NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.307/2024
(IA. No. 820 /2024)

In the matter of:

PUNJAB NATIONAL BANK
Through its Authorised Representative
Mr. Praveen Kumar Sammi, Chief Manager,
Plot No.5, Sector 32 Institutional Area,
Gurugram 122001. **… APPELLANT**

V

MR. NAGIREDDY VENKATA PRATAP REDDY
A-907, Fortune Heights, Madeenaguda
Hyderabad-500045 (TO)
… RESPONDENT NO.1

MR. PRAMOD GAIKWAD
26, Jijau Nagari, Sindhi Meghe
Wardha- 442003 Maharashtra **… RESPONDENT NO.2**

MR. M. KRISHNAMACHARYULU
Flat No. 201, Balaji Apartments
Street No. 1, Kapasbera, New Delhi - 110037 **… RESPONDENT NO.3**

MR. DEVENDER KUMAR
C-2/ 251, Yarnuna Vihar,
Delhi – 110053. **… RESPONDENT NO.4**

MR. PRAVEEN KUMAR DAHIYA
RZF 530, Raj Nagar-II
Palam Colony, New Delhi – 110045. **… RESPONDENT NO.5**

MR. NEERAJ KUMAR PRADHAN
1224, Sector 37, Faridabad
Haryana – 121003. **… RESPONDENT NO.6**

MR. ROSHAN NIRANJAN TELANGE
House No. 1401, Ward No. 03
Adarsh Nagar, Near IT part
Sewagram, Wardha – 442001. **… RESPONDENT NO.7**

MR. SUNIL ANANDRAO TADAS
Plot No. 19, Ward No. 01, Balkrishna Nagar
Alodi, Wardha – 442001. **… RESPONDENT NO.8**

MR. VIJAY KUMAR GARG, LIQUIDATOR
M/s Lanco Vidarbha Thermal Power Limited
Flat No. 1402 Tower-A, GPL Eden Heights
Sector 70, Darbaripur Road Gurugram -122101. **… RESPONDENT NO.9**

Present :

For Appellant : Ms. Shweta Dubey & Ms. Kanishka Prasad, Advocates

For Respondents : Mr. Ravi Rajagopalan, Advocate for R1 – R8

O R D E R
(Hybrid Mode)

17.06.2026:

Oral: Justice Sharad Kumar Sharma, Member (Judicial)

The grievance of the Respondents / workmen, before the Ld. Adjudicating Authority had been against the denial by the Liquidator, M/s. Lanco Vidarbha Thermal Power Limited to release the portion of gratuity and leave encashment amount pertaining to pre-CIRP period to them, consequentially resulting into initiation of the proceedings, in the shape of IA (IBC)/640/2023, that was preferred in CP (IB) No.529/7/HDB/2018. The same has been determined by the Ld. NCLT, Hyderabad, by the impugned order of 11.06.2024.

2. The Ld. Tribunal, while considering the claim raised by the Respondents, by invoking the provisions contained under Section 60 (5) of the I & B Code, 2016, had found that, the claim raised by the Appellants were justifiable, owing to the ratio as propounded by the NCLAT and Ld. NCLT too, where there had been a persistent view that, there cannot be any avoidance of reckoning of liability to pay gratuity to the employees, on the ground of any procedural inconvenience and consequentially, issued the direction to the Liquidator to treat the gratuity and leave encashment amount payable to the workmen (Applicants before Ld. NCLT) / Respondents herein, as CIRP cost and ensure to pay the same as per their eligibility under law. It is against this order that the Appellant, i.e., Punjab National Bank is before us.

3. The Respondents, herein are the workmen of the Corporate Debtor, i.e., M/s. Lanco Vidarbha Thermal Power Limited, who were the applicants of IA(IBC)640/2023, that was preferred in CP(IB) No.529/7/HDB/2018, before the Ld. Adjudicating Authority, i.e., NCLT, Hyderabad Bench-1, by invoking the provisions contained under Section 60(5) of the I & B Code, 2016. In the application thus preferred by the Respondents / workmen, on 17.04.2023, the workmen had prayed for payment of gratuity and leave encashment payable to them, which had accrued during pre-CIRP period by treating the same, as part of

the CIRP cost, and for issue of full and final settlement letters along with the breakup of the components and for issuance of service certificates for the entire period of services rendered by them with the Respondent Company. It is under the aforesaid backdrop, when the matter came up for consideration before the Ld. Tribunal, the Ld. Tribunal vide impugned order allowed the application and directed for payment of gratuity and leave encashment amount due to the Appellants, by observing that it has already decided a similar case in its order dated 01.10.2019 in **IA No. 96/2019** in **CP(IB) No.111/7/HDB/2017**, in the matters of **Appala Siva Kumar v. Savan Godiawala**, which has been upheld by Hon'ble Apex Court vide its judgement dated 07.02.2023 in **Civil Appeal No.2520/2020**. In the aforesaid order, Ld. NCLT had observed in para. 11 as under: -

