IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

CA No. 294/2019
In
CP No.(IB) 223/ALD/2018

IN THE MATTER OF :
SRI SUPRIYO KUMAR CHAUDHURI
(Resolutional Professional of
JVL Agro Indstries Ltd)

............................Applicant

IN THE MATTER OF :

STANDARD CHARTERED BANK **............FINANCIAL CREDITOR**

VS

JVL AGRO INDUSTRIES LTD. **.,......CORPORATE DEBTOR(In liquidation)**

ORDER DELIVERED ON:10.12.2020

CORAM:
HON'BLE MR. JUSTICE (RETD.) RAJESH DAYAL KHARE, MEMBER, JUDICIAL

Counsel for the Applicant : Mr. Yash Tondon, Advocate

PER SE: MR. JUSTICE (RETD.) RAJESH DAYAL KHARE, MEMBER (JUDICIAL)

Order

The present application has been filed u/s 60(5) of the Insolvency and Bankruptcy Code, 2016 on behalf of the liquidator with the prayer for leave to be granted to the applicant to make payment of the premium of gratuity policy of Life Insurance Corporation Of India which has become due and further to take appropriate steps to buy new policy for covering all eligible employees and to include all the uncovered eligible employees in the existing gratuity policy of LIC by paying premium amount of Rs.2,45,06255/- and to pay gratuity to the eligible employees of the corporate debtor who have resigned or superannuated after the commencement of CIRP.

The facts of the case in brief is that the, the CIRP has commenced against the corporate debtor i.e JVL Agro Industries Ltd. vide order dated 25th July, 2018 and moratorium was declared and Ms Supriyo Kumar Choudhary was appointed as the Resolution Professional of the corporate debtor. Further as no resolution plan was approved by COC thus Adjudicating Authority vide its order dated 19th August, 2020 has

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allowed the liquidation application and the Applicant was appointed as the liquidator of the corporate debtor.

As per the averments made in the application, the corporate debtor has factories and offices and has employed nearly 500 employees.

It is further stated that the corporate debtor had taken a gratuity policy from the Life Insurance Corporation of India for only 92 of its employees in the year 2017 for which the annual gratuity contribution was arranged to be paid by the Resolution Professional till September, 2019 during the CIRP period. Further, the next renewal contribution of the policy in respect of the said group gratuity policy fell due for payment on 4th September, 2020, the said renewal contribution was not paid and the liquidation order was passed.

It is also stated that a list of 92 employees covered under the gratuity policy has rendered not less than 5 years of continuous service to the corporate debtor prior to the commencement of the CIRP and also during the CIRP period, is entitled to get gratuity in law and also entitled to get statutory interest for late disbursement of the gratuity amount.

Further stated that there are around 403 employees of the corporate debtor who are not covered by the existing gratuity policy of LIC and some of the employees of the corporate debtor besides 403 have superannuated or resigned after the start of CIRP of the corporate debtor who are also not covered by gratuity policy of LIC.

The liquidator has stated that he had made a public announcement on 24th August, 2020 wherein several of the employees of the corporate debtor who have being discharged from service subsequent to the passing of the liquidation orders, have lodged their claims on account of their unpaid dues including gratuity. It is further stated that the LIC has expressed and informed that the remaining 403 eligible employees not covered by the group gratuity policy of LIC can be covered either by adding or including in the existing group gratuity policy or by issuing a separate group gratuity policy provided additional contribution towards fast service gratuity upto 31st March, 2020 amounting to Rs.2,45,06,255/- is paid by the corporate debtor and the

-Sd-applicant further states that corporate debtor has fund in the liquidation estates for making payments of the same.

After hearing the Ld. counsel for the liquidator and relying on the judgment of ***"Alchemist Asset Reconstruction Company Limited Vs. Moser Baer India Ltd"*** which has also been upheld by NCLAT in which it was observed in para 3 that *"u/s 36 (41) (a) (m), the expression liquidation estate has been defined and it is clarified that all sums due to any workmen or employee from the provident fund, pension fund and gratuity fund, were not to constitute and included in the expression "liquidation estates assets". Once the sum due to any workmen or employee from the provident fund, pension fund and gratuity fund are not constituting apart of the liquidation estate, we fail to understand as to how section 53 would be invoked alongwith its explanation. According to Section 53 the proceeds from the sale of liquidation estates are to be distributed in the manner specified therein. Therefore, the aforesaid amount of the workmen dues cannot be a part of liquidation estates assets."*

Referring to the above, this Adjudicating Authority is of the view that as the gratuity amount due does not form part of the liquidation estate and the corporate debtor has fund in the liquidation estate for making payment of the same, therefore, the liquidator is directed to make payment of the gratuity policy of LIC which has become due and also to buy new policy for covering all the eligible employees including all uncovered eligible employees by paying premium amount and is also directed to pay gratuity to the eligible employees who have resigned or superannuated after the commencement of CIRP.

With the following observation and directions, IA NO. 294/2020 is hereby allowed and accordingly, disposed of.

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JUSTICE RAJESH DAYAL KHARE
MEMBER (JUDICIAL)

Dated: 10.12.2020

Swati Gupta
(LRA)