

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.2281 of 2024
& I.A. No.8501 of 2024

IN THE MATTER OF:

Drish Shoes Workers Union

...Appellant

Versus

**Drish Shoes Ltd.
Through Its Resolution Professional**

...Respondent

Present:

For Appellant : Mr. M. L. Dhingra, Sr. Advocate with Mr. Gaurav Dhingra, Mr. Govind Bhardwaj, Advocates.

For Respondent : Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Ridhima Mehrotra, Mr. Akshit Awasthi, Advocates.

O R D E R
(Hybrid Mode)

10.01.2025: **I.A. No.8501 of 2024:** This is an application praying for condonation of 102 days' delay in refiling the appeal. Learned counsel for the Appellant submits that this appeal has been filed by the Workers' Union and grounds have been taken in Paras 5 to 7 explaining the cause for delay in refiling. It is submitted that 19 defects were communicated and there were voluminous documents which took some time in obtaining the documents and including authorisation. We find sufficient cause for condonation of refiling delay. Refiling delay is condoned.

2. Heard learned counsel for the Appellant and Shri Abhishek Anand, learned counsel appearing for the Respondent. This Appeal has been filed against order passed by the Adjudicating Authority dated 01.07.2024 in IA No.406/2024 filed by the Appellant. By the impugned order, the IA filed by

the Appellant questioning the decision of the Resolution Professional for admitting the claim filed by the Applicant for an amount of Rs.185,62,360/- has been rejected. Brief facts of the case for deciding this appeal are:

3. The CIRP of the Corporate Debtor commenced on 12.05.2022. The Corporate Debtor was an industry where notice for lay off was issued on 31.07.2021 for 45 days' layoff. Subsequently, after the notice, the work could not be resumed and the industry remained closed. After initiation of the CIRP, claims were filed by the Appellant; Workers' Union amounting to Rs.314,31,360/-. The Resolution Professional admitted the claim to the tune of Rs.185,62,360/-. An IA No.2357 of 2023 was filed, where the Adjudicating Authority directed the Resolution Professional to re-examine the claim submitted by the Appellant within three weeks. In pursuance of the said order, the Resolution Professional again examined and reaffirmed the earlier calculation of Rs.1,85,62,360/-. Aggrieved by the said decision, IA NO.406/2024 was filed by the Appellant, which was rejected by the impugned order.

4. Learned counsel for the Appellant relying on the provisions of Industrial Dispute Act, Section 25(M) and (O) submits that the Adjudicating Authority erred in not appreciating the provisions of Industrial Dispute Act. The layoff was illegal and was required to be ignored by the RP while computing the salary of the workmen and the workmen were entitled to the salary till insolvency commencement date.

5. Shri Abhishek Anand, learned counsel appearing for the Respondent submits that the CIRP commenced on 12.05.2022 and it was open for the Appellant to challenge the layoff. Layoff having not been challenged by the Appellant, the Resolution Professional had to collate the claim and calculate the salary payment till date of layoff.

6. We have considered the submissions of learned counsel for the parties and perused the record.

7. In Paras 7 and 8 of the order, the Adjudicating Authority has made following observations:

“7. From the record, we notice that the CIRP of the Corporate Debtor commenced on 12.05.2022. The layoff notice was issued on 31.07.2021 informing the workers of a 45-days’ layoff, which was extended further due to the non-resumption of business. Whether the Workers are entitled to claim their dues for the lay off period from September 2021, is an issue which relates to the period prior to the commencement of CIRP, and which could have been decided by the court of appropriate jurisdiction under the relevant Labour laws. The Applicant has, however, contended that they could not approach any other forum for the adjudication of the lay off period amount since the moratorium under Section 14 was in force.

In this backdrop, it is worthwhile to refer to the Judgement of Hon’ble High Court of Kerala in the matter of Deputy Commissioner (Works Contract),

Kerala State Goods And Services Tax Department, Ernakulam Vs National Company Law Tribunal in WP(C) NO. 39185 OF 2022, wherein the following was held:

“5.3 Thus, after declaring the moratorium, there is an embargo on enforcing the demand, but there is no embargo under Section 14, read with Section 33(5) of the IBC, for determining the quantum of tax and other levies, if any, against the Corporate Debtor.”

Thus, while drawing the simile, in our view, there was no legal embargo before the Applicant to seek adjudication before the relevant Labour Law authority of their dues pertaining to the lay off period, which pertain to the pre-CIRP period. Further, the legal embargo under Section 14(1) of IBC 2016 is only about execution of a claim and not for determining the quantum of dues/claim.

8. Further, the RP is empowered to represent the Corporate Debtor before a Judicial Forum. Since the issue whether Applicant is entitled to salary for the lay off period is arising prior to the initiation of CIRP, the same is not arising out of the insolvency proceedings and is therefore, dehors to the jurisdiction of this Adjudicating Authority under Section 60(5) of IBC 2016.”

8. Learned counsel for the Respondent submits that the issued raised in the present appeal is fully covered by judgment of this Tribunal in **“Company Appeal (AT) (Ins.) No.1572 of 2024, Era Labourer Union of Sidcul, Pant Nagar, through its Secretary Vs. Apex Buildsys Ltd.”**. In the said

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judgment also both layoff as well as computation of salary was challenged before the Adjudicating Authority by means of an IA, which IA was not accepted and the salary was not computed after layoff period till initiation of insolvency. Aggrieved by which order, an appeal was filed, which appeal was also rejected. This Tribunal in Para 19 and 29 laid down following:

“19. From the facts of the above case, it is clear that the closure/lockout notice which was issued on 31.07.2017 much prior to initiation of the CIRP and the closure and lockout notice was nothing to do with the CIRP process. Challenge to the closure and lockout notice cannot be raised before the Adjudicating Authority who is not competent to adjudicate the said issue which arises out of the provision of the Uttar Pradesh Industrial Disputes Act, 1947. Hence, we are of the view that the Adjudicating Authority did not commit any error in not entertaining the challenge to the closure notice dated 31.07.2017.

29. In view of the foregoing discussions, we are of the view that no error has been committed by the Adjudicating Authority in rejecting the IA No. 2545 of 2021 filed by the Appellant where Appellant has sought to challenge the closure dated 31.07.2017 and transfer order dated 20.06.2017. Insofar as the claims of the Appellant, the liquidator has accepted the claim. Non-verification of the claim subsequent to 31.07.2017 when the Pant Nagar factory remain closed cannot be interfered with by this Tribunal in the present Appeal. We, thus, do not find any merit in the Appeal. The Appeal is dismissed.”

9. In the present case, the Resolution Professional has calculated the salary till the layoff period and accordingly, admitted the claim to the tune of Rs.185,62,360/-, which has been reaffirmed by the Resolution Professional. We are of the view that non-computation of salary after lay off by the Resolution Professional cannot be faulted with since the Resolution Professional has no adjudicatory jurisdiction and the Adjudicating Authority has rightly observed that whether the Workers are entitled to claim their dues for the layoff period under provisions of Industrial Dispute Act is not in the domain of the Adjudicating Authority. The said view is clearly in accordance of law laid down by this Tribunal in **“Era Labourer Union of Sidcul, Pant Nagar, through its Secretary Vs. Apex Buildsys Ltd.”** decided on 20.09.2024, as noted above. We, thus, do not find any error in the order passed by the Adjudicating Authority warranting any interference. We, however, make it clear that it shall be open for the Appellant to take such remedy as available in law. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Archana/nn