

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.733 of 2025

(Arising out of Order dated 01.04.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai, Court-I in IA No.11 of 2025 in CP(IB) No.3528(MB) of 2018)

IN THE MATTER OF:

Jadeja Ravirajsinh Juvansinh

...Appellant

Versus

Nuvoco Vistas Corporation Ltd. & Ors.

...Respondent

Present:

For Appellant : Ms. Anju Jain and Mr. Hitesh Sachar, Advocates.

For Respondents : Mr. Arun Kathpalia Sr. Advocate with Ms. Astha Mehta, Mr. Gaurav Mathur, Ms. Prerana Mohapatra, Ms. Prina Sharma and Ms. Diksha Gupta, Advocates for R1 and R2.

Mr. Viraj Parikh, Mr. Vivek Shetty, Mr. Akhilesh Menezes, Mr. Nishant Upadhyay, Mr. Navneet R and Ms. Alankrita Sinha, Advocates for R4.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by the Appellant claiming to be an employee and authorized representative of employees of M/s. Vadraj Cement Ltd. has been filed challenging order dated 01.04.2025 approving the Resolution Plan of the Corporate Debtor (“**CD**”) – M/s Vadraj Cement Limited. By the impugned order, the Adjudicating Authority has allowed the application – IA No.11 of 2025 filed by Resolution Professional (“**RP**”) praying for approval of Resolution Plan, approved by the Committee of Creditors (“**CoC**”) with 100% majority of CoC. The Adjudicating Authority by the impugned order has approved the Resolution Plan. The Resolution Plan

provided for payout to the Operational Creditors, which included the employees of the CD.

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

- (i) The Corporate Insolvency Resolution Process (“**CIRP**”) against the CD commenced vide order dated 02.02.2024 on an application under Section 7 filed by Oriental Bank of Commerce (now Punjab National Bank). Respondent No.4 was confirmed as RP. In pursuance of public announcement made on 03.02.2024, claims were filed. Claims were also filed by the employees. List of creditors was prepared. The RP after verifying, admitted the claims of the employees to the extent of approximately 73%.
- (ii) The Resolution Plan was approved by the CoC, which provided payment of total amount towards provident fund was Rs.10,51,00,841/-, i.e. 100% admitted claim and with regard to claim of employees was 61,79,77,862/-, out of which the Plan proposed payment of Rs.6,30,10,916. An application was filed by the RP for approval of Resolution Plan, which was allowed by the impugned order dated 01.04.2025.
- (iii) After approval of the Plan, the RP after certain correspondence sent an email dated 24.04.2025 informing the representative of the employees that employee payout of

Rs.6,30,10,916, shall be utilized to first pay the unpaid gratuity dues of Rs.2,86,32,757/- and the balance employee payout of Rs.3,43,78,159/- shall be paid out to employees on pro-rata basis. The present Appeal has been filed by the Appellant on 30.04.2025.

3. We have heard learned Counsel for the Appellant; learned Counsel appearing for Respondent Nos.1 and 2, as well as learned Counsel appearing for Respondent No.4.

4. In pursuance of order passed by this Tribunal on 16.05.2025, counter reply by Respondent No.4 as well as affidavit has been filed by Respondent No.1, to which rejoinder has also been filed by the Appellant.

5. Learned Counsel for the Appellant in support of the Appeal submits that email dated 24.04.2025 sent by the RP is not in conformity with the payouts as provided in the Plan. Learned Counsel for the Appellant submits that there is no dispute with regard to the payouts under the Plan regarding provident fund dues, which are 100% being paid in the Plan. However, with respect to employees' payout, which is Rs.6,30,10,916/-, the payment of gratuity dues to the employees was contemplated to be in addition to the above payout of Rs.6,30,10,916/-. Learned Counsel for the Appellant referred to paragraph 28 of the impugned order of the Adjudicating Authority where Form-H submitted by RP has been noted. He has referred to payouts, where it was mentioned that *"Employees dues to not include gratuity dues which shall be paid in full in accordance with the Resolution Plan approved by the Committee of*

Creditors of the CD". It is submitted that now the gratuity dues are sought to be paid by the RP out of the amount of Rs.6,30,10,916/-, whereas payment of gratuity dues were in addition to the aforesaid payout. It is, thus, submitted that the payout proposed to the employees is not in accordance with the Resolution Plan.

