,65,880/- (admitted amount) during proceedings before the Adjudicating Authority which is duly accepted and acknowledge by the Appellant and rest of the claim (claim and interest) of Rs. 7,47,276/- is time barred and rightly rejected by the Ld. Adjudicating Authority.

iii) It is further submitted that IBC cannot be a way for recovery of dues which is a time barred claim.

iv) It is further submitted that the claim of Gratuity of Rs. 45,029/- is also not due and payable. The claim for gratuity can be decided by the Competent Authority under the Gratuity Act for which the Appellant has not approached the appropriate authority.

Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020

v) It is further submitted that the Appellant is wife of Mr. Ranjeet Singh (Appellant in Company Appeal (AT) (Ins.) No. 719 of 2020) who was In- Charge of production in the machine Shop production in the Foundry. The said Mr. Ranjeet Singh (Husband) falsely represented that the appellant is properly qualified and competent to work as Assistant Engineer-Design and thus by using his influence and position, got the Appellant appointed on salary higher than in usual course, whereas the present appellant was not deserving.

vi) It is further submitted that the Appellant was not attending office but her husband by misusing his position, malifidely shown her as working and thus kept on drawing salary for which the Appellant did not work.

v) It is further submitted that by misrepresenting qualification and skills, the husband Mr. Ranjeet Singh and the Appellant, in collusion and connivance caused huge loss including loss on account of rejection of goods produced to the Respondent. As a matter of fact, on account of misrepresentation and fraud, the Respondent company wanted to file criminal case against the Appellant but her husband sought mercy and sympathy, hence the respondent did not pursue criminal proceedings. The Corporate Debtor actually suffered substantial losses and damages of Rs. 31,33,992.50.

vi) It is further submitted that the Appellant without permission, authorization and intimation remained absent w.e.f. 23.09.2017 without giving charge to any other person and has caused loss of production, quality, defects and delay in deliveries and losses. Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020

23. It is further submitted that the petition under Section 9 of the IBC is against the main objective of IBC which is maximization of value of assets. It is well settled that the IBC proceedings are not the recovery proceedings. In these present Appeals, the Appellants have filed the Applications for recovery of time barred claim.

24. It is further submitted that the Hon'ble Supreme Court in the case of Mobilox Innovations (P) Ltd. Vs. Kirusa Software (P) Ltd. 2018 (1) SCC 353 in paragraph 34 has held that that the "Insolvency proceedings cannot be triggered by the Operational Creditor for disputed claim". Further submitted that the aforesaid judgment was relied by the Hon'ble Supreme Court in the case of Transmission Corpn. of A.P Ltd. Vs. Equipment Conductors & Cables Ltd. 2019 (12) SCC 697 .

25. It is further submitted that there is no "claim", "debt", Operational Debt, "due" and "payable" in favour of the Appellant as defined under the IBC, 2016. The claim of the period May 2014 to September 2014 and interest claim thereon are clearly time barred. The Learned Counsel for the Respondent relied on the judgment of Swiss Ribbon Pvt. Ltd. Vs. UOI 2019 (4) SCC 17 in paragraph 64 of the judgment wherein the Hon'ble Supreme Court held that the "date of default is relevant and not cause of action."

26. Learned Counsel for the Appellant further submitted that based on these submissions there is no merit in these Appeals, therefore, these Appeals are fit to be dismissed.

Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020 E FINDINGS

27. After hearing the Learned Counsel for the parties and perusing the records of these Appeals and considering the arguments advanced on behalf of the parties and going through the written submissions and also Additional Written Submissions filed on behalf of Appellants and Respondent.

We are of the view that so far as the question of limitation of all these Appeals being hit by limitation is concerned that in view of order dated 23.03.2020 passed by Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No(s). 3 of 2020* "in re -cognizance for extension of limitation" has held that "it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings." Thus, all these Appeals filed by the Appellants are covered by the directions passed by the Hon'ble Supreme Court. Accordingly, we hold that these Appeals are not barred by limitation and the submission made on behalf of the Respondent is hereby rejected.

