

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA**

IA (IBC)/113 (KOB)/2021

in

IA(IBC)/21/KOB/2021

in

TIBA/03/KOB/2019

(Under Section 60(5)(3) of IBC, 2016)

Order delivered on: 6th October, 2021

Coram:

**Hon'ble Mr. Rajesh Sharma,
Member (Technical)**

**Hon'ble Mr. Ashok Kumar Borah,
Member (Judicial)**

Applicant

Mr. Kumar Rajan

(former Resolution Professional of
Hindustan Newsprint Limited)

...Applicant

V.

Joshy M

Sr. Inspector Special Grade I (Rtd.), HNL
Thanal, Alathukavu, Ponganadu P.O
Kilimanoor, Trivandrum-695601

... Respondent

In the matter of:

M/s RBL Bank Limited

... Financial Creditor

Vs.

M/s Hindustan Newsprint Limited

... Corporate Debtor

Parties/Counsel present (through video conference)

For applicant : Mr.Vinod PV, Advocate
For respondent : Ms.Jinu Sara George, Advocate

ORDER

Per: Rajesh Sharma, Member(T)

1. This application has been filed by Mr. Kumar Rajan (former Resolution Professional of the Hindustan Newsprint Limited against Mr. Joshy M, a former employee of HNL, seeking the following reliefs: -

a) Pass an order directing the Respondent to refund and transfer Rs.4,58,238/- to the Account of Hindustan Newsprint Limited maintained at Central Bank of India, which was wrongly credited to his account immediately and/or;

b) Pass an order directing the Branch Manager, State Bank of India, Ponganadu Branch to reverse the transaction of Rs.4,58,238/- credited to the account of the Respondent from Hindustan Newsprint Limited.

The brief facts are: -

2. An application 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 (Hindustan Newsprint Limited) before the National Company Law Tribunal, Chennai Bench, by RBL Bank Limited. Vide order dated 28.11.2019 this Tribunal admitted the application and appointed Mr. Navneeth Vasudevan as the Interim Resolution Professional. Subsequently, vide order dated 10.03.2020 Mr. Kumar Rajan was appointed as the Resolution Professional. The Committee of Creditors in its meeting on 24.12.2020 with 92.72% voting approved the Resolution Plan submitted by Kerala

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Industrial Infrastructure Development Corporation(KINFRA). Based on the decision of the CoC, this Tribunal approved the resolution plan vide order dated 29.01.2021 in IA(IBC)/21/KOB/2021.

3. It is stated that in terms of resolution plan KINFRA has paid the entire resolution amount of Rs. 145.60 crore. A monitoring committee was also formed with two representatives of the Financial Creditors and One representative of the Resolution applicant on 05.02.2021.
4. It is further stated that the respondent herein is an operational creditor (workman) of the corporate debtor and in terms of the approved resolution plan he is entitled to 35.13% of the admitted claim. Accordingly, the respondent is entitled to Rs. 4,90,106, which is as follows: -

Principal due claimed	Rs. 12,51,268
Interest claimed	Rs. 3,50,000
Total amount Claimed	Rs. 16,01,268
Claim Admitted	Rs. 14,01,905
Claim Rejected	Rs. 1,99,363
Amount payable under the Resolution Plan (35.13% of the admitted Claim)	Rs. 4,90,106

5. Respondent along with 3 other claimants had filed an application No. MA/165/KOB/2020 before this Tribunal seeking a direction to Resolution Professional to revise the admitted claims. However, this Tribunal vide order dated 03.12.2020 disposed of the said application confirming the admitted claims by the RP. It is also stated that an amount of Rs.4,90,106 was remitted to the Respondent's A/c No. 20102622564, in SBI, Ponganadu Branch on 19.03.2021 being the full and final settlement of his claim. However, by mistake the Monitoring Committee again transferred Rs. 4,58,238/- to his account, which was supposed to be paid to another

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operational creditor (workmen) Mr. Mohanan K.K having A/c no. 11130100072232 maintained at Federal Bank (IFSC Code: FDRL00011 13).