6. Noticing the above submission of the learned Counsel for the Appellant, we directed on 16.05.2025 to RP as well as Resolution Applicant to file an affidavit, explaining the aforesaid payout within two weeks. The order dated 16.05.2025 is as follows:

"16.05.2025: Learned counsel for the appellant submits that under the resolution plan which he has referred to in paragraph 20(D)(i) which provided that resolution applicant proposes Rs.6,30,00,000/- towards employees claim and further towards full and final discharge/settlement of the claims of Rs.10,51,00,000/- towards PF and gratuity.

2. Learned counsel for the appellant submits that the email has been sent by the RP dated 24.04.2025 which according to the appellant is not in conformity to the pay out as provided in the plan.

3. Learned counsel for the RP submits that whatever the amount was earmarked in the plan shall be paid to the employees towards their claim as well as the PF and gratuity dues.

4. Learned counsel for the SRA also submits that the payment shall be made as per the resolution plan.

5. Learned counsel for the RP as well as the resolution applicant is permitted to file an affidavit explaining the aforesaid pay outs within two weeks.

6. Rejoinder, if any, may be filed within two weeks. List this appeal on 03rd July, 2025.

We however make it clear that resolution plan shall be implemented.

Learned counsel for the RP submits that plan itself provides that in event, appellants are entitled for any payment that shall be made out of the resolution plan amount.”

7. Learned Counsel for the RP refuting the submissions of learned Counsel for the Appellant submits that the Resolution Plan contemplated total payout to the employees of Rs.6,30,10,916/-. It was contemplated that in event full gratuity payout shall be paid to the employees and in event the amount is not sufficient, the same shall be paid out of the payout to the Financial Creditor. It is submitted that there was no separate amount earmarked for payment of gratuity apart from Rs.6,30,10,916/-. It is submitted that email sent by the RP is in accordance with the Resolution Plan.

8. Learned Counsel for Respondent No.4 submits that note on which the Appellant is relying was with respect to admitted claim of the employees, which was under Column-5 and did not relate to payout proposed to the employees.

9. Learned Counsel appearing for Resolution Applicant submitted that amount is being paid to the employees as per the Resolution Plan. It is submitted that the payout of Rs.10,51,00,841/- is towards full amount of the PF and the gratuity was to be paid out of Rs.6,30,10,916/-. The payout to the Appellant is in accordance with the Resolution Plan and

submission of the Appellant that they are entitled to be paid gratuity over and in excess of Rs.6,30,10,916/-, is incorrect.

10. We have considered the submissions of learned Counsel for the parties and have perused the records.

11. The submission of the Appellant in this Appeal is only to the extent of the payout to the employees regarding gratuity dues. Only question to be considered is as to whether payment of unpaid gratuity dues has to be in addition to the payment proposed to the employees of Rs.6,30,10,916/- or the said gratuity was to be paid only out of the said amount. The RP in its affidavit filed in this Appeal has brought on record the Clauses of Resolution Plan, dealing with Operational Creditor (employees and workmen). Clause 13 of the Resolution Plan deals with employees and workmen. No workmen have submitted any claim. Paragraph 13.1.2 of Clause 13 of the Resolution Plan is as follows:

“13.1.2 As per the List of Creditors, the Resolution Professional has admitted Employee Claim Amount of an amount of INR 63,01,09,164 (Indian Rupees Sixty Three Crore One Lakh Nine Thousand One Hundred and Sixty Four) towards Claims of the Employees against the Corporate Debtor. The Employees of the Corporate Debtor including those set out In Part A of Appendix II (List of Claims of the Operational Creditors as on 1 August 2024) shall be paid an amount of upto INR 6,30,10,916 (Indian Rupees Six Crore Thirty Lakhs Ten Thousand Nine Hundred and Sixteen) being the Employee Payment Amount, on a pro-rata basis, and in priority to the Financial Creditors of the Corporate Debtor, in full and final satisfaction of all their Claims including the Employee Claim Amount and any

Claims in relation to unpaid dues of the Corporate Debtor towards provident funds, pension fund or gratuity funds of the Employees.

