

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.20978 of 2017**

JK JUTE MILL MAZDOOR MORCHA ...APPELLANT

VERSUS

JUGGILAL KAMLAPAT JUTE MILLS
COMPANY LTD. THROUGH ITS DIRECTOR
& ORS. ...RESPONDENTS

J U D G M E N T

R.F. NARIMAN, J.

1. The present appeal raises an important question as to whether a trade union could be said to be an operational creditor for the purpose of the Insolvency and Bankruptcy Code, 2016 [**“Code”**]. The facts of the present case reveal a long-drawn saga of a jute mill being closed and reopened several times until finally, it has been closed for good on 07.03.2014. Proceedings were pending under the Sick Industrial Companies (Special Provisions) Act, 1985. On 14.03.2017, the appellant issued a demand notice on behalf of

roughly 3000 workers under Section 8 of the Code for outstanding dues of workers. This was replied to by respondent No.1 on 31.03.2017. The National Company Law Tribunal [“**NCLT**”], on 28.04.2017, after describing all the antecedent facts including suits that have been filed by respondent No.1 and referring to pending writ petitions in the High Court of Delhi, ultimately held that a trade union not being covered as an operational creditor, the petition would have to be dismissed. By the impugned order dated 12.09.2017, the National Company Law Appellate Tribunal [“**NCLAT**”] did likewise and dismissed the appeal filed by the appellant before us, stating that each worker may file an individual application before the NCLT.

2. Shri Gopal Jain, learned Senior Advocate appearing on behalf of the appellant took us through various provisions of the Code and the Trade Unions Act, 1926, [“**Trade Unions Act**”] and cited a Division Bench judgment of the Bombay High Court in **Sanjay Sadanand Varrier v. Power Horse India Pvt. Ltd.**, (2017) 5 Mah LJ 876 [“**Sanjay Sadanand Varrier**”] to argue that even literally speaking, the provisions of the Code would lead to the result that a

trade union would be an operational creditor within the meaning of the Code. Even otherwise, a purposive interpretation ought to be granted, as has been done in various recent judgments to the provisions of the Code, and that therefore, such an application by a registered trade union filed as an operational creditor would be maintainable. Shri Gaurav Kejriwal, learned Advocate appearing on behalf of respondent No.2 has supported the arguments advanced by Shri Gopal Jain.

3. On the other hand, Shri Navaniti Prasad Singh, Shri Jayant K. Sud, and Shri Anip Sachthey, learned Senior Advocates appearing on behalf of respondent No.1 supported the NCLAT judgment to argue that as no services are rendered by a trade union to the corporate debtor to claim any dues which can be termed as debts, trade unions will not come within the definition of operational creditors. That apart, each claim of each workman is a separate cause of action in law, and therefore, a separate claim for which there are separate dates of default of each debt. This being so, a collective application under the rubric of a registered trade union would not be maintainable.

4. Section 5(20) of the Code defines operational creditor as follows:

“5. Definitions.—In this Part, unless the context otherwise requires,—

xxx xxx xxx

(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;

xxx xxx xxx”

Section 5(21) defines operational debt as follows:

“5. Definitions.—In this Part, unless the context otherwise requires,—

xxx xxx xxx

(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;

xxx xxx xxx”

Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 states as follows:

“6. Application by operational creditor.—(1) An operational creditor, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under Section 9 of the Code in Form 5, accompanied with documents and records required therein and as specified in the Insolvency and

Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(2) The applicant under sub-rule (1) shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor.”

Form 5, to which Rule 6 refers, contains Part V, in which the note states:

“*Note:* Where workmen/employees are operational creditors, the application may be made either in an individual capacity or in a joint capacity by one of them who is duly authorised for the purpose.”

