

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A. No.167 of 2021 in
C.P. (IB) No.101/BB/2018
U/R 11 of the NCLT Rules, 2016
R/w Section 42 of the IBC, 2016

BETWEEN:

The President

GCL Private Limited Employees Union
A Unit of Bengaluru North Industrial Workmen Union
(Regd. Trade Union under the TU Act)
#183/1, Maruthi Nilaya, 4th Cross,
Near St. Mary's Convent,
Kalyana Nagara, T. Dasarahalli,
Bengaluru - 560 057.

- Applicant

AND

Shri M.V. Sudharshan

Liquidator of GCL Private Limited
No.984/13, 8th Main, Girinagar II,
Bengaluru - 560 085.

- Respondent

Order delivered on: \ 3 August, 2021

Coram:

1. Hon'ble Shri Bhaskara Pantula Mohan, Acting President
2. Hon'ble Shri Hemant Kumar Sarangi, Member (Technical)

Parties/Counsels Present (through Video Conference):

For the Applicant : Shri L. Muralidhar Peshwa, Advocate

For the Respondent : Shri M.V. Sudarshan, Liquidator
a/w Shri Hemanth Rao, Advocate

ORDER

Per: Bhaskara Pantula Mohan, Acting President

1. This Application has been filed by the President of GCL Private Limited Employees Union (hereinafter referred as 'Applicant') under Rule 11 of the



National Company Law Tribunal Rules, 2016 read with Section 42 of the Insolvency and Bankruptcy Code, 2016, by *inter alia* seeking to set aside the order of the Liquidator on the admission of claims of the workers as the same is illegal and unfair; to direct the Respondent herein to admit all the claims of the Workmen as sent to the Respondent and to set aside the decision taken in the Stakeholders Consultative Committee meeting held on 06.042021, etc.

2. Brief facts of the Application, which are relevant to the question, are as follows:

- (1) The Applicant are the Workmen of the Corporate Debtor, GCL Pvt. Ltd., represented by the President of the GCL Pvt. Ltd. Employees Union, a Unit of Bengaluru North Industrial Workmen Union, Registered Trade Union, registered under the TU Act, bearing registration No. B-1 (TUA) 14-1984/85 espousing the cause of the Workmen of the Corporate Debtor ('CD'). It is stated that the Applicant Union is a recognized Union of the Corporate Debtor. More than 100 workmen / employees are employed by the CD at the plant located at Plot No.67A and B, Dobberspet, Sompura Industrial Area, Nelamangala Taluq, Bengaluru Rural District, Karnataka-562111, before the Corporate Debtor illegally caused Lay off to the Workmen by a notice dated 08.03.2019. More than 1000 people, including the Workmen, were dependent on the operations of the CD.
- (2) It is stated that the CD was not paying the Workmen / employees' wages since October, 2018 and was also not remitting the contributions to the EPF & ESIC authorities of the contributions of the Workmen / employees and Employer since the month of January, 2018. Since Oct., 2018, the Workmen have worked for the CD at the plant without wages with the sincere hope that the Employer would pay them the wages as per the procedure of Law. As stated supra, the CD had caused an illegal lay off by a notice dated 08.03.2019. As per the provisions of Sec. 25M of the Industrial Disputes Act, 1947, the CD was ought to obtain the prior permission of the Authorities under the aforesaid Act, before causing the

lay off since the number of Workmen at the CD was more than 100 at the relevant period. Hence, the CD was bound to pay the Workmen full wages as per Sec. 33(C)(1) of the ID Act, 1947. But by virtue of the moratorium imposed by this Tribunal, the Workmen didn't file for any recovery of the amount under the ID Act, 1947.

- (3) After the Memorandum of Settlement was signed between the Applicant Union on 07.02.2017 and the Management of the CD, the Management of the CD was not complying the terms of the Settlement and the Applicant Union made a representation in this regard to the CD. The Operational Creditor in this Petition, Shri R.N. Manoharan, had signed the said Memorandum on behalf of the CD. The CD was also not paying the Workmen the earned wages within the stipulated time. The Applicant Union, after exhausting the bilateral remedies, made representation to the concerned Authorities under the ID Act, 1947 & the Authority under the Factories Act, 1948. Post representation to the concerned authorities, the CD caused an illegal Lay effective from 09.10.2018. The Applicant Union brought this illegal action of the CD to the concerned Labour Authority by a representation dt.11.10.2018. The said lay off was lifted on 26.11.2018 and the matter is presently pending before the Industrial Tribunal. Since the number of workmen of the CD is more than 100, the CD was bound to obtain the permission from Appropriate Authority u/s 25M of the ID Act, however, the CD failed to do so. The matters of the illegal lay off was also pending as an Industrial Dispute.
- (4) When the said matters were pending as an Industrial dispute, the CD caused another illegal lay off to the Workmen / employees effective from 08.03.2019 and the same was brought to the knowledge of the Concerned Authorities by the Applicant under the ID Act, 1947, by a representation dt. 08.03.2019.
- (5) Subsequently, the Applicant came to know about the admission of this Petition filed by the Operational Creditor, Shri R.N. Manoharan, and



