

IN THE NATIONAL COMPANY LAW TRIBUNAL**KOCHI BENCH, KERALA****MA/190/KOB/2020, MA/191/KOB/2020****MA/192/KOB/2020, MA/193/KOB/2020****MA/194/KOB/2020, MA/195/KOB/2020****MA/196/KOB/2020****in****MA/45/KOB/2019****in****IBA/240/2019(Chennai Bench)
(Under Section 42 of IBC 2016)****Order delivered on: 06.10.2021****Coram:****Hon'ble Shri.Rajesh Sharma
Member (Technical)****Hon'ble Shri. Ashok Kumar Borah
Member (Judicial)****Applicants****1. MA/190/KOB/2020**

Dr. Manjula Ramachandran
Krishnajali,
Thelakom P.O
Kottayam District
Kerala – 686630

2. MA/191/KOB/2020

Dr. Surya Kingsly
Lekshmana, TC 2/581(2),
Rajiv Gandhi Nagar
Medical College P.O,
Trivandrum-695011

3. MA/192/KOB/2020

Dr. Mathew James
Vayalil Kalappura,
Kizhapparayar P.O,
Poovarany Pala,
Kottayam District,

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Kerala-686578

4. MA/193/KOB/2020

Dr. Jmaes Cyriac
Kovilakath House,
Ayarkunnam P.O,
Kottayam
Kerala-686564

5. MA/194/KOB/2020

Dr. Praveen Kumar K.S
C-2, SL Nest,
Near Rohini Apartments,
Meenchira Road,
Ponekkara Church
AIMS P.O,
Ernakulam,
Kerala-682041

6. MA/195/KOB/2020

Dr. Kingsly Iyyankutty
Lekshmana,
TC 2/581(2)
Rajiv Gandhi Nagar
Medical College P.O
Trivandrum-695011

7. MA/196/KOB/2020

Dr. John Mathew
Karathattil House,
Chettukandam P.O
Eraviperoor
Thiruvalla Kerala-68954

Respondent in all the above cases

C.A Mahalingam Suresh Kumar
SPP& Co, Chartered Accountants,
No.279, Nevedh Vikas,
Pankaja Mill Road,
Pulliyakulam
Coimbatore-641045

Parties/Counsel Present (through Video Conferencing):

For Applicants : Shri. Vishnu Buvanachandran, Advocate
For Respondent : Shri. A.G Sathyanarayana, Advocate

ORDER

Per: Ashok Kumar Borah, Member (J)

1. These appeals have been filed by the Applicants who were stated to be workmen/ employees of Raihan Healthcare Private Limited, under Section 42 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred as Code) aggrieved by the decision dated 23.07.2020 of the Liquidator intimating them that their claims are partly admitted and remaining claims are rejected.

2. The brief facts are as under: -

An application IBA/240/2019 has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against the Corporate Debtor (Raihan Healthcare Private Limited) before the National Company Law Tribunal, Chennai Bench, by Union Bank of India. The said application was admitted by the National Company Law Tribunal, Chennai Bench, vide its Order dated March 20, 2019 and accordingly, the Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") was initiated. Since no resolution plan was received during CIRP period, this Tribunal passed order dated 16.12.2019 for Liquidation of the Corporate Debtor and the Respondent herein, Mr. Mahalingam Suresh Kumar, was appointed as the Liquidator of the Corporate Debtor.

Pursuant to the order of liquidation, the Liquidator on 12.02.2020 issued public announcement in Form B and in the newspapers publishing liquidation of the subject company and calling upon the stakeholders to submit their claims on or before 11.03.2020.