That the Appellants are employees of the Corporate Debtor- M/s Karan Motors Pvt. Ltd. The appellants claim fall within IBC as Operational Debt. In view of Section 5(20) and 5(21). The said

Sections are reads hereunder:

Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020 "5(20) "Operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred; 5(21) "Operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the [payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;"

The Appellants have filed Applications under Section 9 of the IBC before the Adjudication Authority. From the perusal of the record it appears that in Company Appeal (AT) (Insolvency) No. 719 of 2020 Appellant had sent the demand notice under Section 8 of the IBC which is contained in page 62 to 64 of the Appeal Paper Book and in Company Appeal (AT) (Insolvency) No. 723 of 2020 Appellant had also sent the demand notice under Section 8 of the IBC which is contained in page 62 to 64 of the Appeal Paper Book. In remained Appeals, i.e. Company Appeal (AT) (Insolvency) No. 721 of 2020, Company Appeal (AT) (Insolvency) No. 722 of 2020 and Company Appeal (AT) (Insolvency) No. 728 of 2020 Appellants have not sent the demand notice under Section 8 of the IBC and straight away filed Application under Section 9 of the IBC before the Adjudicating Authority (National Company Law tribunal), New Delhi which is contrary to the law laid down by the Hon'ble Supreme Court at paragraph 33 in Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited reported in (2018) 1 SCC 353 and relied by the Bench of this Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020 Tribunal also at paragraph 5 of M/s Krystal Integrated Services Pvt.

Ltd. Vs. M/s Indiaonline Express Pvt. Ltd. [Company Appeal (AT) (Insolvency) No. 194 of 2019] .

From the perusal of the record in Company Appeal (AT) (Insolvency) No. 719 of 2020 at Annexure -A/2 (page 46 to 97 of the Appeal Paper Book) at page 56 wherein Part-IV of the Application at Sl. No. 2 which deals with amount claimed to be in default and the date on which the default occurred, no specific date has been mentioned by the Appellant rather it has been mentioned that claim of total interest of Rs. 10,02,701/- and interest @ 18% from 14.02.2019 till the realisation of outstanding amount.

From the perusal of the record in Company Appeal (AT) (Insolvency) No. 721 of 2020 at Annexure -A/2 (page 44 to 77 of the Appeal Paper Book) at page 54 wherein Part-IV of the Application at Sl. No. 2 which deals with amount claimed to be in default and the date on which the default occurred, no specific date has been mentioned by the Appellant rather it has been mentioned that claim of total interest of Rs. 1,64,421/- and interest @ 18% from 14.02.2019 till the realisation of outstanding amount.

From the perusal of the record in Company Appeal (AT) (Insolvency) No. 722 of 2020 at Annexure -A/2 (page 46 to 79 of the Appeal Paper Book) at page 56 wherein Part-IV of the Application at Sl. No. 2 which deals with amount claimed to be in default and the date on which the default occurred, no specific date has been mentioned by the Appellant rather it has been mentioned that claim of total interest of Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020 Rs. 1,87,711/- and interest @ 18% from 14.02.2019 till the realisation of outstanding amount.

From the perusal of the record in Company Appeal (AT) (Insolvency) No. 723 of 2020 at Annexure -A/2 (page 46 to 82 of the Appeal Paper Book) at page 56 wherein Part-IV of the Application at Sl. No. 2 which deals with amount claimed to be in default and the date on which the default occurred, no specific date has been mentioned by the Appellant rather it has been mentioned that claim of total interest of Rs. 4,65,355/- and interest @ 18% from 14.02.2019 till the realisation of outstanding amount.

From the perusal of the record in Company Appeal (AT) (Insolvency) No. 728 of 2020 at Annexure -A/2 (page 46 to 82 of the Appeal Paper Book) at page 56 wherein Part-IV of the Application at Sl. No. 2 which deals with amount claimed to be in default and the date on which the default occurred, no specific date has been mentioned by the Appellant rather it has been mentioned that claim of total interest of Rs. 4,22,447/- and interest @ 18% from 14.02.2019 till the realisation of outstanding amount.

In the recent judgment of Hon'ble Supreme Court passed in Civil Appeal No. 676 of 2021 [Pratap Technocrats (P) Ltd. & Ors. Vs. Monitoring Committee of Reliance Infratel Limited &Anr.] dated 10.08.2021 where Hon'ble Supreme Court has held in paragraph 22 as under:

"22 The resolution plan was approved by the CoC, in compliance with the provisions of the IBC. The jurisdiction of Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020 the Adjudicating Authority under Section 31(1) is to determine whether the resolution plan, as approved by the CoC, complies with the requirements of Section 30(2). The NCLT is within its jurisdiction in approving a resolution plan which accords with the IBC. There is no equity-based jurisdiction with the NCLT, under the provisions of the IBC."