about the appointment of Shri Shivadutt Banerjee as an IRP to carry out the CIRP. Later this Tribunal vide order dt.22.07.2019 had also appointed Shri Srikantiah Shivaswamy, as a Resolution Professional ('RP'). The Applicant had filed a claim statement to the RP. It is stated that the total amount claimed to the RP was Rs. 4,23,11,876/-. This claim excluded the applicable Statutory dues, including the Gratuity and Closure Compensation, as applicable under the ID Act, 1947, since the workmen were hoping that the matter would be resolved through a Resolution Plan through a prospective Resolution Applicant and the workmen will be protected with their job and wages.

- (6) Subsequently, the Applicant through IA No.423 of 2019, before this Tribunal on the prayers of the Workmen which included to hear the workmen since they are an important part in the CD and any orders would have a strong impact on the livelihood of the Workmen. This Tribunal, vide order dt.23.09.2019, directed the RP to invite the Authorised Representative of the Employees Union of the CD in the meetings of the CIRP. However, the RP failed to comply the same in spite of repeated communications and he also failed to update the Workmen on the progress of this Petition. During the month of Sept., 2020, they came to know about this Tribunal order for liquidation of the CD and the Respondent herein was appointed as a Liquidator of GCL Pvt. Ltd. When the representatives of the Applicant Union tried to contact with the erstwhile RP, Shri Shivaswamy, and sought the details, they did not get any clarification. Later the Applicant Union came to know about this Tribunal's order for liquidation of the CD, and the Liquidator had also handed over the possession of the CD to M/s. Canara Bank, being a Secured Creditor. The Applicant Union sent a representation dt.26.9.2020, to the Respondent herein, praying to accept the claims of the Workmen.
- (7) However, the Respondent herein, expressed that he cannot accept any claims from the Workmen without any orders from this Tribunal and

further claimed that he had notified in 'The Financial Express' and 'Hosa Digantha' seeking for claims. It is stated that since the publication was made in said English daily, which is read only by some elite class of the society and the other daily was quite unknown and poorly circulated daily and hence there was no chance that the Workmen to know its contents. It is stated that the Applicant Union sent communications to the Liquidator regarding their claims and it appeared that the Liquidator had a prejudiced view against the Workmen on all their claims for the reasons best known to him.

- (8) It is further stated that the General Secretary of the Applicant Union, had sent the detailed claim statement to the Respondent. However, the Respondent again objected to the claim and sought that the claim can be admitted only if this Tribunal makes an order. In response, the Respondent made untenable remarks on the Workmen, thus further proving his prejudiced actions against the Workmen. It is also stated that the Liquidator had not followed the fair procedure of law while making the publications and the Workmen were unfairly kept in dark about the whole process to their prejudice.
- (9) Thus, the Applicant filed an Application, bearing IA No.455 of 2020, seeking a direction to the Respondent to accept our claims. This Tribunal, vide order dt.07.01.2021, allowed the IA, and directed the Liquidator to consider the claims of the Workmen. Subsequent to the above order, the Respondent sought details of the claimant workmen along with bank details, and the Counsel for the Applicant, vide email dt. 16.02.2021, sent the compensation details, as sought by the Liquidator.
- (10) Subsequent to the Liquidator's email calling for a meeting, the Counsel for the Applicant along with its representatives met the Liquidator on 27.03.2021 and upon going through the claims as admitted by the Liquidator, the Counsel for the Applicant were shocked over the grossly unfair calculations made by the Liquidator and the same was also



expressed to the sole Secured Creditor, M/s. Canara Bank, in its meeting, which sought a detailed justification through the Liquidator.