12. Clause 13.1.2 as noted above, provides that although claim of the employees was admitted for Rs.63,01,09,164/-, but the claim of the employees to be paid was Rs.6,30,10,916/-, which included unpaid dues of provident fund, pension fund and gratuity funds of the employees. In Clause 13.1.3, it was mentioned that amount of Rs.10,51,00,841/- is admitted toward the provident fund and the said amount is being paid in full. Learned Counsel for both the parties submitted before us that there is no dispute with respect to payment of provident fund, which has been paid 100% of admitted claim of provident fund, i.e. Rs.10,51,00,841/- and the payment of Rs.10,51,00,841/- did not include the gratuity payment and that was only provident fund payment. Clause 13.1.4 further contemplated that if any additional amount becomes due and payable towards the employees, including provident funds, pension fund or gratuity funds etc., as per the judgment of the Hon'ble Supreme Court or any other judgment that deals with similar issues, such excess employee dues amount shall be paid by the CD out of the total SFC payment amount.

13. Now, we need to notice the email dated 24.04.2025, which has been brought on record in the Appeal and the payout as proposed is questioned in the Appeal. Email dated 24.04.2025 sent by RP to the representative of the employees is as follows:

“From: CIRP Vadraj Cement Limited (cirp.vcl@gmail.com)

To: saxenavipul64@yahoo.com
Cc: exvadrajcementltdemployeeassoc@gmail.com
Date: Thursday 24 April, 2025 at 11:50 am 1ST
Dear Sir,

Thank you for your email.

In furtherance to our earlier email, we would like to clarify that, in terms of the resolution plan submitted by Nuvoco Vistas Corporation Limited, the amount allocated towards the total employee dues including unpaid gratuity dues of the Corporate Debtor is INR 6,30,10,916 (Indian Rupees Six Crore Thirty Lakhs Ten Thousand Nine Hundred and Sixteen) ("Employee Payout").

Therefore, the Employee Payout of INR 6,30,10,916 (Indian Rupees Six Crore Thirty Lakhs Ten Thousand Nine Hundred and Sixteen) shall be utilized to first pay the unpaid gratuity dues of INR 2,86,32,757 (Indian Rupees Two Crore Eighty Six Lakhs Thirty Two Thousand Seven Hundred and Fifty Seven) in full. The balance Employee Payout of INR 3,43,78,159 (Indian Rupees Three Crore Forty Three Lakhs Seventy Eight Thousand One Hundred and Fifty Nine) shall be paid out to employees on a pro-rata basis.

This email and the contents hereof are without prejudice to any rights, remedies and contentions available to us under law, equity or contract, all of which are hereby expressly reserved.

Hope this email clarifies the same.

Regards,

Office of Pulkit Gupta
Erstwhile Resolution Professional
Vadraj Cement Limited
Process Email : cirp.vcl@gmail.com

14. The above email indicates that unpaid gratuity dues of Rs.2,86,32,757/-, which shall be paid out of the amount of Rs.6,30,10,916/- and thereafter the rest of the amount shall be paid on a

pro-rata basis to the employees. The submission, which has been advanced by learned Counsel for the Appellant is based on a note occurring at page 83 of the paper book, which is as follows:

“*Employee dues do not include gratuity dues which shall be paid in full in accordance with the resolution plan approved by the committee of creditors of the CD.”

15. When we look into the above note, which begins with an asterisk mentions that ‘employee dues do not include gratuity dues, which shall be paid in full in accordance with the Resolution Plan approved by the CoC of the CD’. It is relevant to notice that said asterisk in Form-H, relates to compliance certificate, which has been filed with Resolution Plan and is part of paragraph 28. Paragraph 28 begins with following:

“**28.** The Resolution Professional has submitted Form-H under Regulation 39(4) of the CIRP Regulations to certify that the Resolution Plan as approved by the CoC meets all the requirements of the IBC and its Regulations, the relevant parts of which are reproduced below:

FORM H

COMPLIANCE CERTIFICATE

xxx xxx xxx”

16. Form-H, Clause-7 provides the payout to Secured Financial Creditors, Unsecured Financial Creditors, Operational Creditors and workmen and employees have also been dealt. Against the payout to the employees, the amount mentioned as Rs.6,30,10,916/- (at page 82 of the paper book). The payment of provident fund is also dealt with under the heading ‘Operational Creditors’ and against the provident fund total

payout mentioned is Rs.10,51,00841/-, which is 100% of the admitted provident fund dues, whereas employee payout as mentioned is only 10% of the provident fund dues. It is useful to extract the table which is part of Form-H, with regard to 'Operational Creditors' and payment to workmen and employees, following have been noticed:

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Plan#	Amount Provided to the amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7_
		(a) Related Party of Corporate Debtor				
3	Operational Creditors	(b) Other than (a) above:	7,88,93,60,341	7,53,33,96,050		
		(i) Government (Other than Provident Fund dues and secured government dues)				
		(ii) PF	10,51,00,841	10,51,00,841	10,51,00,841	100
		(iii) Secured Government Dues	3,017,077,603	2,154,675,221	46,63,97,392	22
		Total Government Dues [(a) + (b)]	11,01,15,38,785	9,79,31,72,112	57,14,98,233	
		(i) Workmen	-	-	Nil	0
		(ii) Employees	84,44,98,945	61,79,77,862	6,30,10,916	10
		(iii) Vendors	1,48,16,94,249	79,83,85,564	Nil	0
		Total [(a) + (b)]	13,33,77,31,979	11,20,95,35,538	63,45,09,149	6

17. We have also noticed the Resolution Plan, which mentions that against employees' column, admitted claim is Rs.61,79,77,862/-, only Rs.6,30,10,916/- has been proposed to be paid, which also includes the unpaid dues of gratuity fund. The submission of the Appellant that payment of unpaid gratuity dues has to be in addition to payout of Rs.6,30,10,916/- is not substantiated from relevant Clauses of the Resolution Plan. Relevant Clause is Clause 13.1.2, which clearly provides that all employees dues, including gratuity dues has to be paid from Rs.6,30,10,916/-. The Resolution Plan has been approved by the CoC and Adjudicating Authority. The submission, which has been advanced by the Appellant is on the basis of note in Form-H, which was prepared by the RP providing for summary of the Resolution Plan and the payouts. The Adjudicating Authority in the impugned order under the heading "Salient Features of the Resolution Plan" has noted the key features and summary of the final plan in paragraph 20. In paragraph 20, in Clause-D, 'Treatment of Operational Creditors (Employees)' has been dealt with, which is as follows:

"D) TREATMENT OF OPERATIONAL CREDITORS (EMPLOYEES)

i) The Resolution Applicant proposes to pay Rs. 6,30,10,916 (Rupees Six Crore Thirty Lakhs Ten Thousand Nine Hundred and Sixteen) towards employees claims ("Employee Payment Amount") as set out in the List of Claims to the Employees of the Corporate Debtor, on a pro-rata basis, towards full and final discharge/ settlement of their Claims and Rs. 10,51,00,841 (Indian Rupees Ten Crore Fifty One Lakhs

Eight Hundred and Forty One) towards provident funds, pension fund or gratuity funds of the Employees.

ii) In case of excess Employees Dues (“Excess Employee Dues Amount”), the same shall be paid in full by the Corporate Debtor which shall be adjusted from the Total SFC Payment Amount.”

18. Thus, the Adjudicating Authority has also noted the payout of Rs.6,30,10,916/-, which is towards full and final discharge of the claims and Rs.10,51,00,841/-is towards provident funds, pension fund and gratuity funds.

19. As noted above, there is no dispute between the parties that amount of Rs.10,51,00,841/-, only related to provident fund dues, which has been 100% admitted and 100% paid. Obviously, the unpaid gratuity dues of the employees has to fall in the payout of Rs.6,30,10,916/-, which is payment for the employees. The Resolution Plan does not indicate that gratuity payments were contemplated in addition to the payment of Rs.6,30,10,916/-, as contended by the Appellant. The RP in paragraph 14 of the affidavit in Clause (d) has stated following with regard to payout of dues, outstanding towards gratuity in full:

“(d)Payout of dues outstanding towards gratuity in full:

(i) In accordance with applicable law and judicial pronouncements, the Resolution Plan is required to provide for the payment of gratuity dues in full.

