

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-I, HYDERABAD**

**I.A. No.1708 of 2023 in
CP. No.111/7/ HDB/2017**

**Under section 60 (5) of the Insolvency and
Bankruptcy Code 2016**

BETWEEN

1. Dhananjay Kumar Tripathi, S/o. Sri Ramkishor Tripathi
Aged about 38 years,
R/o Sawanha Bathua Bazar, Bathubazar,
Phulwaria, Gopalganj, Bihar – 841425
2. Sachendra Choudhary, S/o Late Sh. Dineshwar Choudhary
Aged about 45 years,
R/o A1/47, Upper Ground Floor,
Flat No.2, Block A-1, Birla Farm,
Chattarpur Extension, Chattarpur, Delhi – 110074
3. Mohammed Mahaboob Ali, S/o MG Ahmed
Aged about 43 years,
R/o H.No. B1-57, Huda Colony,
Gangaram, Chandanagar, Serilingampally Mandal,
R.R. District, Hyderabad – 500 050
4. Arasan.L, S/o Lakshman
Aged about 55 years,
R/o Door No. 25 KR, Mill Colony,
RBI Post, Mysore, Karnataka State – 570003
5. Suraj Kumar, S/o Lalan Prasad
Aged about 44 years,
R/o 2502 First Floor, Near Horse Farm,
Sector – 23, Cartarpuri Alias Daulatpur
Nasirabad (63) Carterpuri, Gurgaon, Haryana – 122017

Date of Order: 28.02.2024

6. Dasari Ramesh, S/o Samarasam
Aged about 53 years,
R/o Flat No. 608, Block No.4,
SMR Vinay Fountainhead,
Water Works Road, Miyapur, Hyderabad – 500 049
7. Nirmal Kumar, S/o Radhe Shyam Das
Aged about 37 years,
R/o H-202, NTPC Vihar, Phase – 3,
Ambedkar Path, Patna – 14.
8. Abhey Singh, S/o Sh. Tejpal,
Aged about 45 years
R/o H. No. D118, Ward No.5, Vill Kherli Jeeta,
PO Siaroli Distt Palwal, Haryana – 121102
9. Manoj Kumar, S/o. Sh. Bidama Ram,
Aged about 39 years,
R/o H. No. 265, Jheel Distt Jind,
Haryana – 126105
10. Amit Prasad Dixit, S/o Sh. Yogendra Prasad Dixit
Aged about 48 years,
R/o 12A02, Tower H, Ajnara Daffodil Society,
Sector – 137, Noida, Uttar Pradesh – 201 301
11. Sachin Kulkarni, S/o Bhagwant Kulkarni,
Aged about 50 years,
R/o Flat No. D-101, Citadel Empress,
B.T. Kawade Road, Opp: Citadel Enclave,
Ghorpadi, Pune City, Pune, Maharashtra – 411 001

(Petitioner No.1 to 11 are being represented by their Attorney
Mr.Apsingi Arun Kumar)

... Petitioners/Corporate Creditors

AND

Date of Order: 28.02.2024

The Liquidator
CS Anuradha Bisani of
M/s. Lanco Infratech Limited,
Registration No. IBBI/IPA-002/IP-N00941-2020-2021/13022
Office at 3-6-106/A, OM Sri Sai Towers,
Flat No. 102, St. No. 19, Near Vijaya Diagnostic Centre,
Himayatnagar, Hyderabad – 500 029, Telangana
Email Id: bisanianu@gmail.com
liq.lancoinfra@gmail.com

... Respondent/Corporate Debtor

DATE OF ORDER : 28.02.2024

Coram:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
HON'BLE MEMBER (JUDICIAL)**

SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Parties / Counsels Present

For the petitioner : Mr. V. Sethu Madhava Rao, Counsel.

PER BENCH

ORDER

1. This present Application is filed by the Petitioners under Sections 60(5), of the Insolvency Bankruptcy Code, 2016 of the National Company Law Tribunal Rules, 2016 seeking to direct the Liquidator to pay the gratuity amount to the petitioners as per the list for workmen and employees who are eligible for payment of the gratuity as detailed in the list of workmen and employees uploaded to the Lanco website and

Date of Order: 28.02.2024

as detailed in the Annexure – A and pass such other order or orders as may be deemed fit in the circumstances of the case.

2. Gist of the Application:

- 2.1 It is stated that the Petitioners worked as Employees in M/s.Lanco Infratech Limited (Hereinafter called the Corporate Debtor). It is stated that the Financial Creditor filed Company Petition under Section 7 of the IB Code and the CP was admitted and RP was appointed and subsequently liquidator was also appointed to take possession of the properties of Corporate Debtor. On knowing the same Ex-employee of Lanco Infratech filed I.A. No. 96/2019 with a prayer to pay with a gratuity to pay along with the simple interest at 10% per annum and the said I.A. was allowed vide orders dated 01.10.2019.
- 2.2 It is stated that aggrieved by the said order, the liquidator has preferred an Appeal before Hon'ble NCLAT and the same was allowed by the Hon'ble NCLAT. Aggrieved by the said order, the Appala Siva Kumar Vs. Savan Godiwala preferred Civil Appeal No. 2520/2020 before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide orders dated 28.02.2023 set aside the orders passed by the Hon'ble NCLAT.
- 2.3 It is stated that the Petitioners filed Comp.A(IBC) 8/2023 for implementation of the orders of this Hon'ble Tribunal and in default to initiate contempt proceedings against the liquidator. The Hon'ble Tribunal vide orders No. 8/2023 dated 04.05.2023 directed the Liquidator to pay the gratuity within 1 week from the date of the order

Date of Order: 28.02.2024

and file compliance along with the interest for the delayed period and directed to list the matter on 22.05.2023 for further direction. The Hon'ble Tribunal vide orders dated 04.05.2023 in Cont. A (IBC) 8/2023 at Para No. 13(v) directed as detailed hereunder.