In view of the aforesaid judgment passed by Hon'ble Supreme Court we are conscious of the facts that both the NCLT and NCLAT works under IBC where there is no equity jurisdiction and we are bound by the provisions of the IBC while adjudicating the matters under IBC. The judgment relied by the Learned Counsel for the Appellant regarding arrears of salary to be continuing cause of action as held by the Hon'ble Himachal Pradesh High Court (supra), being a constitutional Court have equity jurisdiction and the ratio of the judgment cannot be followed by statutory Tribunal both NCLT and NCLAT which ratio could not be followed with due reference while deciding the claim under IBC.

So far as, reliance placed by the Learned Counsel for the Appellant in in the case of "JK Jute Mill Mazdoor Morcha Vs Juggilal Kamlapat Jute Mills Company 2019 (11) SCC 332" is not applicable in

these Appeals in much as here the Appellants moved before the Adjudicating Authority in individual capacity and they have preferred these Appeals in individual capacity also. In this judgment Hon'ble Supreme Court has held as under:

Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020 "Held, a trade union is certainly an entity established under a statute, in the sense of being governed by the Trade Unions Act, and would therefore fall within the definition of "person" under S. 3(23) of the Code - Thus, an "operational debt", meaning a claim in respect of employment, could certainly be made by a person duly authorised to make such claim on behalf of a workman - Further, instead of one consolidated petition by a trade union representing a number of workmen, filing individual petitions would be burdensome as each workman would thereafter have to pay insolvency resolution process costs, costs of the interim resolution professional, costs of appointing valuers, etc. -Further, trade union represents its members who are workers, to whom dues may be owed by the employer, which are certainly debts owed for services rendered by each individual workman, who are collectively represented by the trade union - Insolvency and Bankruptcy (application to Adjudicating Authority) rules, 2016 - R. 6 - Labour Law - trade Unions Act, 1926 - Sc. 2(h), 2(g), 8, 13, 15(c) and (d) - Interpretation of Statutes - Subsidiary Rules - Noscitur a sociis - Application of principle of to S. 3(23)(g) of Insolvency and Bankruptcy Code, 2016 "

(Paras 12 to 17) The question decided by the Hon'ble Supreme Court was whether the collective application on behalf of the workman can be filed by the trade union. The Hon'ble Supreme Court answered the question in the above judgment as to whether trade union fall within the definition of "person" under Section 3(23) of the IBC. In the instant case this question does not arise in much as all the Appellants herein have invoked independently the provisions of Section 9 of the IBC. Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020 It is also an admitted fact that in all these Appeals, the Appellants have failed to show any document to establish that the Respondent has acknowledged the dues of salary, gratuity etc. from 2014 onwards.

Considering all these facts and provisions of the law, we are of the considered view that there is no illegality in the impugned orders. The Ld. Adjudicating Authority have rightly dismissed the Applications under Section 9 of the IBC filed by the Appellants by observing that "if for delayed payment applicant(s) claim any interest, it will be open to them to move before a court of competent jurisdiction for recovery of interest, but initiation of Corporate Insolvency Resolution Process is not the answer."

ORDER

28. We agree with the reasons mentioned in the impugned orders dated 18.02.2020 passed by the Ld. Adjudicating Authority (National Company Law tribunal), New

Delhi Bench-V while dismissing the Applications under Section 9 of the IBC filed by the Appellants in CP (IB)-703/ND/2019, CP (IB)-702/ND/2019, CP (IB)-705/ND/2019, CP (IB)-706/ND/2019 and CP (IB)-743/ND/2019 are hereby affirmed. There is no merit in these Appeals.

- i) Company Appeal (AT) (Insolvency) No. 719 of 2020 is dismissed.
- ii) Company Appeal (AT) (Insolvency) No. 721 of 2020 is dismissed.
- iii) Company Appeal (AT) (Insolvency) No. 722 of 2020 is dismissed.
- iv) Company Appeal (AT) (Insolvency) No. 723 of 2020 is dismissed.

Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020

- v) Company Appeal (AT) (Insolvency) No. 728 of 2020 is dismissed.

No order as to costs.

29. Registry to upload the Judgment forthwith on the website of this Appellate Tribunal.

30. Registry is directed to send the copy of this Judgment to the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench- V, forthwith.

[Justice Anant Bijay Singh] Member (Judicial) [Ms. Shreesha Merla] Member (Technical) New Delhi 18th August, 2021 R. Nath.

Company Appeal (AT) (Insolvency) Nos. 719, 721, 722, 723 & 728 of 2020