

11

**NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
BENGALURU BENCH, BENGALURU, HELD ON 07.01.2021

**THROUGH VIDEO CONFERENCING**  
**CAUSE LIST**

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala  
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB)No. 101/BB/2018	For hearing IA 455/2020 (to admit claim by liquidator) -Under Liquidation	Sec 9 of I&B code 2016	R N Manohar	-	GCL Pvt Ltd	M V Sudarshan, Liquidator, Hem anth Rao for Liquidator L Muralidhar Peshwa for IA

ADVOCATE FOR PETITIONER/s:

Mr. L. Muralidhar Peshwa for  
Applicant in IA

ADVOCATE FOR RESPONDENT/s:

Mr. Hemanth Rao for  
Liquidator

**ORDER**

Heard Mr. L. Muralidhar Peshwa, Learned Counsel for the Applicant in I.A and Mr. Hemanth Rao, Learned Counsel for the Liquidator through Video Conference.  
**I.A No. 455 of 2020 is disposed of by separate order. Post the case on 17.02.2021.**

  
MEMBER (T)

  
MEMBER (J)

Verified

  
Court Officer

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

I.A.No.455/2020 in  
C.P. (IB)No.101/BB/2018  
Under Rule 11 of the NCLT Rules, 2016

***The General Secretary***

*of M/s.GCL Private Limited Employees Union  
A Unit of Bengaluru North Industrial Workers Union  
(Registered Trade Union, Regd. Under the TU Act)  
#183/1, Maruthi Nilaya, 4<sup>th</sup> Cross  
Near St. Mary's Convent,  
Kalyana Nagara, T. Dasarahalli  
Bengaluru – 560 057.*

- Applicant

**In the matter of:**

**Shri R. N. Manoharan**

11/1, 4<sup>th</sup> Cross,  
Ayyappa Nagar, Jalahalli West,  
Bangalore – 560 015.

- Petitioner/Operational Creditor

**Versus**

**M/s. GCL Private Limited**

No.419/420, 10<sup>th</sup> Main Road,  
2<sup>nd</sup> Stage, Peenya Industrial Estate,  
Bangalore – 560 058.

- Respondent/Corporate Debtor

**Date of Order: 07<sup>th</sup> January, 2021**

**Coram:**

1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present, through Video Conference**

For the Applicant : Mr. L. Muralidhar Peshwa, Adv.  
For the Liquidator : Mr. H. Hemanth Rao, Adv.

**ORDER*****Per: Ashutosh Chandra, Member (Technical)***

1. I.A.No.455/2020 in C.P.(IB)No.101/BB/2018 is filed by Workers/Employees of GCL Private Limited ('Applicant'), Under Rule 11 of the NCLT Rules, 2016 by *inter alia* seeking to admit this Application of the Applicant Union and to pass an order directing the Liquidator to admit the claim of the workers as sent to the Respondent, etc.
2. The facts of the case as mentioned in application by *inter alia* stated as following:
  - (1) Initially, C.P.(IB)No.101/BB/2018 filed by Shri R.N. Manoharan (Petitioner/Operational Creditor), U/s.9 of the IBC, 2016, and the same was admitted by the Adjudicating Authority, vide its Order dated 01.05.2019, by initiating CIRP in respect of the Corporate Debtor, appointing Mr. Shivadutt Bannanjee, as IRP, imposing moratorium etc. Subsequently, the Adjudicating Authority vide its order dated July 22<sup>nd</sup>, 2019 allowed the I.A.No.345/2019 filed on behalf of the CoC of the Corporate Debtor to change the RP of the Corporate Debtor and thus appointed Mr. Srikantiah Shivaswamy as the RP in place of Shivadutt Bannanjee.
  - (2) It is stated that the workmen of the Corporate Debtor are the members of the Union. More than 100 workers/employees are employed by the Corporate Debtor 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 workers by a notice dated 08.03.2019. More than 1000 people, including the workers, were dependent on the operations of the Corporate Debtor.
  - (3) It is stated that the Corporate Debtor was not paying the workers/employees' wages since the month of October, 2018, and the



Corporate Debtor was also not remitting the contributions to the EPF and ESIC Authorities of the contributions of the workers/employees and the contributions of the Employer since the month of January, 2018.