An operational creditor refers to any “person”. “Person” is defined under Section 3(23) of the Code to include the following:

“3. Definitions.—In this Code, unless the context otherwise requires,—

xxx xxx xxx

(23) “person” includes—

- (a) an individual;
- (b) a Hindu Undivided Family;
- (c) a company;
- (d) a trust;
- (e) a partnership;
- (f) a limited liability partnership; and
- (g) any other entity established under a statute, and includes a person resident outside India;

xxx xxx xxx”

5. When we come to the Trade Unions Act, Section 2(h) defines a trade union as follows:

“2. Definitions.—In this Act, ‘the appropriate Government’ means, in relation to Trade Unions whose objects are not confined to one State, the Central Government, and in relation to other Trade Unions, the State Government, and, unless there is anything repugnant in the subject or context,—

xxx xxx xxx

(h) “Trade Union” means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions;

xxx xxx xxx”

Equally, trade disputes under the said Act are defined under Section 2(g) as follows:

“2. Definitions.—In this Act, ‘the appropriate Government’ means, in relation to Trade Unions whose objects are not confined to one State, the Central Government, and in relation to other Trade Unions, the State Government, and, unless there is anything repugnant in the subject or context,—

xxx xxx xxx

(g) “trade dispute” means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which

is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person, and “workmen” means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises; and
xxx xxx xxx”

Section 8, Section 13, and Section 15(c) and (d) are relevant and state:

“8. Registration.—The Registrar, on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration.”

“13. Incorporation of registered Trade Unions.—Every registered Trade Union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued.”

“15. Objects on which general funds may be spent.—The general funds of a registered Trade Union shall not be spent on any other objects than the following, namely,—

xxx xxx xxx

(c) the prosecution or defence of any legal proceeding to which the Trade Union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Trade Union as such or any rights arising out of the relations of

any member with his employer or with a person whom the member employs;

(d) the conduct of trade disputes on behalf of the Trade Union or any member thereof;

xxx xxx xxx”

6. On a reading of the aforesaid statutory provisions, what becomes clear is that a trade union is certainly an entity established under a statute – namely, the Trade Unions Act, and would therefore fall within the definition of “person” under Sections 3(23) of the Code. This being so, it is clear that 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. Rule 6, Form 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 also recognises the fact that claims may be made not only in an individual capacity, but also conjointly. Further, a registered trade union recognised by Section 8 of the Trade Unions Act, makes it clear that it can sue and be sued as a body corporate under Section 13 of that Act. Equally, the general fund of the trade union, which *inter alia* is from collections from workmen who are its members, can certainly be spent on the conduct of disputes involving a member or members thereof or for

the prosecution of a legal proceeding to which the trade union is a party, and which is undertaken for the purpose of protecting the rights arising out of the relation of its members with their employer, which would include wages and other sums due from the employer to workmen.

7. The Bombay High Court in **Sanjay Sadanand Varrier** (supra), after setting out various provisions of the Trade Unions Act, including Section 15, has held:

“13. As can be seen from the said section, Registered Trade Unions can prosecute or defend any legal proceeding to which the Trade Union or member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any right of the Trade Union as such, or any rights arising out of the relations of any member with his employer or with a person whom the member employs. In fact, the Trade Union can even spend general funds on the conduct of trade disputes on behalf of the Trade Union or any member thereof.

14. On a conjoint reading of the provisions of the Companies Act, 1956 and more particularly sections 434 and 439 as well as the provisions of the Trade Unions Act, 1926, we are clearly of the view that looking to the mandate of sections 13 and 15 of the Trade Unions Act, 1926, there is no doubt in our mind that a Petition for winding up would be maintainable at the instance of the Trade Union. This is for the simple reason that section 15(c) and (d) clearly mandates that the prosecution or defence of any proceeding to which the Trade Union or

any member thereof is a party as well as the conduct of trade disputes on behalf of the Trade Union or any member thereof can be done by the Trade Union. This would clearly go to show that the Trade Union, for and on behalf of its members can certainly prefer a winding up Petition as contemplated under section 439 of the said Act. This is for the simple reason that if the workmen have not been paid their wages and/or salary by the Company, they would certainly be a creditor or creditors as contemplated under section 439(1)(b) of the Companies Act, 1956. Section 15 clearly mandates that the Trade Union can take up this cause for and on behalf of its members. Hence, after complying with the provisions of section 434 of the Companies Act, 1956 the Trade Union would certainly be competent to present a winding up Petition.”

