

**NATIONAL COMPANY LAW TRIBUNAL  
BENCH, HYDERABAD**

**IA No.251 of 2019**  
**CP (IB) NO. 111/7/HDB/2017**  
APPLICATION UNDER SECTION 60(5) OF IBC, 2016,  
**IN THE MATTER OF M/s LANCO INFRATECH LIMITED**

**M/s. Lanco Infratech Employees Welfare Association**  
R/o Plot No.397, Udyog Vihar, Phase 3,  
Gurgaon, Haryana-122016,  
Represented by Mr.Vishwanaath Tulasi

**... Applicant**

AND

**1. Mr. Savan Godiawala**

Liquidator of M/s Lanco Infratech Limited,  
Deloitte Touche Tohmatsu India LLP,  
Level 7, Building 10 Toer B,  
DLF Cyber City Phase-II,  
Gurgaon-122 022.

**...Respondent**

**Date of order:11.03.2024**

**Coram:**

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

**SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**Appearance**

For Applicant: Shri Sai Sanjay Suraneni, Counsel.

For the Respondent: Ms.Rubaina S Khatoon and other counsels.

**[PER BENCH]**

**O R D E R**

1. This application is filed by the Applicant under Section 60(5), of IBC, 2016 seeking direction to the liquidator to admit the claims of the Applicant and to pass necessary directions.
2. Averments in brief:
  - a. The Applicant is the Employees Welfare Association of the M/s. Lanco Infratech Limited. The Applicant comprises of about 212 former employees of Lanco. The members of the Applicant are under the employment of Lanco for several years and have been absolutely crucial for its operations, both prior to and during the CIRP.
  - b. It is averred that rightful dues of the employees accruing during and prior to the CIRP has not been paid for several months, due to which several members of the Applicant threatened to leave the employment. However, the erstwhile management undertook to pay a 'retention allowance' to the employees who would continue to provide their services to Lanco till 2018. Based on such condition of service, the employees continued to provide their services to Lanco even though they were not paid for several months during and prior to the CIRP. It is averred that 'retention allowance' was authorized by HR Manager of Lanco upon approval of management of Lanco. Copy of the order dated 18.05.2017 is annexed to the application as Annexure-1.

- c. It is averred that there are several applications filed before this Adjudicating Authority, wherein this Adjudicating Authority allowed the Applications and directed the Respondent to clear the dues of the Applicant and other employees. Copy of the order by this Tribunal is annexed as Annexure-9 to the Application.
- d. Due to non-approval of the resolution plans by COC, respondent was appointed as liquidator. Since respondent failed to clear the dues of the Applicant despite specific directions of this Tribunal, Applicant preferred another application wherein this Tribunal directed the respondent to clear the dues. Copy of the order dated 27.09.2018 is annexed to the Application as Annexure-11.
- e. Further the applicant on 22.12.2021, submitted its claim before liquidator amounting to Rs.5, 63, 98,415. The claim of the applicant was bifurcated into 'retention allowance' and 'monthly salary amounting to Rs.2,80,36,076/- and INR 2,23,62,339/- respectively.
- f. It is averred that respondent has incorrectly and arbitrary rejected the claims of the Applicant towards the retention allowance amounting to total of Rs.2,80,36,076/- by stating the reasons as follows:
- Retention allowance does not form part of employment contract as was based on a decision of the erstwhile management.
  - No authorization was taken from the Resolution professional before issuance of the payment slips.

- Retention allowance does not form a part of books of accounts of Lanco.
- g. It is averred that liquidator/respondent has rejected the rightful claims of the Applicant. The retention allowance was only to be disbursed to such employees who would provide their services till March 2018. The retention allowance formed part of the books of Lanco, since it is reflected on the salary slips of the employees for the Month of March, 2018.
- h. Though the respondent repeatedly assured that all the dues of the employees would be cleared, it has failed to admit the claims of the Applicant towards 'retention allowance'. Thus the Applicant prayed this Adjudicating Authority to protect the employees of Lanco and allow the application.

**3. Reply filed by the liquidator:**

- a. It is averred by the liquidator that the averments, allegations and statements made by the Applicant are baseless and the present application may be treated as denial *in seriatim* of the entire contents of the appeal.
- b. It is averred that the application is filed for the following reliefs:
- To direct the Liquidator to pay the Applicant Salaries of certain employees for the month of June 2017.
  - To direct the liquidator to pay the Applicant a 'retention allowance' to the employees.

