



W.P.No.26259 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.03.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.26259 of 2019

Indu Employees Progressive Union,
registered no.36 NLG & Affiliated to LPF
rep. By its President,
Mr.N.Srinivasan
No.69-B, Perraichi Illam
Alai Sait Compound,
Coonoor, Nilgiris District 643 102

... Petitioner

Vs.

1. Government of India
rep. By its Secretary,
Department of Heavy Industry
Ministry of Heavy Industries and
Public Enterprises, Udyog Bhavan
New Delhi – 100 011
2. The Chairman and Managing Director,
Hindustan Photo Film Manufacturing Co., Ltd.,
Indu Nagar, Ootacamund,
Nilgiris – 643 005
3. The Commissioner of Income Tax (TDS)
No.121, Uthamar Gandhi Salai,
Chennai – 600 034
4. The Regional Labour Commissioner (Central)
Office of the Regional Labour Commissioner (Central)
Kanaga Apartments, Suit No.3, 1st Floor,
13-A, Lady Doak College Road,
Chinna Chokkikulam, Madurai – 625 002



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5. Deputy General Manager (Human Resource)
Hindustan Photo Film Manufacturing Co., Ltd.,
Indu Nagar, Ootacamund, Nilgiris – 643 005

... Respondents

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Writ Petition is filed under Article 226 of Constitution of India to issue a Writ of Mandamus directing the 1st and 2nd respondents to pay the 22 months pending salaries from 01.07.2016 to 24.04.2018 to the 167 petitioner union employees and consequently direct the 1st and 2nd respondents to effect the VRS accordingly from 24.04.2018 instead of effecting from 30.06.2016.

For Petitioner : Mr.A.Saravanan

For Respondents : Mr.Venkataswamy Babu for R1 and R4
Mr.Aiyar & Doila for R2
Dr.B.Ramaswamy for R3

ORDER

The present Writ Petition has been filed for issuance of a Writ of Mandamus directing the 1st and 2nd respondents to pay the 22 months pending salaries from 01.07.2016 to 24.04.2018 to the 167 petitioner union employees and consequently direct the 1st and 2nd respondents to effect the VRS accordingly from 24.04.2018 instead of effecting from 30.06.2016.



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2. The learned counsel on either side submitted that the similar issue which is involved in the present writ petition has been placed before the National Company Law Tribunal and this matter may also be transferred to be clubbed with the same. In support of the same, the learned counsel has produced a order dated 18.05.2020 passed in Comp.A.No.429 of 2019 in C.P.No.114 of 2003, wherein the prayer was to transfer the said Company Petition No.114 of 2003 to the National Company Law Tribunal, Chennai Bench, to initiate Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 for speedy and expeditious disposal of the company petition. This Court, after hearing the parties, passed an order on 18.05.2020, following the order passed by the Hon'ble Supreme Court in **Jaipur Metals and Electricals Employees Organisation Vs. Jaipur Metals and Electricals Ltd.,** and the said petition was allowed as prayed for. The operative portion of the said order reads as follows:-

“11. The Language of this Judgment is therefore, emphatic and imperative that as a rule all proceedings under Section 20 of the SICA pending before the High Court shall continue to be heard by the High Court. However, if any party files an application to transfer such proceedings to the NCLT post



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17.08.2018, the High Court is left with no other alternative but to transfer the proceedings.

12. In the instant case, the proceeding is only at the notice stage and it is only C.P.No.21 of 1995 that has been admitted. The Official Liquidator is yet to be appointed as per the provisions of the Act. The argument of the Third respondent that once the recommendation of the BIFR has been approved by this Court what remains is only the Ministerial Act of winding up cannot be countenanced. Once the petition is received from the BIFR it is thereafter numbered as a Company Petition and the entire procedure envisaged for a winding up proceedings has to be followed to the letter. Further the creditors and contributories of the company are also to be paid their dues first as the case of the Workmen.

*13. Therefore, in the light of the Language of the Judgment in *Jaipur Metals and Electricals Employees Organisation Vs. Jaipur Metals and Electricals Ltd*, this Court has no other alternative but to allow the application. It is needless to state that this order does not affect the rights of the workmen granted to them in the Writ proceedings as upheld by the Hon^{ble} Supreme Court.*

14. In the result, A.No.429 of 2019 is allowed and C.P.No.114 of 2003 stands transferred to the file of the National Company Law Tribunal, Chennai Bench, to initiate Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016.

3. In view of the above, since the prayer sought for by the petitioner-Union is also identical, the present writ petition is closed and the proceedings in the writ petition stands transferred to the file of the National



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Company Law Tribunal, Chennai Bench. No costs.

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Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Order
ssd

Note: Registry is directed to transmit entire bundle (In-original) to the National Company Law Tribunal, Chennai



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V.BHAVANI SUBBAROYAN, J.,

ssd

To

1. Government of India
rep. By its Secretary,
Department of Heavy Industry
Ministry of Heavy Industries and
Public Enterprises, Udyog Bhavan
New Delhi – 100 011
2. The Chairman and Managing Director,
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