

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 209 of 2018**

**IN THE MATTER OF:**

**Somesh Bagchi & Ors.**

**...Appellants**

**Vs**

**Nicco Corporation Ltd., through Liquidator**

**....Respondent**

**Present:**

**For Appellants: Mr. Swarnendu Chatterjee and Mr. Pinaki Addy, Advocates.**

**For Respondent: Mr. Vinod Kumar Kothari, Liquidator with Ms. Nitu Poddar, PCS and Mr. Anirudh Wadhwa & Mr. Madhusudan Sharma, Advocates for R-1.**

**Mr. B. B. Sawhney, Sr. Advocate with Mr. Lakshy Sawhney, Advocate for Impleader (TDB).**

**O R D E R**

**18.07.2018:** This appeal has been preferred by ‘Somesh Bagchi and 20 Others’ retired employees of ‘Nicco Corporation Limited’ (Corporate Debtor), which is undergoing liquidation pursuant to order issued under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘I&B Code’), Resolution Process having failed.

2. The grievance of the Appellants is that the Liquidator is deviating the gratuity of the employees for payment of dues of Creditors in terms of Section 53 of the I&B Code. Learned counsel for the Appellant rightly submitted that the gratuity, which is in the Gratuity Trust Fund accrued under the Gratuity Act belongs to the employees/workmen of the Corporate Debtor. Therefore, it cannot be disbursed to any other Creditor. It was alleged that out of Rs.27 Crore of asset of the Corporate Debtor which was existing prior to liquidation, Rs.16 Crore has been paid in favour of the Secured Creditors.

3. Notice was issued on the question as to whether the gratuity amount lying in the 'Gratuity Trust Fund' can be treated to be asset of the Corporate Debtor. Mr. Vinod Kothari, Liquidator appeared in person and took plea that 'Gratuity Trust Fund' of the employees has not been treated as asset of the Corporate Debtor nor any amount has been disbursed from the said fund to any Creditor of the Corporate Debtor. A reply affidavit has been filed by the Liquidator with following statement:-

*"2. That the amount of Rs 27,94,19,639 crores (Twenty Seven Crores Ninety Four Lakhs Nineteen Thousand Six Hundred and Thirty Nine Rupees Only) lying in the No-lien account with Allahabad Bank as on the liquidation commencement date did not include the amount lying to the credit of the gratuity fund;*

*3. That no amount lying in the gratuity fund was used for making the interim distribution made by the Liquidator vide his decision dated 22.12.2018;*

*4. That as per the information received from the ex-Managing Director of the Corporate Debtor, the following are the present trustees of the Gratuity Fund:*

- a. Mr. Kartick Kr. Chatterjee, Chairman*
- b. Mr. Shiv Siddhant Narayan Kaul, Member*
- c. Mr. Sibaji Datta, Member*
- d. Mr. Subrata Bhattacharjee, Member*

*5. That further, as per the information received from the ex-Human Resource Head, vide an email dated 06.07.2018, of the Corporate Debtor, attached herewith and marked as Annexure-I,*

*Rs.22634566 (Two Crores Twenty Six Lakhs Thirty Four Thousand Five Hundred and Sixty Six Rupees Only) is lying in the gratuity fund as on 30.06.2018, bifurcation of which is as below:*

- a. Rs.2,05,51,304 in HDFC as on 30.06.2018*
- b. Rs.20,83,262 in LIC as on 06.07.2018.”*

4. We appreciate the stand taken by the Liquidator, who has clearly stated that the gratuity amount of the employees/workmen lying in the ‘Gratuity Trust Fund’ has not been treated as asset of the Corporate Debtor. The details relating to the Fund have been shown but we find that there is a shortage of Rs.5.70 Crore in the said Fund. How such shortage in Gratuity Trust Fund has occurred and who is to make good of such amount and the competent authority, who is to ensure that the amount is paid to the ex-employees/workmen/officers of the Corporate Debtor to the extent they are entitled as per their share and law, could not be decided by the Adjudicating Authority or this Appellate Tribunal in the Company Petition or in this appeal.

5. Any decision of the Adjudicating Authority relating to the ‘Gratuity Trust Fund’ or observation made in the impugned order dated 8<sup>th</sup> March, 2018 should be treated as mere observation not binding on the Competent Authority or any Court of Law. In view of the fact that the ‘Gratuity Trust Fund’ has not been treated as asset of the Corporate Debtor, we leave other questions open for determination by appropriate authority/ a court of competent jurisdiction.

6. However, taking into consideration that the Corporate Debtor is undergoing liquidation and the creditors are entitled for their share in terms of Section 53 including wages, salaries of the employees, but the employees who are also entitle to withdraw their gratuity amount from the Fund, we allow the Appellants or any other employee or other association to move before appropriate authority or a court of competent jurisdiction who may take care of their grievances. In view of the observations above, the application for impleadment has become infructuous I. A. No. 880 and another I. A. No. 881 stands disposed of. The appeal stands disposed of with aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

*am/sk*