> *"11. The Liquidator cannot avoid the liability to pay gratuity to the employees on the ground that Corporate Debtor did not maintain separate funds, even if there is no fund maintained, the Liquidator has to provide sufficient provision for payment of gratuity to the applicants according to their eligibility .."*

4. Ultimately, the conclusion that has been drawn, in the impugned order has been based on the ratio as propounded in the aforesaid judgment, it was that, since the gratuity to the employees, being payable under the beneficial legislation, the benefits of it cannot be denied by the Liquidator, to be remitted to the eligible employees, merely on the ground that the Corporate Debtor has not maintained

the separate Funds to maintain such amounts and that, even if the Corporate Debtor has not maintained the fund, then too the Liquidator has to make sufficient provision for payment of gratuity to the workmen according to their eligibility. It is against this order the Appellant / Financial Creditor is before us.

5. The facts of the case are that Respondents / workmen, who are 8 in number, in their application thus preferred on 17.04.2023, had come up with the case that, the Corporate Debtor company, with whom they were working as their employees, was ultimately directed to be liquidated on conclusion of the proceedings in CP No.12/10/HDB/2019 and had prayed for that an appropriate direction may be issued to the Liquidator for remittance of the portion of gratuity and leave encashment for the pre-CIRP period, which was due to the applicants, under the head of 'CIRP costs', as the said dues had accrued during the CIRP period. They had further contended that, as on the date of passing of the order of liquidation, i.e., on 30.06.2021, they continued to be under the employment of the Corporate Debtor holding different positions, which they had legally acquired at the relevant point of time, ever since from their respective date of appointment, as it was detailed in para. 4 of the application, till the date of their respective discharge of the services. The Applicants / Respondents' case was that, since the service conditions were governed by the standing orders and the operating procedures of the Lanco group, as would be apparent from Employee Handbook

of Lanco group, they would be legally entitled for the grant of gratuity and leave encashment.

6. To agitate their cause, the Applicants / Respondents had filed FORM-E, as required under the provisions of the I & B Code, 2016, lodging their claim for remittance of the gratuity and leave encashment and sought that their respective claim be verified and admitted by the Liquidator. Subsequently, the claim was admitted and the same was even submitted for consideration before the 6th Stakeholders' Consultative Committee (SCC) meeting, which was held on 09.05.2022 of the Corporate Debtor, under liquidation. It is upon deliberation and on taking of a legal opinion from the Auditors, i.e., M/s. Link Legal, SCC in its 6th meeting, came to the conclusion that, the employee’s dues in form of gratuity and leave encashment are to be bifurcated into the CIRP and pre-CIRP portions and the Liquidator would be liable to pay the CIRP portion and the balance would be paid in accordance with the waterfall mechanism as envisaged under Section 53 of the I & B Code, 2016.

7. The same was challenged by the Applicants (Respondents herein) by getting a legal opinion and it was placed before SCC for decision and the SCC in its minutes dated 26.08.2022 resolved that the dues towards gratuity and leave encashment are to be bifurcated into CIRP-period dues and pre-CIRP period dues, that the CIRP-period dues will be paid as part of CIRP costs and that the pre-CIRP dues will be paid under the waterfall mechanism as laid down under Section

53 of the Code. Accordingly, the amount payable to the Respondents was worked out by the Liquidator in a tabular form which is extracted below: -

"<u>Bifurcation of Full and Final Settlement Dues of Employees.</u>

Employee name	*Date of exit*	*Portion of F&F forming part of CIRP Cost (Rs.)*	*Pre-CIRP Dues payable under Waterfall Mechanism (Rs.)*
Devendar Kumar	*07-02-2021*	*1,48,501*	*4,69,180*
Sunil Anandrao Tadas	*19-12-2020*	*88,646*	*5,40,892*
Roshan Telange	*19-12-2020*	*46,983*	*1,53,736*
Neeraj Kumar Pradhan	*19-12-2020*	*58,687*	*1,25,491*
Parveen Kumar Dahiya	*19-12-2020*	*95,148*	*1,33,208*
M Krishna Macharyulu	*30-06-2021*	*3,17,367*	*3,58,208*
Pramod Gaikwad	*30-06-2021*	*2,85,978*	*12,72,111*
Nagireddy Venkata Pratap Reddy	*24-08-2020*	*2,08,099*	*16,08,846*
Raju Thakur	*29-02-2020*	*16,191*	*1,94,069*
TOTAL		*12,65,602*	*48,55,740*