(ii) Clause 13.1.2 of the Resolution Plan expressly stipulates that an amount of INR 6,30,10,916/- (Indian Rupees Six Crore Thirty Lakhs Ten Thousand Nine Hundred and Sixteen) (“Employee Payment Amount”) shall be paid as full and final satisfaction against the total outstanding employees’ claims including (i) any claims relating to unpaid dues of the Corporate Debtor towards provident funds, pension fund, or gratuity funds of the employees in full and (ii)

the balance amounts towards their salary dues on a pro-rata basis.

(iii) Further, Clause 13.1.4 of the Resolution Plan provides that if the Employee Payment Amount is insufficient to cover the gratuity dues as required under applicable law, the shortfall may be met by deducting the necessary additional amount from the payout proposed for the secured financial creditors of the Corporate Debtor. However, in the facts of the present CIRP, the Employee Payment Amount is sufficient to cover the gratuity dues as required under applicable law as on the date of filing of this Reply.

(iv) It is important to clarify that several employees submitted their claims without providing a breakup of their claim. They did not specify the amounts attributed to outstanding salary or gratuity from the claim amount submitted. Further, even as on the date of submission of the Resolution Plan, the said bifurcation was not available.

(v) The answering Respondent has made several attempts by writing various emails to the employees seeking bifurcation of their claim amount. The answering Respondent has been receiving the breakup from the employees, and based on the supporting documents provided by the employees, the total amount of outstanding gratuity dues is INR 3,02,95,411/- as on the date of filing of this Reply.

(vi) Further, the answering Respondent understands that the gratuity dues are required to be paid in full and therefore the entire gratuity dues crystallized as on the date of making payment towards the claims of operational creditor from the Resolution Plan's consideration shall be paid in full as provided under Clause 13.1.2 and 13.1.4 of the Resolution Plan. Accordingly, the Resolution Plan provides for the payment towards the gratuity dues in full.

(vii) After deducting dues towards gratuity, the balance Employee Payment Amount (if available) shall be distributed among the employees' claims on a *pro rata* basis in terms of Clause 13.1.2 of the Resolution Plan."

20. The Resolution Applicant has also supported the Resolution Plan and the submissions advanced by the RP explaining the various clauses of the Resolution Plan.

21. The claims filed by the employees was of Rs.6,01,09,164/- at the time of submission of the Plan and only 10% of the admitted claim are being proposed to be paid, as is clear from the payment proposal noted above. The Clauses of the Resolution Plan 13.1.2, 13.1.3 and 13.1.4, which deal with Operational Creditors (employees and workmen) cannot be interpreted to mean that payment of full gratuity dues was in addition to payout of Rs.6,30,10,916/- as proposed. Rather, the gratuity was also included in the payout of Rs.6,30,10,916/- and the Clause 13, further contemplated that in event any additional amount become due and payable, under any order towards provident fund and gratuity, under orders of Supreme Court or any other Court, the same shall be paid by the CD out of the total SFC payment amount. In the present case, the RP in the email dated 24.04.2025 indicated that the total amount of gratuity dues is only Rs.2,86,32,757/-, i.e. well within payout proposed for employees. Thus, the email sent by the RP, proposing for balance amount to be paid on a pro-rata basis is in accordance with the Resolution Plan. We do not find any inconsistency or contradiction in the Resolution Plan as contended by the Appellant. It is not the case of the Appellant that Resolution Plan violated any provisions of Section 30, sub-section (2) or it is not in compliant of provisions of the IBC. The Resolution Applicant and the RP have also contended that as per value of Resolution Plan and payment to the Secured Financial Creditors, the liquidation value of the employees is Nil and the Plan purposes to make payment to employees despite the liquidation value being Nil.

22. Learned Counsel for the Appellant also during the submission sought to raise question of valuation of the CD, which cannot be allowed to be raised at this stage. In the Form-H, which has been filed by the RP, the liquidation value and the fair value of the CD have already been mentioned. Average liquidation value being Rs.1080 crores and fair value being Rs.1668 crores, the Plan value submitted by Resolution Applicant is more than fair value of the CD.

23. In view of our foregoing discussions, we are of the view that there is no inconsistency or illegality in the impugned order dated 01.04.2025 approving the Resolution Plan. The payout to the employees is as per the approved Resolution Plan. We do not find any substance in submissions of the Appellant, so as to interfere with the order approving the Resolution Plan. There is no merit in the Appeal. The Appeal is dismissed. Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

21st August, 2025

Ashwani