

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court- II)**

IA/258(KB)2023

IN

C.P. (IB)/972(KB)2018

In the matter of:

An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016;

And

In the Matter of:

Bell Finvest (India) Limited

(CIN: 632200MH1994PLO80907), a company incorporated UNDER THE provisions of the Companies Act, 1956, having its registered office at 1107, Maker Chambers V, Nariman Point, Mumbai-400021.

.... Financial Creditor

Versus

Duckbill Drugs Private Limited

(CIN: 624232WB1994PTC063258), having its registered office at D-660, Lake Gardens, Kolkata, West Bengal-700045.

.... Corporate Debtor (In Liquidation)

And

In the matter of:

1. Krishan Murari Dayal

Son of Dr. L. K. Dayal, residing at P.T.C. Road, Near Malaria Office, Korrah, Hazaribag, Bihar – 825301, presently camping at 60A, Charu Avenue, Kolkata - 700033.

2. Saroj Kumar

Son of Chandra Bhusan Prasad, residing at R.S. Tank (Narolia), P.O. – Laheriasarai, District – Darbhanga, Bihar – 846001 and presently camping at 60A, Charu Avenue, Kolkata - 700033.

3. Ashok Kumar Dubey

Son of Abadhesh Kumar Dubey, residing at Quarter No.384, Sector – 1/B, Bokaro Steel City, Jharkhand and presently camping at 60A, Charu Avenue, Kolkata - 700033.

4. Mihir Gupta

Son of Gopal Chandra Dey, residing at Mohanpur (Near Nakkoo Asthan), Samastipur – 848101, Bihar, presently camping at 60A, Charu Avenue, Kolkata - 700033.

5. Girindra Kumar

Son of Jagadish Naryan Verma, residing at Asha Sadan, Chandmari (EKWANA), Motihari – 845401, East – Champaran, Bihar and presently camping at 60A, Charu Avenue, Kolkata - 700033.

.... Applicants

Versus

CA Santanu Brahma

Son of Late Amalendu Brahma, Liquidator of Duckbill Drugs Private Limited (In Liquidation), having registration number ICCI/IPA-001/IP-P01482/2018-2019/1225) and having its office at AH 276, Salt Lake Sector-II, Kolkata-700091.

.... Liquidator/Respondent

CORAM:

Smt. Bidisha Banerjee : Member (Judicial)

Shri D. Arvind: Member (Technical)

Date of pronouncing the order: 26/04/2024

Appearances (Physically/ via video conference)

- | | |
|-----------------------------------|---|
| 1) Mr. Aninda Lahiri, Adv. |] For the Applicant. |
| 2) Ms. Dipika Banu, Adv. |] |
| 3) Mr. Subhadip Chakraborty, Adv. |] |
| 4) Mr. Souvik Dian, Adv. |] |
| 5) Ms. Bolivia Roy, Adv. |] |
| | |
| 1) Mr. Shaunak Mitra, Adv. |] For the Liquidator |
| 2) Mr. Santanu Brahma |] Liquidator-in-person |
| | |
| 1) Ms. Urmila Chakraborty, Adv. |] For the Successful Resolution Applicant |
| 2) Mr. Avishek Guha, Adv. |] |
| 3) Ms. Arunika Dutta, Adv. |] |
| 4) Mr. Kaustav De Sarkar, Adv. |] |

ORDER

Smt. Bidisha Banerjee, Member (Judicial)

1. Court convened in a hybrid mode.
2. Ld. Counsel for the Applicant, Ld. Counsel for the Liquidator and Ld. Counsel for the Successful Resolution Applicant were heard.
3. This application has been preferred by 5 Workmen of the Corporate Debtor Duckbill Drugs Private Limited (in liquidation) to seek the following reliefs:
 - (a) Delay may be condoned if any, by filing this application;
 - (b) A direction be given to the Official Liquidator to accept and acknowledge the claims as submitted by the applicants and disburse the same;

- (c) Order and / or orders may be passed directing the Respondent Resolution Professional to consider the total claim of the Applicants.
- (d) Such further order and/or other orders, as this Learned Tribunal deems fit and proper.