"

8. It is to be kept in mind as per its preamble to the Constitution, India is a welfare state, the government has been enacting laws from time to time to promote welfare of the workmen and accordingly, the Payment of Gratuity Act, 1972 has been enacted with effect from 21.08.1972 which mandates a lump-sum payment to eligible employees in establishments employing 10 or more individuals. Section 4 of the said Act makes it mandatory, for payment of gratuity to an employee on termination of his employment after rendering of the continuous services of not less than 5 years, provided the said termination is on account of (i) superannuation, or (ii) retirement or resignation, or (iii) on death or disablement due to accident or disease.

9. It is under the aforesaid mandate of law and the rights reserved under the constitutional framework, and that too, as protected by special statute, i.e., Payment of Gratuity Act, 1972, the said application for payment of eligible amounts of gratuity and leave encashment had been preferred by the Applicants (Respondents herein) before the Ld. Adjudicating Authority, contending therein that, as the Corporate Debtor, has been directed to be liquidated in pursuance to the order passed in CP No.12/10/HDB/2019 and their services have been terminated during CIRP period, they would be entitled for the amount of gratuity and leave encashment, as detailed in the breakup extracted above, that they had been consistently raising their claim before the RP / Liquidator by sending e-mail communications for the purposes of ensuring payment of the aforesaid amount

without any positive outcome, that though their claim was shown to have been admitted, it is being bifurcated into the dues falling within the CIRP period and pre-CIRP period, with the Liquidator agreeing to pay the portion pertaining to CIRP period as part of CIRP costs and to pay the balance pertaining to pre-CIRP period as per the waterfall mechanism, as envisaged under Section 53(1)(c) of the I & B Code, 2016, which is against the provisions of Section 36(4)(a)(iii) of the Code and against the decision rendered in IA No. 96/2019 in CP(IB) No. 111/7/HDB/2017 by Ld. NCLT, Hyderabad and that, therefore Ld. NCLT may direct the Liquidator to pay their claims in respect of gratuity and earned leave encashment by treating it as part of CIRP cost.

10. The Applicants / Respondents herein had also contended that the said aspect had fallen for consideration before the Ld. NCLT, Principal Bench, Delhi, in the matters of **Alchemist Asset Reconstruction Co. Ltd. vs. Moser Baer India Limited**, in **CA-19 (PB)/ 2019** and it was decided in that case that provident funds, gratuity funds and pension funds are not to be treated as a part of liquidation estate. In the judgment as rendered on 19.03.2019, the following observations were made: -

> *"4. A perusal of the aforesaid para shows that the provident fund dues, pension funds dues and <u>gratuity fund dues are not treated as a part of the liquidation estate</u> and would not, therefore, be recovered by Section 53 of the Code which provides for waterfall mechanism. The liquidator*

> *has taken a perverse view by unnecessarily referring to explanation II of Section 53 and Section 326 of the Companies Act, 2013.*
>
> *5. As a sequel to the above discussion, the application is allowed. Learned counsel for the liquidator states that the claim of the workmen dues shall be considered afresh as per law propounded in the present order as well as the order passed by Mumbai Bench of NCLT. <u>It is made clear that if there is any deficiency to the provident fund, pension fund and gratuity fund, then the liquidator shall ensure that the fund is made available in the aforesaid accounts, even if their employer has not diverted the requisite amount.</u> The prayer made with regard to the bonus* ***and compensation*** *shall also be decided in the light of the observations made in accordance with law."*

Based on the above, the Applicants had contended before Ld. NCLT that the gratuity and leave encashment dues be paid in full, treating them as part of CIRP costs.

11. The Respondent to the Company Application / the Liquidator, had sought to counter the same by contending that since no gratuity fund has been created by the Corporate Debtor by the ex-management of the Corporate Debtor prior to CIRP, the Liquidator cannot be asked to contribute amounts from the Liquidation Estate of the Corporate Debtor to create a gratuity fund to settle the claims of employees pertaining to pre-CIRP period and that gratuity and leave encashment amount pertaining to the pre-CIRP period will be admitted, but will have to be

paid as per Section 53(1)(c) of the code as they do not constitute the CIRP costs which is required to be incurred to keep the Corporate Debtor as a going concern.