- (4) The Applicant Union is a recognized Union of the Corporate Debtor. That after the Memorandum of Settlement was signed between the Applicant Union on 07.02.2017 and the Management of the Corporate Debtor, the Management of the Corporate Debtor was not complying the terms of the settlement and the Applicant Union made a representation in this regard to the Corporate Debtor. The workers also made representation to the concerned authorities under the Industrial Disputes Act, 1947 and the Authority under the Factory's Act, 1948. The Corporate Debtor caused an illegal layoff w.e.f.09.10.2018 which was lifted on 26.11.2018. All these matters are now pending before the Appropriate Authorities. The matters on the illegal lay off is also pending as an Industrial Disputes in Ref.No.1/DA/SR/03-2019. The Corporate Debtor caused another illegal lay off to the workers/employees w.e.f. 08.03.2019.
- (5) Subsequently the Applicant came to know that this Tribunal had admitted a petition from the Applicant/Operational Creditor, Shri R.N. Manoharan, and also appointed Mr. Shivadutt Bannenjee as an IRP to carry out CIRP and later by an Order dated 22.07.2019 Mr. Srikantaih Shivaswamy, as an RP. It is submitted that the total amount claimed to the RP was Rs.4,23,11,876/-. This claim excluded the Applicable Statutory including the Gratuity and other statutory dues, including the Closure Compensation as applicable under the Industrial Disputes Act, 1947. Later the Applicant had also filed an application on the prayer of the workers which included to hear the workmen since the workmen are an important part in the Corporate Debtor since any orders would have a strong impact on the life and livelihood of the workers. Further this Tribunal was pleased to admit the Application of this Applicant and the same was numbered as 423/2019 in the present C.P(IB)No.101/BB/2019 and given specific direction to the RP to invite the Representative of the



Applicant Union in the meetings on the CIRP. But the RP failed to comply with the specific directions.

- (6) In the month of September, 2020 the workers were given to understand that this Tribunal had ordered for the liquidation of the Corporate Debtor and the Respondent in this Application, Mr. M.V. Sudharshan, was appointed as Liquidator of GCL Private Limited. Later through the website of this Tribunal the Applicant Union were shocked to find the order of this Tribunal ordering for the liquidation of the Corporate Debtor and the Liquidator had also handed over the possession of the Corporate Debtor to M/s. Canara Bank being a secured creditor. Through the address provided in the order the Applicant Union sent a representation dated 26.09.2020 to the Liquidator, the Respondent in this Application, praying for the liquidator to accept the claims of the workers.
- (7) But the Respondent Liquidator, expressed that he cannot accept any claims from the workers without any orders from this Tribunal and further claimed that the Respondent had notified in the Financial Express and a paper called Hosa Diganatha seeking for claims. But so called papers were out of bounds for the workers for the reasons that the publication is made in the language of English and one of the paper is an English daily which is read only by the some elite class of the society and the other daily is quite unknown and poorly circulated daily and hence there was no chance that the workers had the chance to know the contents of the same. Further the Applicant fails to understand as to what prevented the management of the Corporate Debtor, administered through the Liquidator, being the Respondent this Application, to communicate the Application union. Further the Order from this Tribunal also must be in the records of the Liquidator since all the correspondences would have been transferred from the RP to the Liquidator.
- (8) The Workers of the Corporate Union, by Authorizing the General Secretary of the Applicant Union, had sent the detailed claim statement to the Respondent, by requesting, as per the prescribed form. But the



Respondent again objected to the claim and sought that the claim can be admitted only if this Tribunal makes an order.

- (9) The workers/employees of the Corporate Debtor are suffering with severe hardships due to the illegal lay off and non-payment of wages to the workers, by the Corporate Debtor, since the month of October, 2018. Many of the claimant workers/employees have been working for the Corporate Debtor for more than 20 years. These workers have dependent family members. The illegal actions of the Corporate Debtor have put the workers/employees and their dependent family members in destitute positions. Many of them are forced to vacate their rented houses due to non-payment of rents for the past so many months.
- (10) It is stated that the stand of the Respondent, the Liquidator, is untenable and would further cause serious hardships to the workers and their dependent family members. He has not followed the fair procedure of law while making the publications and the workers are unfairly kept in dark about the whole process to their prejudice.
- (11) It is also stated that in the interest of natural justice and equity it will only be fair that the Claim Statement filed by the Applicant Union on behalf of the workers of the Corporate Debtor are admitted by the Respondent, being the Liquidator in the present Company Petition, and the workers are paid their dues as per the claims to at least mitigate the severe hardships the workers are faced to some extent. It is further stated that it would be grossly unconstitutional if the claims are not admitted and the workers are not paid their dues as per the claims. No loss or prejudice whatsoever will be caused to the Respondent, the Liquidator, if the reliefs prayed for are granted. The balance of convenience lies in favour of the Applicant.
3. The Liquidator has filed the statement of objected dated 05.01.2021 in which he has given para wise reply to the application seeking acceptance of the workmen's claim. He has contended as follows:



- (1) Applicants are workmen of the Corporate Debtor, but the allegations with respect to 'illegal layoffs' is not within the knowledge of this Respondent as they have occurred before the initiation of CIRP by this Tribunal. It is true that the workmen had submitted their claims to the Resolution Professional in Form E of CIRP Regulation through their authorised representative the General Secretary, GCL Private Limited Employee Union. But the claim submitted was in a statement form without any proof of claims.
- (2) It is true that this Tribunal had passed an order to invite the representatives of the workmen, but it is not within the knowledge of this Respondent if the workmen's representative were invited by the RP or the reason for not inviting them. Nevertheless, the said allegations have no bearing on the matter at hand.
- (3) It is true that the Respondent was appointed as Liquidator by this Tribunal vide its order dated 15.06.2020. The Respondent had published a notice of the commencement of Liquidation Process and invitation of claims from stakeholders in the Form B of the Schedule II as required by Regulation 12 of the Liquidation Regulations, in the Financial Express and Hosa Digantha on 03.07.2020, mentioning the last date for submitting stakeholder claims as 02.08.2020. However, none of the workmen submitted their claims within the stipulated time frame. As admitted by the Applicants, they have already appeared before this Tribunal and were aware of the CIRP proceedings. Thus, they cannot feign ignorance of the liquidation proceedings.
- (4) Nevertheless, this Respondent has no power under the IBC to admit any claims which are not submitted within the time limit stipulated in Section 38 of the IBC. Similarly, Regulation 16 of the Liquidation Regulations also stipulate that stakeholders should submit their claims to the liquidator, before the last date mentioned in the Public Announcement. Thus, the Liquidator being a creature of the statute cannot act beyond what is permitted by the statute. Hence, he has replied that until necessary orders from this Tribunal is obtained, he cannot entertain belated claims. Further, the Respondent cannot accept the claims submitted by the Applicants as



the Claims did not conform to Regulation 19 of the Insolvency and Bankruptcy Board (Liquidation) Regulations, 2016. As per Regulation 19, the workmen have to submit proof to substantiate their claims. Much as he empathizes with the travails of the workmen, he cannot violate the law to accommodate the claims of the Applicants at this stage. The Applicants falsely allude motives to the Respondent. The Respondent's only motive has been to perform his duties as a liquidator within the confines of the law. The Respondent has acted strictly in accordance with the procedure stipulated by the law. Hence, the allegations made therein are denied as spurious and baseless.

(5) It is stated that the Respondent has no objection to consider the claims of the workmen if so directed by this Tribunal, the claims must be submitted in accordance with the Code and Liquidation Regulations.

4. Heard Mr. L Muralidhar Peshwa, learned Counsel for the Applicant and Mr. Hemanth R. Rao, learned Counsel for the Liquidator, **through Video Conference**. We have carefully perused the pleadings of the Parties and also extant provisions of the Code, and Rules made thereunder.
5. 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.
6. 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.





7. 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.
8. It is submitted by the Liquidator that while he had taken all steps, even making a paper publications 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.
9. 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 and the delay in submission of their claims needs to be condoned. The delay in making the claim in time appears to have been due to reasons beyond their control and the harm caused to them due to non payment of their dues would be disproportionately high compared to the default/delay committed by them in filing the claims. 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.
10. In view of the above, I.A.No.455/2020 in C.P.(IB)No.101/BB/2018 is hereby disposed of with the following directions:
  - (1) In exercise of the powers conferred upon this Tribunal, the delay in filing the claims by the Workers/Employees of GCL Private Limited before the

Liquidator in the Liquidation proceedings in progress, is hereby condoned.

- (2) The Liquidator is directed to consider the claims of the workmen in the manner prescribed in the Code, 2016, the IBBI (Liquidation Process) Rules, 2016 and all other relevant provisions in this regard.



**ASHUTOSH CHANDRA  
MEMBER, TECHNICAL**

Amar



**RAJESWARA RAO VITTANALA  
MEMBER, JUDICIAL**