4. **Submission of the Applicant:**

- 4.1 The Applicants are the workmen in the company under liquidation.
- 4.2 It is submitted that **C.P. (IB)/972(KB)2018** was filed by Bell Finvest (India) Limited, the Financial Creditor to seek initiating of CIRP against Duckbill Drugs Private Limited, the Corporate Debtor.
- 4.3 That the said Petition came up for hearing before this Kolkata Bench on 16.02.2022 when this Tribunal was pleased to inter alia direct that the matter would come up for hearing on 19.04.2022 for filing of Progress Report.
- 4.4 It is submitted that during the interregnum, the workmen of the aforesaid Company came to know through All India Trade Union that the Company had already gone to the Liquidation and a Liquidator has already been appointed. Having heard of this, the workmen had a telephonic discussion with the Official Liquidator but no fruitful conclusion was arrived at.
- 4.5 It is submitted that subsequently the workmen had made a detailed written representation before the Official Liquidator on 28.03.2022 which is annexed with the Application as **Annexure-‘A’**.
- 4.6 Aggrieved with no response and being left with no other

alternative, the workmen filed a Company Application No.452(KB)/2022 before this Tribunal praying the following reliefs: -

- a. *“Delay of 36 days may be condoned in filing proof of claim with the Respondent Resolution Professional;*
- b. *Order and/or orders may be passed directing the Respondent Resolution Professional to consider the claim of the Applicant;*
- c. *Such further order and/or other orders, as this Learned Tribunal deems fit and proper;”*

4.7 This Tribunal, upon hearing the said Application, was pleased to condone the delay vide its order dated 14.10.2022. The order reads thus: -

“This IA has been filed by the workmen union for condoning the delay in filing claim with the Liquidator. It is stated by the Learned Counsel appearing for the applicant that there are 37 workers, who seek to file their claim for consideration before the Liquidator. The delay is hereby condoned”. (Annexure-‘B’).

4.8 It is urged by the Applicants that there were 38 claimants instead of 37 claimants as recorded in the order dated 14.10.2022 by this Tribunal.

4.9 It is submitted that pursuant to such order passed by this Tribunal, the workmen / claimants duly filed their respective claims before the Liquidator with all necessary documents.

4.10 It is further submitted that on 17.11.2022, the Liquidator had sent an email with following observations inter alia: -

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that “On scrutiny of the documents, it is observed that the details about the amount claimed is missing/not mentioned – that is to say, on what account the employees are claiming the amount i.e. whether it is Salary, Gratuity, Leave Encashment etc. Further, there is no documentary evidence to substantiate the claim amount. Only the appointment letter of individual employees are provided which evidences that the claimant has been appointed by CD but under no circumstances substantiate the fact that the claimants was continuing service with the CD and / or whether his claim arises on account of Full & Final Settlement on resignation / retirement from employment with CD. Most importantly the rationality of the amount claimed i.e. how the amount has been determined is also missing from the forms filed with the undersigned”.

The summary of the claim as raised by the Applicants through Form-‘E’ and received by the Liquidator are as under: -

Sl.No.	Name of the Employees (Claimant)	Amount claimed
1	Krishan Murari Dayal	Rs.3,65,151/-
2	Saroj Kumar	Rs.4,59,759/-
3	Ashok Kumar Dubey	Rs.4,47,175/-
4	Mihir Gupta	Rs.1,90,046/-
5	Girindra Kumar	Rs.5,23,926/-
TOTAL		Rs.19,86,057/-

Photocopy of such email communication forms **Annexure-
'C'**.