8. No doubt, this judgment was in the context of a winding up petition, but the rationale based upon Section 15(c) and (d) equally applies to a petition filed under the Code.

9. However, learned counsel appearing on behalf of respondent No. 1 have cited the judgment reported as **Commissioner of Income Tax (TDS), Kanpur and Anr. v. Canara Bank**, (2018) 9 SCC 322 [**“Canara Bank”**]. This judgment dealt with the expression “established by or under a Central, State or Provincial Act” contained in Section 194-A(3)(iii) of the Income Tax Act, 1961. After exhaustively reviewing the case law on the subject, this Court came

to the conclusion that the NOIDA authority was established as an authority under the State Act. While dealing with several judgments of this Court, the Court, in paragraphs 20, 24, and 25, followed judgments stating that a company incorporated and registered under the Companies Act cannot be said to be “established” under the Companies Act. The context of Section 3(23) of the Code shows that this judgment has no application to the definition contained in Section 3(23). Here, a “person” includes a company in clause (c), and would include any other entity established under a statute under clause (g). It is clear that clause (g) has to be read *noscitur a sociis* with the previous clauses of Section 3(23). This being the case, entities such as companies, trusts, partnerships, and limited liability partnerships are all entities governed by the Companies Act, the Indian Trusts Act, and the Partnership Act, which are not “established” under those Acts in the sense understood in **Canara Bank** (supra) and the judgments followed by it. The context, therefore, in which the phrase “established under a statute” occurs, makes it clear that a trade union, like a company, trust, partnership, or limited liability partnership, when registered under the Trade

Union Act, would be “established” under that Act in the sense of being governed by that Act. For this reason, the judgment in **Canara Bank** (supra) would not apply to Section 3(23) of the Code.

10. Even otherwise, we are of the view that 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. under the provisions of the Code read with Regulations 31 and 33 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Looked at from any angle, there is no doubt that a registered trade union which is formed for the purpose of regulating the relations between workmen and their employer can maintain a petition as an operational creditor on behalf of its members. We must never forget that procedure is the handmaid of justice, and is meant to serve justice. This Court, in **Kailash v. Nanhku and Ors.**, (2005) 4 SCC 480, put it thus:

“28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in *Sushil Kumar Sen v. State of Bihar* [(1975) 1 SCC 774] are pertinent: (SCC p. 777, paras 5-6)

“The mortality of justice at the hands of law troubles a judge’s conscience and points an angry interrogation at the law reformer.

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. ... Justice is the goal of jurisprudence — processual, as much as substantive.”

29. In *State of Punjab v. Shamlal Murari* [(1976) 1 SCC 719 : 1976 SCC (L&S) 118] the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that: (SCC p. 720)

“Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and

not the mistress, a lubricant, not a resistant in the administration of justice.”

In *Ghanshyam Dass v. Dominion of India* [(1984) 3 SCC 46] the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle.”

This judgment was followed by the Constitution Bench decision in **Sarah Mathew v. Institute of Cardio Vascular Diseases and Ors.**, (2014) 2 SCC 62 [at paragraph 49].

11. The NCLAT, by the impugned judgment, is not correct in refusing to go into whether the trade union would come within the definition of “person” under Section 3(23) of the Code. Equally, the NCLAT is not correct in stating that a trade union would not be an operational creditor as no services are rendered by the trade union to the corporate debtor. What is clear is that the 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. Equally, to state that for each workman there will be a separate cause of action, a separate claim,

and a separate date of default would ignore the fact that a joint petition could be filed under Rule 6 read with Form 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, with authority from several workmen to one of them to file such petition on behalf of all. For all these reasons, we allow the appeal and set aside the judgment of the NCLAT. The matter is now remanded to the NCLAT who will decide the appeal on merits expeditiously as this matter has been pending for quite some time. The appeal is allowed accordingly.

..... J.
(R. F. Nariman)

..... J.
(Vineet Saran)

New Delhi.
April 30, 2019.