12. After, hearing both sides, Ld. NCLT held that the fact of the Corporate Debtor not maintaining separate funds or not having any funds will not cloud the rights of the workmen, as then too the Liquidator is bound to make sufficient provision for payment of gratuity to the employees, according to their eligibility. Ld. NCLT held that the aforesaid principle, which was laid down in Alchemist Assets Reconstructions Limited (*Supra*) has been reiterated by it, in the matter of **Appala Siva Kumar Vs. Savan Godiawala**, in **IA No. 96/2019 in CP (IB) No.111/7/ HDB/2017**. In fact, Ld. Tribunal after exchange of pleadings and framing of issues in the instant case, had formulated the following issue: -

> 'Whether the gratuity and other dues payable to employees whose services comes to an end during CIRP can be treated as CIRP costs even if no gratuity fund is created by the CD?'

13. While referring to the authority relied by the Respondents / workmen, in the matters of **State Bank of India Vs. Moser Baer Karmachari Union and Ors.** in **Company Appeal (AT) (Ins) No. 396/2019**, as rendered in the judgment on 19.08.2019, the Ld. Tribunal came to a conclusion that, the Liquidator was required to make the payment of the amount due towards gratuity and leave encashment, to the workmen even if no separate dedicated Fund has been created. Further, the Ld. Tribunal considered the judgment of Appala Siva Kumar (*Supra*)

and upon a comparative analysis, came to a conclusion that, in a situation where gratuity and leave encashment dues become payable to those employees whose services comes to an end during the CIRP, it will have to be treated as the CIRP costs and to be paid accordingly.

14. For the aforesaid purpose, Ld. NCLT had made reference to Section 5(13) and Section 53 (1) of the I & B Code, 2016, to be read with Regulation 31 of IBBI (Insolvency Resolution Processes for Corporate Persons) Regulations, 2016 and had come to the conclusion that though provisions of Section 5(13) of the Code read with regulation 31 of IBBI Regulations do not directly mention cost to be incurred on account of gratuity and encashment of leave to be part of CIRP costs, any costs to incurred by the RP in running the business of Corporate Debtor as a going concern will have to be included in CIRP costs, that these employees were retained during CIRP and they have contributed to run the Corporate Debtor as a going concern, that their services came to an end during the CIRP and as per law, gratuity and leave encashment due to them becomes payable on the date of their retirement/termination, which fell due during the CIRP and therefore, these amounts will have to be included in CIRP cost and paid accordingly in terms of Section 53(1) (a) of the I & B Code, 2016.

15. We are of the view that conclusion arrived at by the Ld. Tribunal in the impugned order, holding the entitlement of the Respondents under the heads of gratuity and leave encashment will fall to be part of CIRP costs is in consonance

to the principles laid down by the Principal Bench of NCLT in **IA No. 96/2019 in CP(IB) No.111/7/HDB/2017**, in the matters of **Appala Siva Kumar v. Savan Godiawala** which has been upheld by the Hon'ble Apex Court, as referred to herein in the body of the judgment. Incidentally, a similar issue pertaining to the entitlement of gratuity and leave encashment fell for consideration, in the matters of **Mrs. C.G. Vijayalakshmi Vs. Shri Kumar Rajan, Resolution Professional and 3 Ors.**, and it has been decided by this Appellate Tribunal, in **Company Appeal (AT) (CH) (Ins) No.29/2021**, while referring to the judgment of **Jet Aircraft Maintenance Engineers Welfare Association Vs. Ashish Chhawchharia Resolution Professional of Jet Airways (India) Ltd. & Ors.**, as reported in **2022 SCC OnLine NCLAT 418**, that, the provident fund and gratuity will have to be paid in full. The relevant paragraph being para. 28 of the judgment of Mrs. C.G. Vijayalakshmi (*Supra*), is extracted hereunder: -

> *"28. Having regard to the ratio of the Judgement in 'Jet Aircraft Maintenance Engineers Welfare Association' (Supra) of this Tribunal, upheld by the Hon'ble Apex Court, this Tribunal is of the earnest view that 'PF' and 'Gratuity' is to be paid in full as per the provisions of EPF and NP Act, 1952 and payment of Gratuity Act, 1972. Since admittedly the amounts paid are only 35.13% having treated them as 'Secured Creditors', we are of the considered view that indeed there was a violation of the provisions of Section 30(2) of the Code, with respect to the payment of 'PF' and 'Gratuity' only."*

16. Owing to the above, and for the reasons, which we have assigned, we are of the view that, the company appeal preferred by the Appellant, as against the impugned order of 11.06.2024, lacks merit and deserves dismissal. Accordingly, the Appeal is dismissed, having been held to be without merit.

17. All pending interlocutory applications would stand 'closed'.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

AR/MS/AK