- (11) The Applicant sent a representation dt.07.04.2021 to the Respondent, the justification, both factual and legal, for the claims of the workmen. In response, the Liquidator, vide letter dt.10.04.2021, with highly prejudiced remarks and also legally and factually incorrect. Subsequently the Applicant made one more representation to the Liquidator on the unfairness pertaining to the admission of the amount of claimant workmen. In the meantime, the Respondent started remitting to the Bank A/c of the workmen and the amount remitted were far less than the amount claimed. Later, the Liquidator has sent individual letters to the Applicant Union wherein he has stated that 40.28% of the admitted amount by the Liquidator seriously causing shock to the claimants.
- (12) It is also stated that 23 workmen were not even admitted with even single paise and that the Liquidator has not considered the full closure compensations and full gratuity but has paid only 40.28% of even the gratuity amount to the workmen to whom he has remitted the amount directly to their Bank Account.
- (13) In the meanwhile, the Liquidator conducted a Stakeholders Consultative Committee meeting, without inviting the representatives of the Workmen, the Petitioner, by violating Regulation 31A of the Liquidation process and arbitrary with connivance of the lone Secured Creditor has taken a decision to file dissolution application.
- (14) It is submitted that the Workmen / Employees of the CD were facing severe hardships due to the non-payment of wages since October, 2018 and many of them were working for the CD for more than 20 years. And that the Liquidator has been acting arbitrarily and biased against the interest of the workers. Hence, the claim statement filed by the Applicant Union be admitted by the Respondent, being the Liquidator in the present Company Petition.



- (15) It is stated that the Corporate Debtor was not closed until the Company was ordered for liquidation. A Company is deemed closed when the Company is liquidated. Hence, the Workmen are entitled for closure compensation as per Sec. 25 (O) r/w Sec. 25 (F) of the ID Act, 1947. They have also relied upon the definition of 'workmen's dues' as per Sec. 326 of the Companies Act, 2013, wherein it is *inter alia* defined that *all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman in respect of services rendered to the Company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947.*
- (16) It is also stated that the Workmen are also entitled for Leave encashment, as per Companies Act, 2013, for the period of services they have rendered as per the provisions of Factories Act, 1948, and are also entitled for the statutory bonus until the period the Company is closed, as per the provisions of Bonus Act, along with statutory dues towards the EPF and ESI. It is further stated that it would be grossly unconstitutional if the claims are not admitted and the Workmen are not paid their dues as per the claims.
3. Heard Shri L. Muralidhar Peshwa, learned Counsel for the Applicant, Shri M.V. Sudarshan, learned Liquidator along with Shri Hemanth Rao, learned Counsel for the Liquidator, through Video Conference. We have carefully perused the pleadings of the Parties and extant provisions of the Code, Rules made there under and the Law on the issue.
4. We must state at the very outset that the we are very conscious of the fact that claims of workmen who have toiled to serve the company and helped in production and running of the same through hard labour, must be given due importance. The Companies Act as well as the IBC 2016, contain specific provisions for workmen for this reason. Hence the Legislative intent also is to protect the interest of the workmen.



5. In the instant case when CIRP was ordered, then also their claims were made before the RP, and all the records and documents available with the RP would have been handed over to the Liquidator at the time of his appointment as Liquidator. Further as per Regulation 19(4) of the IBBI (Liquidation Process) Regulations 2016, the Liquidator may admit the claims of the workmen on the basis of the books of accounts of the Corporate Debtor if a claim has not been made by the Workmen.
6. Be that as it may, once the workmen have made a claim, through their Union, the same has to be made in the prescribed manner and within the prescribed time. As per Regulation 16, a stakeholder has to prove his claim for the debt or dues to him as on the liquidation commencement date. As per Reg. 19, in the case of workmen, the proof of claim has to be submitted to the liquidator in person, or by post or electronic means in prescribed forms. The proof has to be provided in the manner laid down in Reg. 19(3). As mentioned supra, the claim can also be accepted as per the books of accounts of the corporate Debtor.
7. It is submitted by the Liquidator that while he had taken all steps, even making a paper publication the claims of the workmen were not received within the prescribed in time. However, we also find from the submissions of the Liquidator that he has no objection to consider the claims of the workmen if so directed by this Tribunal, but the claims must be submitted in accordance with the Code and Liquidation Regulations.
8. On a consideration of the above facts and circumstances, we are of the considered view that the claim of the workmen needs to be considered by the Liquidator. This denial of claims would be against all norms of justice and equity. Hence, without any comment on or interfering with the disputes that are sub-judice before various courts, we are of the view that the legitimate and verifiable dues of the workmen must be considered by the Liquidator.



9. In view of the above, I.A. No.167 of 2021 in C.P. (IB) No.101/BB/2018 is hereby disposed of with the following directions:

- (1) We hereby set aside the order rejecting the claims of the Applicants. We hereby direct the Liquidator to consider the claims of the Applicants afresh and to give a speaking order to the Applicants within 30 days from the receipt of the order in the manner prescribed in the Code, 2016, the IBBI (Liquidation Process) Regulations, 2016 and all other relevant provisions in this regard.



**BHASKARA PANTULA MOHAN
ACTING PRESIDENT**



**HEMANT KUMAR SARANGI
MEMBER (TECHNICAL)**