- 4.11 It is alleged that on 23.11.2022 and 24.11.2022, the claimants had submitted their respective claims along with all documents as per the communication of 17.11.2022, but despite that all the documents were simply lying in the office of the liquidator as the Company always neglected the field workers. It is also alleged that the Company had never provided necessary documents like pay slip etc. to the workers.
- 4.12 It is also urged that vide its order dated 16.02.2022 this Tribunal had inter alia directed that *“Ex. Director/ Respondents shall immediately handover peaceful possession of the assets of the Corporate Debtor, Property1: Immovable Property being piece and parcel of Building No. 1, Gr. Flr (North Part), measuring 2729 sq.ft. situated at Behala Industrial Estate, Building No. 1&2, 620 Diamond Harbour Road, Kolkata- 700034, West Bengal”* and in point No.9 of the same order it was directed that *“Since, there is no registered office of the Corporate Debtor, these respondents/ Directors shall hand over all the ‘Books of Accounts’ which shall include but are not limited to sales register, purchase register, Journal, ledgers, cash book as defined in section 2(13) of the Companies Act, 2013, need to be handed over, stored and delivered at the factory premises. The ‘Books of Accounts’ in Tally format may be specifically directed to be made available at the factory premises”*.
- 4.13 It is urged that, had any objection or objections of the Official Liquidator was/were there, they could have

refuted the same and argued accordingly. Photocopy of such order of this Tribunal has been annexed as **Annexure-‘D’**.

4.14 It is alleged by the Applicant that the Company had issued their employees/workmen Pay Slips only upto the period of May, 2013 whereafter that the Company never issued Pay Slips to its employees as a result, it is impossible for the Claimants to produce such documents to the Liquidator.

4.15 It is also alleged that total 38 claims had been submitted before the Liquidator with supporting documents but as per the email communication dated 07.12.2022 received by the Learned Counsel for the Applicants, the Liquidator has admitted a part which is as under: -

Claimed Amount	Admitted Amount	Rejected Amount
81,84,367	27,87,362	53,97,005

Photocopy of such email communication forms **Annexure-‘E’**.

4.16 It is alleged that although the applicants had lodged total 38 claims, but it was not clear from the email communication dated 07.12.2022 whether all the claims have been considered.

4.17 It is further alleged point No.7 of the email communication dated 07.12.2022 shows that the claim towards Gratuity has been rejected by the Liquidator which is in utter violation of the order of this Tribunal dated 16.02.2022.

4.18 Further that vide point No.8(ii) of the email

communication dated 07.12.2022, the amount claimed by the employees towards Leave Encashment, aggregating to Rs. **17,88,681**, stands rejected by the Liquidator which is in violation of the Statutory Provision of Leave Encashment.

- 4.19 Further that vide point No.8(iii) of the email communication dated 07.12.2022, the claim towards total Salary of Rs. **10,95,764/-** had been rejected by the Liquidator on the pretext that the employees had claimed their salary for the period upto January 2022 which is after the commencement date of liquidation. It is alleged that such rejection is contrary to the order passed by this Tribunal on 16.02.2022.
- 4.20 It is alleged that vide point No.8(b) of the email communication dated 07.12.2022 the total amount of Bonus claimed by the employees Rs. **1,29,173/-** and Expenses Rs. **13,03,276/-** have been rejected by the Liquidator owing to the fact that such expenses were pertaining to the period post 13.04.2021 i.e. the Liquidation commencement date when the Liquidator was not conducting the business of the Corporate Debtor, which is again contrary to the order passed by this Tribunal on 16.02.2022.
- 4.21 It is urged by the Applicants that Federation of Medical and Sales Representatives Association of India (FMRAI) had made an official settlement of their Charter-of-Demands for the period 1st January 2004 to 31st December 2006 on 30th March, 2005 which is applicable to all confirmed Sales Promotion Employees employed by the Company for a period of 3 years, effective from 1st

January, 2004 to 31st December, 2005 and would continue to remain in operation thereafter unless the same is replaced by the parties.