3. The appellants' contention is that they were workmen of the Corporate Debtor. The Corporate Debtor stopped its functioning from 01.11.2019 even without giving salary for the days they worked in the Company. The company illegally stopped its production all on a sudden without giving mandatory notice of

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lock out under Section 22 or notice of sixty days for closure under Section 25F of the Industrial Disputes Act, 1947 to the workers and Government as well. Therefore, the appellants have filed these applications seeking the following reliefs: -

- I. Since the appellant is workmen, the claim filed by Appellant in Form-E is holding good and tenable. Therefore, this Hon'ble Tribunal may classify the appellant under the category of workmen and may adjudicate the claim of the appellant or direction may be given to the respondent to approve the claims of the appellant.
- II. To modify the Annexure 4 order passed by the respondent and adjudicate the claim and grant full amount along with 18% interest claimed in the Annexure 3 claim petition and on the basis of the books of accounts of the corporate debtor to the appellant/workmen of Raihan Healthcare (P) Limited.
- III. The Liquidator may be directed to disburse the partly admitted amount of each appellant as first priority immediately before settling the claim of other creditors.
- IV. To stay all further proceedings pursuant to the distribution of the claim amount of other creditors in connection with the IBA 240/(1B)2019 Kochi Bench till the disbursement of the admitted amount of the appellant sanctioned by the respondent as per Annexure No.4.
- V. To settle the issue impartially and payment may be made to the appellant/workmen on top priority before the disbursement of claims of other creditors i.e., without including in the waterfall mechanism envisaged under Section 53 of I&B Code,2016.
- VI. Direct the Liquidator to decide and admit the entire eligible amount due to the appellants (as mentioned in each appeal).

4. The learned counsel for the appellants submitted that appellants are workman as consultant Doctors of the Corporate Debtor and monthly remuneration is fixed as minimum consolidated professional charges for a period of one year. It is also stated that most of the workmen are not of retirement age as on March 2019. Since the company stopped its function in the year 2019, the employees quit the service prematurely, hence they are eligible for all the benefits.
5. It is further stated that the appellants herein had preferred a claim before the Liquidator. But the Liquidator without considering the evidence and merits of the claim, partially allowed the claims on 23.07.2020. Section 40 of I&B Code, 2016 states that "*provided that where the Liquidator rejects a claim, he shall record in writing the reasons for such rejection*". The basis on which the amount admitted has been arrived at and the reason for rejecting the amount of salary, TDS, interest and others have not been recorded or explained. Thus, the Liquidator has badly erred and failed to appreciate the onerous duty cast upon him as per Regulation 19(4) of the *Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016*.
6. The learned counsel for the appellants stated that the liquidator treated the appellants as Operational Creditors. The liquidator asked the appellants to file a claim petition in Form C. But the appellants filed the claim petition in Form E. Without considering the facts and circumstances and the subsequent rulings of the Apex Court, the Liquidator categorized the claim of the appellant as operational creditor. It is also stated that almost all the doctors appointed by the Corporate Debtor was under Contract Service only. It was the practice of the Corporate Debtor to appoint all doctors under the contract for service. But the appointment letter issued by the Corporate Debtor is not a 'Contract of Service', but only a 'Contract for Service'. Since they are employed under the category of 'Contract of Service' the relationship between them is to be treated as master and servant relationship.

7. The Respondent Liquidator filed counter in each case, inter alia, stating that:

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- I. The Doctors being appointed as professionals have no locus standi to file this application claiming to declare them as workmen which is neither maintainable in law nor on facts. It is further stated that since incorporation of the Corporate Debtor and even in the appointment letter, the appellants were appointed as professionals and not as the workmen and even while paying salary, only TDS has been deducted under the professional head and the same is not even questioned by them at any point of time.
- II. It is further stated that Section 2 (s) of the Industrial Disputes Act, 1947 defines workman as any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work, for hire or reward, terms of employment be expressed or implied and includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of dispute. It excludes persons employed in Army/Navy/Air Force/Police and those employed in mainly managerial or administrative, supervisory capacity and drawing wages of more than INR 10,000/-. Appellants being professionals and drawing wages of more than INR 10,000/- cannot take the advantage of workmen/Employee.
- III. It is also stated that the Liquidator adjudicated the claims as per the provisions of the code after collation of the Corporate Debtor's records and documents submitted by the applicants. Without appreciating the decision of the Liquidator to file the claim in Form C, appellants filed their claim in Form E and now disputing the decision of the liquidator as wrong.
- IV. Liquidator admitted the claim in accordance with law. Further the applicants failed to utilise the opportunity given to them to file Form -C to distribute their dues in accordance with the code. Doctors

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cannot be classified as the Employee/Workmen under any law at any given point of time.

