



S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1**  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
04-05-2023 AT 10:30 AM

**Cont. A (IBC) 8/2023 in CP (IB) No. 111/7/HDB/2017**  
u/s. 7 of IBC, 2016

**IN THE MATTER OF:**

IDBI Bank Limited

...**Financial Creditor**

**VS**

Lanco Infratech Limited

...**Corporate Debtor**

**C O R A M:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**CA.No.8 of 2023 in IA.No.96 of 2019**

1. This is an application filed by the ex-employees of the Corporate Debtor, for a direction to the Respondent/Liquidator to forthwith comply with the order of this Tribunal in IA.No.96/2019 dated 01.10.2019, i.e. to pay their gratuity dues to the Petitioners together with simple interest @10% till the date of payment, for the delayed payment and in *default* to initiate contempt proceedings against the Respondent.
2. According to the applicants, this Tribunal vide order in IA.No.96/2019 dated 01.10.2019 while allowing the said IA directed the Liquidator to make necessary arrangements for payment of gratuity to the applicants as per their eligibility and the said amount shall not be treated as part of the liquidation estate. Aggrieved by the said order the Liquidator had preferred an Appeal before Hon'ble NCLAT, which has been allowed. However, the Civil Appeal No.2520/2020 preferred by the Petitioners as against the order of Hon'ble NCLAT before the Hon'ble Supreme Court of India, has been allowed vide the order dated 07.02.2023 whereby *the order of the Hon'ble NCLAT has been set aside and the order of this Tribunal dated 28.02.2023 has been restored*. Therefore, for noncompliance of the order of this Tribunal dated 01.10.2019, this application is filed for its forthwith implementation and in default to initiate contempt proceedings against the liquidator.



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3. A calculation memo showing the entitlement of gratuity together with simple interest @ 10% calculated up to 28.02.2023 for the delayed payment also has been filed along with the Petition.
  
4. The Liquidator filed a reply *inter-alia*, contending that during the CIRP of the Corporate Debtor the resolution professional had made full and final payment to the employees who continued to serve the Corporate Debtor during the CIRP and by virtue of the *interim orders* passed by the Hon'ble Supreme Court of India on 12.06.2020 an amount of Rs.2.24 Crores was earmarked for payment of gratuity to the applicant employees. It is stated that the liquidator had received a legal notice from the counsel for the applicants demanding payment of gratuity along with interest within 7 days and while the liquidator has been awaiting the decision to be taken by the stakeholders in this regard the present application has been filed. The Respondent states that the gratuity payment will be made since necessary provision has already been made as per the interim order of the Hon'ble Supreme Court of India and the Respondent has no intention to avoid making payment to any of the Petitioners who are entitled to receive the same. The Respondent has also enclosed a list of eligible applicants for payment of gratuity in terms of the order of this Tribunal and the said list contains 47 workmen only. In so far as, the remaining 7 ex-employees are concerned, the liquidator contended that 3 workmen namely B.Anjaneyulu, Ch.V.Narasimharaju and Sarpam Kotilingam were already paid fully as such nothing is payable to them. In so far as Ashwini Kumar Vinayak is concerned according to the liquidator he is not eligible for payment of gratuity since he has not put in the requisite mandatory period of service for getting eligibility to claim gratuity. In so far as claim of Ashwini Kumar Vinayak is concerned the Liquidator contended that he is not eligible for payment of gratuity as he was not in continuous service for a period of five years. As regards the rest of the 3 workmen namely, Shivakumar Appala, V.Srihari and Avinindar Gupta are concerned the Liquidator has stated that they have been paid partly therefore, are only entitled for part payment of gratuity. A separate list of the above 7 employees with objections has been filed by the liquidator.



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5. In so far as payment of interest is concerned the liquidator submits that the petitioners are not entitled for the same. The Liquidator further submitted that in addition to the Petitioners there are some more employees of the Corporate Debtor who are also eligible for payment of gratuity and other amounts, and all such claims shall have to be met only out of the sum of 2.24 crores in deposit, therefore the claim for interest may be dis allowed. The liquidator further submits that upon receipt of the directions from this Tribunal she is prepared to immediately disburse the amounts as per the directions of this Tribunal.
6. However, Ld. Counsel for the applicants submits that, all the 7 employees are eligible to receive the gratuity on par with the rest of the employees Learned counsel in this regard submits that the plea that the 3 workmen B.Anjaneyulu, Ch.V.Narasimharaju, Sarpam Kotilingam were paid fully is unsustainable in as much as the liquidator has not placed any proof as to payment of the gratuity but is trying to establish payment of gratuity by relying on the “other payments made to these applicants”. Learned counsel submits that the amount paid under head other payments, in the absence of details cannot be accepted as the same was not towards gratuity. However, liquidator contended that though the other payment does not mention that the same was paid towards gratuity, but since the gratuity being the statutory payment having preference over all the other payment must be construed as payment of gratuity.
7. Refuting the plea of the liquidator that Ashwini Kumar Vinayak is not eligible for payment of gratuity as he was not in continuous service for a period of five years, Ld Counsel contended that Ashwini Kumar Vinayak has worked for four years and twenty seven days which is same as four years 32 days. Ld, Counsel further stated that he liquidator has not specified the reason for the purported ineligibility of Ashwini Kumar Vinayak. However, since the liquidator contends that Ashwini Kumar Vinayak was not in continuous service for a period of five years hence he is not eligible for payment of gratuity, Ld. Counsel stated that, as per Section 2A (2) of Gratuity Act, an employee shall be treated as having continuous service of one year if in a period of twelve calendar months preceding, if he has worked for not less than 240 days, and the above workman has put in the said period of service four years and 27 days. In support of this plea Ld. Counsel relied on the ruling of Hon’ble High



