

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

**IA No.243/ALD/2021
in
CP (IB) No. 55/ALD/2017**

In the matter of:
LML Limited through
Liquidator

...

Applicant

Versus

Government of NCT of Delhi
Through Assistant Collector
Grade-I/II & another

...

Respondents

**IA No.351/ALD/2021
in
CP (IB) No. 55/ALD/2017**

In the matter of:
Vijay Bahadur Kushwaha and others

...

Applicants

Coram:

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Virendra Kumar Gupta

: Member (Technical)

Appearances (through video conference):

For Applicant in IA No. 243/2021

: Mr. Shubham Agarwal, Advocate

For Applicant in IA No. 351/2021

: Ms. Bushra Maryam, Advocate

Order reserved on: 22.03.2022

Order pronounced on: 06.04.2022

ORDER

Rajasekhar V. K., Member (Judicial)

IA No.351/ALD/2021:

1. This application has been filed for impleadment of the applicants herein, in IA No.243/ALD/2021 which has been filed by some other employees. There is no objection to this from any quarter. Since there is commonality of interest and cause, this application is allowed. The Applicant is directed to implead the applicants herein as party respondents in IA No.243/ALD/2021. The application shall disposed of with these directions.

—Sd—

IA No.243/ALD/2021

2. The facts, in brief, are that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP) *vide* Order dated 30th May 2017 of this Adjudicating Authority. Since no Resolution Plan was received, order for initiation of liquidation of the Corporate Debtor was passed on 23rd March, 2018.
3. There were certain litigations in regard to dues of the certain employees of the Corporate Debtor which were existing as on the date of commencement of liquidation. The proceedings in respect of all the employees are of the same nature. In regard to such cases, an award was passed by the Competent Labour Authority on 30th September 2020. Recovery certificate has been issued on 25th May 2021. The proceedings for recovery of the amount due as land revenue were initiated thereafter.
4. These proceedings have happened in spite of the fact that the liquidator apprised the Assistant Labour Authorities that the Corporate Debtor is under liquidation and the amount of claim filed by them and admitted by the liquidator would have to be distributed only in terms of section 53 of the Insolvency & Bankruptcy Code, 2016 (IBC). The proceedings also state that the amounts in question shall be recovered from the personal property of the liquidator.
5. It is in these circumstances that the liquidator has filed this application wherein the certain interim directions were issued by this Adjudicating Authority to the concerned Labour Authority who was the Recovery Officer. The prayer is that the recovery notices be declared as null and void and the respondent no. 1 and 2 be directed to not to act upon such recovery notices and to act in terms of section 238 read with Section 53 of the IBC 2016 and regulation 44 of Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

—Sd—

6. We have heard the submissions made on behalf of the liquidator and perused the material on record. It is not in dispute that proceedings for recovery of certain sums belonging to the ex-employees were pending on the liquidation commencement date. Rather, the proceedings have been pending before the passing of the order of commencement of CIRP. The moratorium under section 14 applies only for the period when CIRP is going on. Once the liquidation order is passed, the moratorium as provided under section 14 of the Code comes to an end. As per section 33(5) of the Code, after passing of liquidation order no suit or legal proceeding can be instituted by or against the Corporate Debtor. Admittedly in the present case, the proceedings were already existing and those have been continued and culminated during the liquidation period. Hence, its cannot be said that such proceedings are void and be declared so. Thus, this prayer of liquidator is rejected.
7. The next question arises for our consideration is that whether such claims of employees are of the nature of the operational debts or outstanding money belongs to them exclusively. In this regard, as far as PF and Gratuity is concerned, it cannot be argued that the same forms part of the liquidation estate in terms of provisions of section 36(4)(a)(iii) of the Code. Therefore, the same will not be amenable to the waterfall mechanism provided under section 53 of the Code for distribution.
8. Hence, we direct the liquidator to verify the composition of the award. If the whole or any part of the award pertains to payment of provident fund dues or gratuity, payments shall be made without waiting for realisation of all assets of the Corporate Debtor and final distribution thereof. No o coercive action may be taken against the personal property of the liquidator.
9. However, if any sum is required to be paid to such employees pertaining to outstanding wages or pertaining to their employment, the same would fall in the category of operational debt as defined in section 5(21) of the Code. Therefore, such claims would be dealt in terms of section 53 of the Code.

—Sd—

10. As far as dues on account of pension, PF or Gratuity, if any are concerned, these would not form part of liquidation estate as stated earlier, hence recovery proceedings in regard to such claims of these employees can be pursued by such authorities.
11. As regard to the validity of recovery proceedings in respect of the dues of such employees which fall within the ambit of operational debt, such recovery proceedings are declared null and void as these are inconsistent with the specific provisions of section 53 of the Code. Therefore, we direct the recovery authorities not to go ahead with such proceedings any further, since the liquidator can act only in terms of the Code and not *de hors* thereof.
12. IA No.243/ALD/2021 shall stand disposed of in terms of the above directions.
13. The Registry is directed to communicate a copy of this order to the parties or to their counsel on record immediately.
14. Urgent certified copies of his order, if applied for, are supplied to the parties upon compliance of all requisite formalities.

—Sd—

Virendra Kumar Gupta
Member (Technical)

Rajasekhar
V K

Digitally signed by Rajasekhar V K
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Rajasekhar V.K.
Member (Judicial)