



S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
02-03-2023 AT 10:30 AM

IA (IBC) 337/2023 in CP (IB) No.219/7/HDB/2017
u/s. 7 of IBC, 2016

IN THE MATTER OF:

Asset Reconstruction Company (India) Limited

...Financial Creditor

VS

Viceroy Hotels Limited

...Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

ORDER

Order in **IA 337/2023** is pronounced, recorded vide separate sheets. In the result, the application is dismissed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

I.A. NO. 1204/2022

IN

CP (IB) No. 219/7/HDB/2017

IN THE MATTER OF VICEROY HOTELS LIMITED

Filed by

The Deputy Director

Employees State Insurance Corporation
5-9-23, Hill Fort Road
Hyderabad – 500063

...Applicant

VERSUS

Dr. Govindarajula Venkata Narasimha Rao,

Resolution Professional of Viceroy Hotels Limited

Having place of office at Plot No.20, Sector-I,
Survey No.64, 4th Floor, Huda Techno Enclave,
Hyderabad, 500081

... Applicant/
Resolution Professional

Date of order: 02.03.2023

Coram

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)

Shri Charan Singh, Hon'ble Member (Technical)

Appearance:

For Applicant: Shri Venkateswarlu Gummdavelly, Advocate

For Respondent: Shri Shabeer Ahmed, Advocate



PER BENCH
ORDER

1. This Application is filed by the Deputy Director, Employees State Insurance Corporation under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016, seeking to set aside the communication of rejection of the claim by the Resolution Professional dated 13.10.2022.
2. The gist of the Application in brief is that the Corporate Debtor i.e. Viceroy Hotels Limited being the Principal Employer is covered under Employees State Insurance Act, 1948 (herein after referred to as “ACT”) and that it failed to comply with the provisions of the Act by not paying the contributions for several period, failed in paying the interest on the delayed payment of the contributions despite issuance of notices for payment of damages. Upon coming to know that the Asset Reconstruction Company/financial creditor has approached this Tribunal against the corporate debtor this Tribunal was pleased to pass order dated 12/03/2018 *initiating liquidation process against the corporate debtor, the Applicant had filed its claim in Form-F dated 24.08.2022 before the Resolution Professional.*
3. It is alleged that the Resolution Professional vide impugned email correspondence dated 13.10.2022 informed the Applicant that their claim is rejected on the ground that the process of submission of the claims stood closed in 2018 itself and that the Resolution Professional has not been empowered by this Tribunal to accept any claims.



4. The Applicant contends that the decision of the Resolution Professional in rejecting the claim was arbitrary and contrary to the Code, as the dues are statutory in nature have priority over other debts under Section 94 of the ESIC Act and as such the Resolution Professional is bound to transfer the amount due to the Applicant/Corporation.
5. The Applicant further submits that the delay in submission of the claim was neither intentional nor deliberate and if the same is not considered the Applicant would suffer irreparable loss and damage.
6. It is also stated that this Tribunal had earlier in IA No. 803/2020, IA No. 810/2020, IA No. 884/2020 and IA No. 1015/2020 disposed of the IAs by condoning the delay in submitting the claims with direction to Resolution Professional to admit the claim of ESIC.
7. In the light of above averments, the point that arises for our consideration is:

Whether the delay in filing the present application challenging the communication dated 13.10.2022 of the Resolution Professional whereby the Resolution Professional has rejected the claim of the Applicant, can be condoned?
8. We have heard the Ld. Counsel Shri Venkateshwarlu Gummdavelly, Advocate for the Applicant and Shri Shabeer Ahmed, Ld. Counsel for the Respondent/Resolution Professional, perused the record and case law.



9. At the outset, it may be stated that the contention of the Applicant that this Tribunal vide order dated 12/03/2018 initiated liquidation proceedings against the corporate debtor is incorrect, as no such order has been passed so far. In fact the Corporate Debtor is undergoing CIR process.
10. Be that as it may, the present application being one for the condonation of delay, the settled law being that length of delay is immaterial, but the reasons stated thereof for condonation of delay matters.
11. Hon'ble High Court of Madras in re, *S.R.Vediappan vs S.P.Ramalingam C.M.P. No. 7730 of 2017 in A.S.SR. No. 34779 of 2017.dated 11/2/ 2020, held as below.*

“Law of limitation being a substantive law, the appeals are to be filed within a time limit. Filing an appeal within a period of limitation is the rule and condonation of delay is an exception. Thus, while condoning the delay, the Courts must be cautious and only on genuine reasons, the Courts are empowered to condone the delay. The power of discretion to condone the delay is to be exercised judiciously and by recording reasons. The reasons furnished for condonation of delay must be candid and convincing. Therefore, the condonation of delay cannot be claimed as a matter of right and only on genuine reasons, the delay is to be condoned and not otherwise. In the event of condoning the huge delay in a routine manner, the Courts are not only diluting the law of limitation but unnecessarily encouraging this kind of lapses. Therefore, reasons which are all acceptable alone must be a ground for condonation of delay, and flimsy, false and casual reasons cannot be taken for the purpose of condoning the huge delay”.

Therefore, it is to be seen whether the Applicant pleaded any sufficient ground for the delay, in filing the claim before the Resolution Professional.



12. Admittedly, the publication inviting claims by the Resolution Professional was published on 16.03.2018 inviting claims on or before 30.03.2018 in English and Vernacular Language newspapers having circulation in the area where the Applicant's office is situated.
13. A perusal of the present application does not indicate any reason much less sufficient reason for condition of delay. We found from the application that the focus is only on the entitlement of the claim of the Applicant rather than on reason for not making the claim in time. In an application of this nature the merits of the claim are inconsequential. That apart the Applicant has not even quantified the period of delay which the Application is seeking condonation. In the ruling supra, it was categorically held that, *“the power to condone the delay is to be exercised judiciously and by recording reasons. The reasons furnished for condonation of delay must be candid and convincing. Therefore, the condonation of delay cannot be claimed as a matter of right and only on genuine reasons, the delay is to be condoned and not otherwise. In the event of condoning the huge delay in a routine manner, the Courts are not only diluting the law of limitation but unnecessarily encouraging this kind of lapses.”*
14. In the case on hand, as already stated, no reason much less sufficient reason has even pleaded. In the absence of even a reason, the delay cannot be condoned. Therefore, the Application is devoid of any merit. Hence deserves to be dismissed



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15. We accordingly, dismiss the Application. No costs.

SD/-
(Charan Singh)
Member (Technical)

SD/-
(Dr. Venkata Ramakrishna Badarinath Nandula)
Member (Judicial)

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