6. Since distribution was to be made to 1108 employees/workmen of the Corporate Debtor an error was committed while providing the account details in electronic mode to the distributing Bank. The Applicant Former Resolution Professional upon receiving information of said wrong credit has immediately send a mail on 29.04.2021 to the Respondent to refund the amount which was wrongly credited to his account. However, the respondent had not responded to the mail or returned the money to the applicant.
7. It is further stated that a communication was also sent to reverse the said transaction to the State Bank of India, however, on verification of accounts it was found that respondent had converted the said amount into Fixed Deposit and since the respondent was refusing to provide his consent for reversal of transaction, State Bank of India could not complete the reversal of transaction. However, upon Applicant's request, State Bank of India, Ponganadu Branch had put a hold on Rs. 4,58,238/- in the account of Respondent.
8. In the counter the respondent contended that as per the Resolution Plan, the Resolution Professional has failed to disburse the complete claim for which the Respondent is entitled to. The computation of claims to which the Respondent in eligible, is as under: -

PARTICULARS	AMOUNT (Rs.)
Admitted Claim (given in para. 8 of Application)	14,01,905
35.13% of Admitted Claim	4.92,489
Amount disbursed to Respondent	4.90,106

Balance Payable	2,383
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9. It is also stated that the Resolution Professional has failed to disburse the amount to which the Respondent is entitled to, without prejudice to the appeal filed by the Respondent before the Hon'ble NCLAT, Chennai Bench, challenging the Resolution Plan approved by this Tribunal.
10. We have gone through the whole case records and heard the arguments advanced by the learned counsel for the applicant as well as the learned counsel for the Respondent. This is an application filed by the former Resolution professional of the Corporate Debtor seeking direction to the Respondent Shri. Joshy M to refund and transfer Rs.4,58,238/- to the account of HNL maintained at Central Bank of India, which was wrongly credited to his account.
11. The Respondents' contention is that even though he has received the additional amount in his account, that belongs to him as his claim was not fully paid by the Resolution Professional, while crediting the amount of Rs.4,90,106/-. In this connection, the order dated 03.12.2020 in MA/165/KOB/2020 may be referred to, which is as under: -

“This Tribunal heard the arguments advanced by the Learned Counsel for the applicants and the Learned counsel appearing for the Resolution Professional, and had also gone through the materials placed on record. In these circumstances, the decision dated 07.01.2020 of the Regional Labour Commissioner (Central) and Controlling Authority under the Payment of Gratuity Act, 1972, taken in the case of Mr. Sivadasan Nair. S may be referred to, which states that: -

“the gratuity had become payable on 31.07.2017 i.e. on the date of Superannuation. As per the provisions quoted above,

the gratuity should have been paid within 30 days of the Superannuation. As the payment has not been made, the employer is liable to pay gratuity with the penal interest from the next day of Superannuation i.e.01.08.2017, In this regard the Hon'ble Supreme Court, in the case of State of Kerala Vs Padmanabhan Nair M/1985/1VLLJ-530-(SC) has held that any culpable delay in settlement and disbursement of gratuity must be visited with the penalty of payment of interest. In the instant case the delay is certainly culpable and therefore to be visited with the penalty of interest. Thus, the liability of interest commences from the next day of the superannuation of the applicant

This Controlling Authority has therefore decided to award the simple interest towards the delay involved as under Sect. 7 (3A) of the Payment of Gratuity Act @10% on the amount ascertained above from 01.08. 2017 to the actual date of payment of gratuity.”

11.Since, the Resolution Professional stated that he has admitted the interest on gratuity of the applicants till the Insolvency commencement date i.e. on 28.11.2019 from the date of retirement of the applicants and already included the admitted claims in the Information Memorandum, nothing survives for further consideration in this application.

12.Noting the submission of the Learned Resolution Professional, this application No. MA/165/KOB/2020 in TIBA/03/KOB/2019 stands disposed of.”

12. A reading of the above order makes it clear that this Tribunal did not accept the claim of the applicant in the M.A and disposed of the M.A recording the submission of the Resolution Professional.

13. In view of the above, the amount of Rs. 4,58,238/- wrongly credited to the account of Respondent (Mr. Joshy - A/c No. 20102622564, in SBI, Ponganadu Branch) is to be returned by the Respondent to the Account No.2056118105, Central Bank of India of Hindustan Newsprint Limited, immediately at any rate within one week from the date of receipt of this order. The SBI, Ponganadu Branch is also directed to credit the aforesaid amount to the Account No. 2056118105, Central Bank of India of Hindustan Newsprint Limited.

14. With the above direction the IA (IBC)/113(KOB)/2021 is disposed of.

Dated this the 6th day of October,2021

Sd/-

(Rajesh Sharma)
Member (Technical)

Sd/-

(Ashok Kumar Borah)
Member (Judicial)