- Order for initiation of proceedings for contempt of court under Section 425 of the Companies Act, 2013 read with Section 5(1) of the I&B Code, 2016 for wilful disobedience of the orders dated 13.08.2017 and 27.09.2018 passed by this Adjudicating Authority in the company petition.
- c. It is averred that in the light of commitments by the resolution professional and mandate orders of the Adjudicating Authority all the salaries which became due to employees for rendering services during the CIRP period had been paid. The Applicant also acknowledged the same but alleged that only ‘retention bonus’ remains outstanding.
- d. It is averred that due to financial condition of corporate debtor small portion of the salary dues were paid during CIRP and the unpaid salary dues have been included as CIRP Cost.
- e. It is averred that based on the documentary proof and records available the promise of payment of retention allowance was made by way of internal approval note and the same does not form part of the relevant employment contracts. The communication was between Head-HR LITL, corporate debtor and the Managing Director of the corporate debtor vide letter dated 18.05.2017 which bears a noting of MD *“let us agree on paying retention allowance of 7% to employees continuing roles till March 2018”*.
- f. It is further averred that the employees have been issued salary slips wherein retention allowance has been shown to be due,

while the basis of the calculation of the amount remains unclear and questionable. It is averred that salary slips were issued without authorization from the liquidator and thereafter liquidator had made a request to the Human Resources department for issuance of the salary slips without the retention bonus amount vide email dated 22.05.2019, however, request could not be complied as corporate debtor's SAP System had been frozen.

- g. It is averred that a company in liquidation will be additionally burdened with the payments of bonus to the employees over and above their salaries for the CIRP period which have been duly paid.
  - h. In the light of the above, the application may be rejected for payment of one-time bonus, retention allowance. It is reiterated that the orders passed by this Adjudicating Authority do not direct the Resolution Professional/liquidator to pay any such bonus/retention allowance. Further averred that applicant has failed to discharge the burden of proving as to how the liquidator/resolution professional is in contempt with regard to salary dues during CIRP period. In the light of facts and circumstances, the application is ought to be dismissed.
- 4.** Written submissions filed by the Applicant by reiterating the same facts mentioned in the Application and prayed to allow the instant application and direct the respondent to admit the remaining claims of the applicant amounting to Rs.2,80,36,076/- as 'insolvency resolution process cost'.

5. In the light of the contest put forth by both the parties the following point arises for our consideration :

**Point : “Whether MD’S noting on an Internal Note, entitles the employees to receive Retention Allowance as part of their salary and in turn to be considered as a part of salary”**

6. We heard Learned Counsel Mr Sai Sanjay Suraneni for the applicant and Ms.Rubaina S Khatoon for respondent , perused the written submissions, other documents/records submitted by both the parties.

7. **Submissions of applicants :** The counsel for the applicant submits that claims of the applicants were in relation to their employment dues during and prior to the CIRP of Corporate debtor . The submitted claims by the applicants were bifurcated into (a) Monthly Salary and (b) Retention Allowance. He further submits that although the Respondent has admitted dues towards the Monthly Salary of the Applicant (amounting to INR 2,23,62,339), it has arbitrarily and without any basis, vide an email dated 15.02.2022, rejected the amount due towards ‘Retention Allowance’ amounting to INR 2,80,36,076 (Rupees Two Crores Eighty Lakhs Thirty-Six Thousand Seventy-Six Only). The learned counsel contended that applicants are eligible for a retention allowance of 7% on the basis of approval given by MD on 18.05.2017 on an internal note but the respondent has not accepted this claim of applicants for the retention amount of 7% as agreed by MD on 18.05.2017, though it was included in the salary slip also.

**8. Submission of respondents :** The learned counsel for the respondent submits that in the light of commitments by the resolution professional and mandate orders of the Adjudicating Authority all the salaries which became due to employees for rendering services during the CIRP period had been paid and even the applicants also acknowledged the same but alleged that ‘retention bonus’ still remains outstanding. The counsel further submits that promise of payment of retention allowance was made by way of internal approval note and the same does not form part of the relevant employment contracts and no sanction / approval letters for the same were issued to the applicants/ employees . The counsel further clarified that this was a communication between Head-HR LITL, corporate debtor and the Managing Director of the corporate debtor vide letter dated 18.05.2017 which bears a noting of MD *“let us agree on paying retention allowance of 7% to employees continuing roles till March 2018”*. The counsel further clarified that the employees have been issued salary slips wherein retention allowance has been shown to be due, while the basis of the calculation of the amount remains unclear and questionable. The respondent further submits that salary slips were issued without authorization from the liquidator and thereafter liquidator had made a request to the Human Resources department for issuance of the salary slips without the retention bonus amount vide email dated 22.05.2019, however, request could not be complied as corporate debtor’s SAP System had been freezed. The counsel further

contended that the orders passed by this Adjudicating Authority never directed the Resolution Professional/liquidator to pay any such bonus/retention allowance as contended by the applicant . The counsel for the respondent submits that in the light of facts and circumstances, the application is ought to be dismissed.

