

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**PRINCIPAL BENCH, NEW DELHI**

**COMPANY APPEAL (AT) (INSOLVENCY) No. 934 of 2021**

(Arising out of Order dated 06.09.2021, passed by National Company Law Tribunal, Mumbai Bench, in C.P. (IB) No.- 1060/MB/2019)

**IN THE MATTER OF:**

**Kishore K. Lonkar**  
**20/5, Dharamvir, Scheme No. 11,**  
**Sector 25, Yamunanagar,**  
**Nigdi, Pune – 411044.**

**...Appellant**

**Versus**

**Hindustan Antibiotics Ltd.**  
**Mumbai Pune Road,**  
**Pimpri, Pune,**  
**Maharashtra – 411018.**

**...Respondent**

**For Appellant:**

**Ms. Pratiksha Sharma, Mr. Kunal Katariya and Mr. Ankit Acharya, Advocates.**

**For Respondent:**

**Mr. D. Ray Choudhuri, Sr. Advocate with Mr. Deendayal G. Dhanure, Advocate.**

**J U D G E M E N T**

**[Per: ShreeshMerla, Member (T)]**

1. Aggrieved by the Impugned Order dated 06/09/2021, passed by the Learned Adjudicating Authority (National Company Law Tribunal, Mumbai Bench), in C.P. (IB) No. 1060/MB/2019, *Mr. Kishore K. Lonkar* preferred this Appeal against the Order of dismissal of the Application under Section 9 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'The Code').

2. Learned Counsel strenuously contended that the Appellant worked as the employee in the Respondent Company and attained superannuation on

31/10/2016 and that the following service benefits are 'due and payable' by the Respondent Company:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount (Rs.)</b>
01.	Gratuity	10,00,000/-
02.	EL Encashment	6,74,273/-
03.	LTC	6,604/-
	Total	16,80,877/-

**3.** It is the case of the Appellant that despite serving Demand Notice dated 11/02/2019, under Section 8 of the Code, the Respondent Company failed to clear the 'Operational Debt' and hence the Appellant was constrained to file the Application under Section 9 of the Code seeking a direction to initiate Corporate Insolvency Resolution Process (CIRP) against the Respondent Company.

**4.** Learned Counsel submitted that 'Gratuity', 'LTC', and 'EL Encashment' all constitute 'salary' and therefore falls within the ambit of the definition of 'Operational Debt' as defined under Section 5(21) of the Code.

**5.** Learned Sr. Counsel Mr. D. Ray Choudhuri argued that as per Section 14 of the Payment of Gratuity Act, 1972, the Gratuity disputes would be decided by the Regional Labour Commissioner. It is submitted that the Appellant had approached the Commissioner and obtained an Order for payment of Gratuity. On 17/02/2022, the principal amount of the Gratuity was already paid to the Appellant and the question of whether interest is to be paid or not, is to be decided by the Regional Labour Commissioner and that this Tribunal does not have jurisdiction to entertain such disputes.

**6.** As against this argument, Learned Counsel appearing for the Appellant submitted that apart from 'Gratuity' there are still dues pertaining to 'LTC' and 'Leave Encashment' which construes 'debt' and 'default' and

therefore the ratio of the Hon'ble Supreme Court in 'M/s. Innoventive Industries Ltd.' Vs. 'ICICI & Anr.', (2018) 1 SCC 407, with respect to 'debt' and 'default' is applicable to the facts of this case.

7. It is significant to mention that the Adjudicating Authority has recorded in the Impugned Order that one Mr. Harsh S. Pinge earlier filed a similar Petition 2482/2018 before the Adjudicating Authority claiming his retiral benefits/dues, the proceedings of which were stated by the Hon'ble High Court of Mumbai in Writ Petition No. 11366/2019 in an Interim Application No. 01 of 2019 filed by the Respondent Company.

8. Section 5(21) of the Code reads as follows:

**“5. Definitions.-** In this Part unless the context otherwise requires,-

(21) “Operational Debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;”

9. The aforementioned Section includes any 'Claim' in respect of the provision of Goods and Services including 'employment'. It is not the case of the Appellant that the amounts claimed are due towards any emoluments/salary for the services rendered by him to the 'Corporate Debtor', while he was in service. Though 'service benefits' like 'LTC' accrue, on account of the service rendered during the period of employment, the scope and objective of the Code is simply not just for recovery of 'dues' but Resolution of the Companies meant for 'maximisation of the value of assets', to promote entrepreneurship, availability of credit and balance all interest of the stakeholders. Employees and workmen do constitute a major part of the stakeholders. The term 'employee' in general parlance refers to a person,

who is hired by the employer to perform a particular job and is entitled to a specific wage or salary. Section 3(36) of the Code states that the term 'workmen' shall have the same meaning as provided under Section 2(s) of the Industrial Disputes Act, 1947. For the purpose of the Code, the term 'workmen dues' has to be interpreted in terms of explanation to Section 326 of the Companies Act, 2013. As per the definition incorporated therein, the dues would cover wages and salary, accrued holiday remuneration, workmen compensation, and all sums due from Provident Fund, Pension, Gratuity Fund or any other fund for the welfare of the workmen, maintained by the employer. Generally speaking, the 'Claims' of the workmen/employees may be classified as '*service claims*' which arise during the terms of employment, in lieu of service rendered by the employee, salary, wages, bonus, dues etc., and '*welfare claims*' which arise after cessation of employment, like 'Gratuity', 'Leave Encashment', Superannuation Dues, Workmen Compensation for closure of the entity which all depend on the tenure of the employment. Subsequent to the Company going into the Insolvency, all such claims may be submitted in Form D under Regulation 9 of the (Insolvency and Bankruptcy) CIRP Regulations, 2016. But seeking to initiate CIRP on the ground that 'LTC' and 'EL Encashment' has not been paid, which fall within the ambit of service benefits/welfare benefits cannot be said to be the intent and objective of the Code.

**10.** We are also conscious of the fact that the Principal Gratuity amount was paid to the Appellant on 17/02/2022 and deciding the question of interest is not within the domain of IBC. Hence, this Tribunal is of the considered view that there is no illegality or infirmity in the well-considered

Order of the Adjudicating Authority. Therefore, this Appeal fails and is accordingly dismissed. No Order as to costs.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Ms. Shreesha Merla]**  
**Member (Technical)**

**New Delhi**  
**10<sup>th</sup> May, 2022**  
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