8. We have gone through the whole case records and considered the submissions made by the learned counsel for the appellants as well as the learned counsel for the respondent – Liquidator as also the extant provisions of the Code and Rules made thereunder.
9. On-going through the records, it is seen that the appellants filed their claim in Form E even though the Liquidator directed them to file the claim in Form C, stating that they are not Operational Creditors. In this respect the Tribunal consider it necessary to see *whether the appellants being consultant doctors of the corporate debtor comes under the purview of workmen?*
10. According to the appellants doctors doing private practice along with other employment will not come under the category of workman. But the appellant-doctors are working under the management and doing work as per the directions of the Corporate Debtor M/s. Raihan Health Care Pvt Ltd. Since doctors appointed in M/s. Raihan Health Care Pvt Ltd are not permitted for any private practice or they were engaged in any private practice and also not raised or shared any profit arising out of such patients which the doctors recommend to the hospital and the appellants were full time practicing doctors working under the management, they come under the category of workmen/employees.
11. Section 3(36) of I&B Code,2016 defines “Workmen” as under: -

"workman" shall have the same meaning as assigned to it in clause (s) of Section 2 of the Industrial Disputes Act, 1947;

Section 2 (s) of the Industrial Disputes Act, 1947 defines “Workman” as under: -

“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding

under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
- (ii) who is employed in the police service or as an officer or other employee of a prison, or*
- (iii) who is employed mainly in a managerial or administrative capacity, or The Industrial Disputes Act, 1947 or*
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.*

12. A person can acquire the status of a workman under Section 2(s) only if he falls within the first part of Section 2(s) of the Industrial Disputes Act, 1947. They must be employed to do manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. If they fail in any of the above categories in the first part of Section 2(s), then it is to be ascertained whether such person stands excluded by the four exceptions carved out in the latter half of Section 2(s). Whether the appellants are workmen or not is a question of fact and that a finding of fact can be arrived at by this bench only on the basis of evidence on record.

13. In order to verify whether the appellants are paid salary and whether the T.D.S was made, vide order dated 02.08.2021 the appellants were directed to produce the acknowledgement of IT returns showing the income and the tax paid by them during their engagement with the Corporate Debtor. However, the appellants have not produced the same. The learned counsel appearing for appellants could not properly answer why these documents could not be produced. Their contention is that even though the tax is deducted under Section 194 (j) of the Income Tax Act, 1961 they have to be

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classified as workmen and that this provision is only to ensure the tax liability of an assessee.

14. In the cases on hand, the Appellants could not prove that they are full-time employees of the Corporate Debtor and their names entered in the muster rolls of the Corporate Debtor as "Employee". A perusal of the appointment letters annexed with the appeals, it is discernible that the Appellants are appointed as Consultant Doctors for a fixed remuneration and they are acting as Consultants of the Corporate Debtor. In the appointment letter it is agreed between the parties that the tax shall be deducted from the payment of the doctors. It is also seen that the appellants were not registered as a part of corporate debtor's Employee Provident Fund Scheme and no agreement to show that provident fund can be deducted from their professional fees. There is no employment contract between the appellants and the Corporate Debtor. There is a clear demarcation between the Doctors who are the employees and the doctors who are consultants. The appellants here are doctors of the Corporate Debtor working as consultants. Therefore, they cannot be considered as workmen/ employees of the Corporate Debtor, as rightly decided by the Liquidator.
15. In view of the aforesaid discussions and findings, we see no error in the impugned order passed by the Liquidator. Hence, we find no merit in the above MA's. All the MA's are dismissed.

Dated this the 6th day of October, 2021

Sd/-

**(Rajesh Sharma)
Member (Technical)**

Sd/-

**(Ashok Kumar Borah)
Member (Judicial)**

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