**Our findings:** We reproduce here with earlier orders of this Tribunal on this subject and Noting of MD on Internal Note dated 18.05.2017 which are relevant to decide the point before us .

**Order dated 13.07.2018 in IA.No.118 of 2018 ,Para 13 and 14 of the Order:**

- Therefore, in view of the representation made on behalf of the Resolution Professional by the Counsel for Resolution Professional that the salaries of the employees will be paid as and when necessary funds are available with the Corporate Debtor Company and other statutory obligation also will be met, the Application can be disposed off by observing that Resolution Professional to pay the salaries of the employees as and when Company receives funds sufficient to pay the salaries including discharge of other statutory obligations after meeting essential requirements of Corporate Debtor Company.
- Accordingly, the Application is disposed off with above direction.

**Order dated 27.09.2018 in IA.No.375 of 2018**

**Para 11 of the Order:**

- In the result, Application is allowed by directing the Resolution Professional / Liquidator to include the claim of Applicant in the CIRP costs and issue Form-16 after payment of employees dues after due verification with Book of Accounts and those who are found eligible those dues alone be considered in CIRP costs.

**Noting of MD on Internal Note dated 18.05.2017 from Head – HR LITL, filed as Annexure – I of the Petition.**

- “Let us agree on paying Retention Allowance of 7% to employees continuing in roles till March, 2018”.
9. On careful perusal of relevant Para’s of the earlier orders on this matter by this Tribunal, we observe that Tribunal ordered to pay only salaries of the employees or include salaries of the employees in the CIRP costs and No mention/reference was made for payment of Retention Allowance in earlier orders of this Tribunal as contended by the applicant . Order dated 27.09.2018 very categorically says that the claim of the applicant be included into CIRP costs, after due verification with Book of Accounts and those who are found eligible those dues alone be considered in CIRP costs. Since , applicant has accepted that the Respondent has admitted dues towards the Monthly Salary of the Applicant, therefore the salary as directed by this Tribunal in earlier orders has been taken care of.
10. Now the other question before us is on the noting of the MD that whether MD finally approved retention allowance for employees or the noting was just a part of the process for consideration of the

same . We carefully perused the noting of MD and we observe that it is not an approval or an order/direction to pay retention allowance to employees but it is suggestive in nature. As the phrase used the words “Let us agree on paying Retention Allowance of 7% to employees continuing in roles till March, 2018” which clearly shows that MD noting on the Internal Note carries an intention to pay retention allowance but mere intention of paying cannot be treated as an authentic order /direction for payment of the retention allowance.

**11.**Otherwise also the order for allowing any additional allowance to employees has to be very specific and elaborate , containing all minor details in unambiguous terms which is completely not available in this case. Furthermore, such decisions are generally taken in the Board Meetings of the Companies after following due procedure and not by any individual official. Further, if any such decision is taken , all the concerned employees are advised/ informed through individual correspondence or through a circular notifying the decision but nothing sort of this procedure has been followed in this case and no documents have been produced by the applicant before us to this effect.

**12.**Therefore, keeping in view of the above, we are of the opinion that said noting of MD does not entitle employees to receive/claim retention allowance from the Company as part of their salary. Since, we are of the opinion that employees are not entitled for payment of retention allowance on the basis of MD’S noting on an Internal Note,

the said amount claimed as salary cannot be included in the CIRP costs.

**13.**Based on the above findings and observations , the point is decided that MD'S noting on an Internal Note, does not entitle the employees to receive retention allowance as part of their salary and in turn to be considered as a part of salary .

**14.**In view of the above, we find that this application is liable to be rejected. Hence, IA.No.251/2019 is rejected and dismissed however without costs.

**SD**

Charan Singh

Member Technical

**SD**

Dr. Venkata Ramakrishna Badarinath Nandula

Member Judicial

Karim/Pavani