“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.”

- 2.4 It is stated that the Hon'ble Tribunal also made clear that if any claims are received by the liquidator he has to pass necessary orders on the claims received, but on 22.05.2023 the Hon'ble Tribunal was pleased to close the gratuity proceedings without passing any orders. It is stated that the names of the Petitioners are also shown in the list of workmen and employees who are eligible to claim gratuity under liquidation process from the Corporate Debtor uploaded by the liquidator to the Corporate Debtor website. In the said list the liquidator has disclose the number of claims received from the workmen as 56 and the employees as 937. In the claim status he has admitted the claims of the Petitioner No.1 to 8 and for the sack of convenience the Annexure -I is filed herewith wherein the Petitioners furnished the details of the Serial Numbers of the Petitioners in the list of workmen and employees uploaded by the liquidator, the claims accepted and the amount of the gratuity of the payable to the Petitioners. It is not out of place to mentioned that the Petitioners have submitted Form E (Proof of claims)

Date of Order: 28.02.2024

by workmen and employees under Regulation 19 of the Insolvency and Bankruptcy Board of India (Liquidation process) Regulation 2016).

2.5 It is stated that as Hon'ble Tribunal closed the proceedings on 10.07.2023 without passing the orders in continuation dated 04.05.2023, the liquidator has expressed his difficulties to make the payment against the orders has been passed by the Hon'ble Tribunal. Under the above circumstances the Petitioners having no other option is constrained to file present application to seek the kind indulgence of the Hon'ble Tribunal and direct the liquidator to settle the gratuity claims of the petitioners with interest.

2.6 It is stated that in the circumstances explained above I pray that this Tribunal may be pleased to direct the liquidator to receive our applications consequently direct liquidator to pay the gratuity amount claimed and admitted by the liquidator.

3. The Counsel for the Petitioners filed written submissions/arguments by re-iterating the contents of the application, apart from that:

3.1 It is stated that under Section 36 (4) (a) (iii) of the IB Code all sums due to any workmen or employee from the provident fund, the pension fund and the gratuity fund shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation. In this connection the Petitioners rely upon the Judgment of the Hon'ble Supreme Court in "Savan Godiwala vs. Appala Shiva Kumar case

Date of Order: 28.02.2024

wherein the Hon'ble Supreme Court affirmed the view that even where there are no funds available towards payment of provident fund, pension and gratuity the liquidator must make such payments. It is stated that when the amount payable under gratuity is not part of the liquidation estate assets, the liquidator contention that there is no specific direction for payment of the gratuity to the Petitioners is untenable and unsustainable and contrary to the principle laid by the Hon'ble Apex Court in Savan Godiwala Case and the provisions of 36 (4) (a) (iii) of the IB Code.

4. This is an application filed by 11 ex-employees of the Corporate Debtor with a prayer to direct the Liquidator to pay the gratuity amount. The contentions of the applicants are mainly based on orders pronounced in IA.No. 96 of 2019, the details of the orders passed in the said application are as follows:
 - a. Sixty one erstwhile employees of the corporate debtor has moved an application before this Hon'ble Tribunal and sought the then resolution Professional to release their Gratuity Amount vide IA No.96 of 2019 in priority to all the payments to be made under the waterfall mechanism as provided under section 53 of the code.
 - b. This Hon'ble Tribunal allowed the said application on 01.10.2019 by directing the then liquidator to make necessary arrangements for payment of gratuity to the "applicants" according to their "eligibility".

Date of Order: 28.02.2024

- c. Aggrieved with the above order the then Liquidator i.e., Mr. Savan Godiawala moved an appeal before the Appellate Tribunal and challenged the order by filing Company Appeal (AT) (Insolvency) No.1229 of 2019, and the same was allowed by setting aside the order passed by this Hon'ble Tribunal.
 - d. Aggrieved with the above order passed by the Appellate Tribunal the "51 Applicants out of 61 Applicants" in IA No.96 of 2019 (Erstwhile Employees of the corporate debtor) have moved a Civil Appeal No.2520 of 2020 before the Hon'ble Supreme Court of India.
 - e. Hon'ble Supreme Court of India upheld the order passed by this Tribunal in IA.No.96 of 2019 .
5. The Applicants submits that the same directions of the Hon'ble Supreme Court as passed in IA.No.96 of 2019 may be applied to the Applicants and the Liquidator be directed to pay the gratuity amount. The Respondent/ liquidator submitted that since none of the Applicant in this application is a party to that IA, the order of the Hon'ble Supreme Court of India in IA.No.96 of 2019 will not be applicable to the Applicants in this IA.
6. Further, the Liquidator orally submitted that the Corporate Debtor has already been sold as a going concern and the acquisition plan has already been approved by this Tribunal ,therefore the claim of the Applicants at this stage after approval of the acquisition plan becomes

Date of Order: 28.02.2024

infructuous. The said approved plan also does not have any provision for making payment of gratuity to the remaining ex employees of corporate debtor.

7. After hearing both the parties and on perusal of the documents, we find that this Tribunal allowed the acquisition plan on 26.09.2022 and approved the Corporate Debtor company be sold as a going concern in the form of an acquisition plan. This Application has been filed on 20.09.2023 approximately one year after the approval of the acquisition plan and hence at this stage the Application cannot be admitted.
8. In view of the above this application is dismissed as infructuous and accordingly, disposed of.

SD

Charan Singh
Member Technical

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Sridher