- 4.22 That a statement of travelling expenses (**Annexure-‘C’**) is submitted by the Applicant No.1, 2 and 5 by way of a supplementary affidavit dated 22.03.2024. It is urged that claim should be counted till January 2022 instead of 13.04.2021.
- 4.23 It is also submitted that the Company never informed the employees about the process of liquidation rather, the Company always insisted its field workers to carry on their field works as also provided the saleable goods to meet the demands in the market.
- 4.24 Vide supplementary affidavit it is alleged that despite several requests, the Company refused to pay their claims since beginning.
- 4.25 A statement reflecting the respective provident fund contributions (**Annexure-‘D’**) is also submitted by way of the said Supplementary Affidavit.

5. **Per Contra:**

The Liquidator of the Corporate Debtor Duckbill Drugs Private Limited would vehemently oppose the claim.

- 5.1 It is submitted by the Respondent / Liquidator by way of reply affidavit dated **10.04.2023** that on account of Gratuity aggregating to Rs.**31,94,414/-**, an amount of Rs.**27,87,362/-** had been admitted and an amount of Rs.**4,07,052/-** had been rejected by the Liquidator.
- 5.2 It is submitted by the Respondent / Liquidator by way of

reply affidavit dated **14.10.2023** that the Applicant No.1, 2 and 5 had received payment of all their expenses and salaries save and except the alleged expenses for the period 8-9 years.

- 5.3 It is also asserted that the Applicant No.1, 2 and 5 had not received the alleged expenses for the period 8-9 years for they could not produce any evidence to substantiate that the alleged expenses were submitted with the erstwhile management for reimbursement.
- 5.4 It is further submitted by the Liquidator that the Applicant No.1, 2 and 5 had not made any follow-up communication with the erstwhile management in respect of their conveyance expenses for the period 8-9 years which could have been considered without substantive evidence establishing the authenticity of the claim.
- 5.5 It is submitted that Applicant No.1, 2 and 5 had never claimed the alleged expenses in the nature of local conveyance, daily allowance etc. with the Corporate Debtor and hence the alleged expenses were not outstanding as on the liquidation commencement date i.e. 13.04.2021.
- 5.6 It is submitted by the Respondent/Liquidator vide affidavit dated **19.12.2023** that upon condonation of delay by this Tribunal, vide order dated 14.10.2023 the claims of Rs.**81,84,367/-** (Rupees Eighty One Lakh Eighty Four Thousand Three Hundred Sixty Seven only) had been considered by the Liquidator, the same were verified and admitted to the extent of Rs.**27,87,362/-** (Rupees Twenty Seven Lakh Eighty Seven Thousand Three Hundred Sixty Two only) and the same had been disbursed to the respective bank accounts of the claimants on 31.01.2023

(Rs.27,36,348/-) and on 19.05.2023 (Rs.51,014/-).

- 5.7 It is also submitted by the Liquidator that in compliance of this Tribunal's order dated 29.11.2023, the Liquidator had conducted a meeting on 09.12.2023 at 11 AM with the representatives of the workmen and employees of the Corporate Debtor along with their learned advocates being the applicants to the 8(eight) I.As i.e. I.A. No.255/KB/2023, I.A. No.256/KB/2023, I.A. No.257/KB/2023, I.A. No.258/KB/2023, I.A. No.259/KB/2023, I.A. No.260/KB/2023, I.A. No.262/KB/2023 and I.A. No.263/KB/2023 at the IBBI registered office of the Liquidator being AH-276, Salt Lake, Sector-II, Kolkata-700091.
- 5.8 It is submitted that advance notice of the said meeting was sent on behalf of the Liquidator to the Advocate on Record of the Employees by email dated 29.11.2023 which is annexed as **Annexure-'A-1'** with the affidavit dated 19.12.2023.
- 5.9 That during the meeting, each element of the claim i.e. gratuity, leave encashment, bonus, salary, expenses and interest had been deliberated upon and admitted or rejected with full reasons as to why the Respondent Liquidator was constrained to reject/partially admit the claim.
- 5.10 It is further submitted that as an outcome of the meeting, there was difference of opinion on the following items:-
- a) Cut-off date for admissibility of claim filed by the employees;
 - b) Leave encashment; and
 - c) Expenses claimed by the employees