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8. Court of Madras, *in re, Mettur Breadsell Ltd vs Regional Labour Commissioner Madras, 1998 LLR 1072*, wherein it was held that,

*Payment of Gratuity Act, 1972- Sections 2(a), 2(b), 2(c), 2(e) and 2A – ‘Continuous Service’ – Qualifying period of service by an employee- Entitlement of Gratuity – An employee rendering continuous service for a period of 240 days in a year will be deemed to have continued in service for one year as stipulated by Section 2A of the Act. Thus an employee who has put in service for 10 months and 18 days for the fifth year subsequent to first 4 years should be deemed to have completed continuous service of five years. His claim of gratuity is tenable.*

9. Ld. Liquidator has not disputed the period of service of the above workman as stated in the application and only contended that his service was less than five years. Therefore, in the light of the ruling as above we hold that the Portioner Ashwini Kumar Vinayak, is deemed to be in continuous service of the corporate debtor for a period of five years, as such he is eligible for payment of gratuity.

10. In so far as entitlement of interest for the delayed payment on the outstanding gratuity amount is concerned the learned counsel has relied on the following ruling of Hon’ble Supreme Court of India in re: H. Gangahanume Gowda vs Karnataka Agro Industries Appeal (civil) 1024 of 2003 on 5 February, 2003

*From the provisions made in [Section 7](#), a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may be. However, under the proviso to [Section 7\(3A\)](#), no interest shall be payable if delay in payment of gratuity is due to the fault of the employee and further condition that the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground. Under [Section 8](#), provision is made for recovery of gratuity payable under the Act, if not paid by the employer within the prescribed time. The Collector shall recover the amount of gratuity with compound*



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*interest thereon as arrears of land revenue and pay the same to the person entitled. A penal provision is also made in [Section 9](#) for non-payment of gratuity. Payment of gratuity with or without interest as the case may be does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied*

and contended that the applicants are entitled as a matter of right payment of interest on the gratuity as such the Respondent is bound to pay the same.

11. While the matter thus stood, during the course of recent hearing learned counsel for the petitioners submitted that in so far as the claim for payment of simple interest @10% is concerned he has been instructed by the petitioners that the petitioners are prepared to accept for distribution of the whatever the amount that is left after full payment of gratuity to all the petitioners, on pro rata basis notwithstanding their entitlement of simple interest @ 10% as full and final settlement of payment of interest on their claim.
12. However, learned liquidator prayed that interest may not be paid to the employees and the balance amount be allowed to be kept in deposit enabling the distribution of the same for the remaining eligible workers of the Corporate Debtor.
13. In the above backdrop it can be said that in so far as the payment of full claim of the 47 members de hors interest whose list is enclosed to the petitioner is concerned, there is no dispute as to their entitlement of gratuity as claimed in the application. We are therefore hereby directing the liquidator to :
  - (i) disburse the amount as mentioned in the statement that was enclosed to the application, by crediting the same to their respective Bank Accounts, within one week from the date of our order and file compliance.
  - (ii) In so far as the 7 workmen whose names are referred above are concerned, having examined the record placed before us we are convinced that the payments made to B.Anjaneyulu, Ch.V.Narasimharaju and Sarpam Kotilingam, towards other



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payments cannot be construed/taken as payment towards gratuity, as such we hold that the above three ex-employees are entitled for payment of the gratuity amount on par with the above 47 ex-employees. Hence the amount of gratuity shall be paid within one week from the date of our order and file compliance.

(iii) In so far as the claim of Mr.Shivakumar Appala, B.Srihari and Aravind Gupta are concerned , we hold that they are also entitled to be paid as per the claim made in the statement annexed to the application, on par with the remaining petitioners. Hence we hereby direct that the gratuity be paid to them within one week from the date of our order and file compliance.

(iv) In so far as payment of interest for the delayed payment is concerned we have no hesitation to say that the Petitioners are fully entitled for payment of interest on the gratuity and they are not at the mercy of the Corporate Debtor (under liquidation), represented by the liquidator, *provided the delay is attributable to the liquidator.*

(v) Therefore, pending our final decision the payment of interest on delayed payment, and as the liquidator pleaded that there are some more workmen who are not covered in the petition but are eligible/entitled for gratuity, we direct the liquidator to examine such claims if any received as per the procedure and place the list of the eligible claimants if any received mentioning the amount if any payable to them, before this Tribunal on 22.05.2023 without fail.

14. We hereby make it clear that suitable Orders as to the petitioners entitlement of interest, besides on the claims if any received as above by the liquidator, will be passed on 22.05.2023.

**List the matter on 22.05.2023, for further directions.**



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**Memo in IA No. 260 of 2023 in IA No. 1455/2022**

On mentioning, memo is taken up. Perused the Memo. Heard the Ld. Counsel Shri Vikram Puttapaga. The memo is filed on behalf of the successful Acquirer for issue of certified copy of the approved acquisition plan dated 22.09.2021. If the Applicant had complied with the procedure for issuance of certified copy, the Registry shall issue the same immediately.

The consent or no consent of the Liquidator for issuance of a certified copy is immaterial.

**SD/-**  
**MEMBER (T)**

**SD/-**  
**MEMBER (J)**