- 5.11 In regard to **cut-off date** for admissibility of claim, the Applicants / Workmen disagreed to the Respondent Liquidator's contention that the liabilities of the employees should be considered till 13.04.2021 i.e. liquidation commencement date, and stressed on the fact that their service post 13.04.2021 with the erstwhile Promoters and Directors should also be considered as they were unaware of the liquidation order dated 13.04.2021 passed by this Tribunal.
- 5.12 In regard to **Leave Encashment**, the representatives of the employees stated that their employment was subject to the Sales Promotion Employees (Conditions of Service) Act, 1976 ("Sales Promotion Employees Act") read with the Sales Promotion Employees (Conditions of Service) Rules, 1976 ("Sales Promotion Employees Rules") and hence the employees were statutorily entitled to 'Leave Encashment' by virtue of the provision of Section 4 of Sales Promotion Employees Act read with Rule 14 of Sales Promotion Employees Rules. Accordingly, a joint exercise was conducted to determine the amount of claim as per the Sales Promotion Employees Act and the Rules which worked out to the tune of Rs.**9,55,582/-** (Rupees Nine Lakh Fifty Five Thousand Five Hundred Eighty Two only). The detailed Calculation sheet is annexed as **Annexure-'A-2'** with the said affidavit.
- 5.13 In regard to **Expenses** claimed by the employees, the Respondent / Liquidator submitted that no supporting documentation have been provided by the employees for the amounts of Rs.7,29,882/-, Rs.5,37,023/- and Rs.36,371/- that pertains to the period post liquidation

commencement date i.e. 13.04.2021. Owing to such non-disclosure, a total amount of Rs.**13,03,276/-** (Rupees Thirteen Lakh Three Thousand Two Hundred Seventy Six only) claimed by the employees, has been rejected by the Liquidator.

6. By way of Written Notes of Arguments, the Applicant workers have asserted that: -
- a) the workmen were the field workers. Occasionally they used to visit company for very limited purposes even they were absolutely unaware about the liquidation process as well as the order of liquidation dated 13.08.2021.
 - b) the workmen used to receive their respective salaries by way of cash from the company., So, it is crystal clear from the records as well as evidence there were no chance to know that the liquidation process is going on behind the back of the workmen.
 - c) The applicant/workmen were provided their respective services to the company above named till the month of January 2022. So, the claim and or dues should be counted till the month of January 2022.
 - d) That the applicant and or workmen are statutorily entitled for leave encashment by virtue of the provisions under Section 4 of the Sales Promotion Employees Act read with rules 14 of the Sales Promotion Employees Rules which is as under: -

@ 27 days a year i.e. 1/11th of 303 days (i.e. 365 days a year *- 52 days of Sunday – 10 days of holiday as per Rule 4 of Sales Promotion Employees Rules);

Maximum permissible limit of leave encashment is of 120 days.

7. We have considered the rival contentions.
8. In our considered opinion, absence of substantive documents in support of the claim of the Applicants for service beyond liquidation date, salary, leave encashment etc. would render this Tribunal unable to deal with the legality and propriety of the claims. There is nothing on record to demonstrate that the Liquidator has failed to discharge its duties in accordance with the Code.
9. The Liquidator, as it seems, has applied his mind to come to a finding on the merit of each claim, which without a confident rebuttal, cannot be set aside.
10. In such view of the matter, we **dismiss** this application.
11. It goes without saying that the applicant may pursue its remedies in accordance with law.
12. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information.
13. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed this, on the 26th day of April, 2024

Skb