

S.No.2

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
26-02-2024 AT 10:30 AM**

CP(IB) No.369/10/HDB/2019

And

**IA (IBC) 1421/2023 & IA No. 731/2020 in CP(IB) No.369/10/HDB/2019
u/s. 10 of IBC, 2016**

IN THE MATTER OF:

Priyadarsini Ltd

...Petitioner

C O R A M:-

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

ORDER

IA (IBC) 1421/2023

Mr. Krishna Mohan Gollamudi, Liquidator present through Video Conference.

Orders pronounced. In the result, **this application is partly allowed.**

IA No. 731/2020

Mr. Krishna Mohan Gollamudi, Liquidator present through Video Conference.

As clarification is required orders not pronounced. Matter adjourned to
05.03.2024.

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I**

**IA No 1421 of 2023
in
CP(IB) No.369/10/HDB/2019**

IN THE MATTER OF M/S. PRIYADARSHINI LIMITED

Between:

Kosuru Venkata Ramadevi
W/o Kosuru Kasirao
R/o 8-5-157, Road No 4, Mallikarjuna Colony,
Secunderabad-500011. Applicant

AND

M/s. Priyadarshini Limited
Represented by its Liquidator, Mr. Krishna Mohan Gollamudi
Address at Flat No 107, 1-9-648/107 Maurya Towers,
Adikmet Road, Vidyanagar, Hyderabad, Telangana 500044
.... Respondent

DATE OF ORDER: 26.02.2024

Coram

**Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member
(Judicial)
Shri Charan Singh, Hon'ble Member (Technical)**

Appearance:-

For the Petitioner: MS Mano Ranjani, Advocate

For the Respondent: Mr. Krishna Mohan Gollamudi, PCS.

PER: BENCH
ORDER

1. This instant Application is filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of National Company law Tribunal Rules, 2016 seeking directions to the Liquidator to admit the claim of Rs. 12,08,433/- of the applicant.

2. **Brief of the averment of Applicant:**

2.1 It is averred that the Applicant is former employee of the CD and had been working with the CD since 07.06. 1987 and the CD is liable to pay retrenchment compensation pursuant to order of Labour Court-II, Hyderabad in LD No 53 of 2013 The Appellant is also entitled for EPF, Gratuity and other emoluments.

2.2 It is averred that the orders for Liquidation of the CD were passed, a paper publication was issued by the Liquidator inviting claims and the Appellant herein submitted her claim in Form E on 01.08.2022 to the Respondent/Liquidator claiming an amount Rs. 12,08,433/- (Rupees Twelve Lakhs Eight Thousand Four Hundred Thirty-Three Rupees Only) and the said claim was rejected by the Liquidator vide letter dated 03.08.2022 as it was received after the due date mentioned in the public announcement. Further averred that the Appellant filed application IA no.1321/2023 seeking this Hon'ble Tribunal's intervention to condone the delay and issue a direction to the Liquidator for the acceptance of the claim amounting to Rs 12,08,433/- and this Hon'ble Adjudicating

Authority vide order dated 29.05.2023 directed the Liquidator to examine the claim and communicate the outcome within 7 days and disposed the application IA 1321/2023.

- 2.3 It is averred that on 02.06.2023 and 17.06.2023 the Liquidator sent letters stating that the Award remained in operation upto 05.02.2018 only and that no calculation has been provided as to how the claim amount of Rs. 12,08,433 has been arrived at and hence rejecting the claim. It is averred that immediately vide letter dated 24.06.2023, the Appellant has provided the calculations as to how the claim amount of Rs. 12,08,433/- has been arrived at along with the relevant documents related to Appellants dues from the CD.
- 2.4 It is averred that Appellant also explained that after the CD failed to pay the awarded amount of Rs. 3,00,000/- within a year, as directed in the Award, she filed the Execution Petition of 2018 praying to pass attachment of the CD's property to realize the awarded amount and that the Presiding officer, vide order dated 13.03 2019 dismissed the said execution petition, stating that all the assets of the CD are under hypothecation, under attachment of the various consortium of banks and hence the Appellant is not entitled to seek enforcement of the award and that she has liberty to approach the BIFR for payment of wages. Further averred that on 28.02.2020 when the CD got admitted for CIRP and she filed her claim in Form D during CIRP and subsequently during the liquidation in Form E as prescribed under the provisions of the Code.

2.5 It is averred that no reply was received from the Liquidator after the required clarifications were provided by the Appellant vide letter dated 24.06 2023 and every time the Appellant and her counsel checked with the Liquidator with respect to the approval of the claim, they were told that the certain documents of the CD with regards to gratuity are yet to be traced.

2.6 It is averred that the Appellant, a highly skilled worker of the CD, diligently served during her prime years and received the best worker award in the years 1995 & 1997. However, when she fell sick and was taking treatment from ESI her termination was carried out without adhering to the labour laws and sought to dismiss her prevented from attending her duties, engaging in unjust labour practices. Further averred that to obtain her rightful dues petitioner even submitted the claim during the CIRP and Liquidation, as per the provisions of the Code. Despite her efforts and numerous attempts, she has not received the amount owed to her and as a result, she has been enduring significant hardship in her old age.

3. Brief of the averment in counter filed by Respondent/Liquidator:

3.1 It is averred that the present Interlocutory Application ("IA") filed by the Applicant is misconceived, false, frivolous, misleading and mischievous and devoid of any merits on the grounds/facts mentioned here below and the said IA is liable to be dismissed by this Hon'ble Tribunal.

- 3.2 It is averred that the appellant again preferred this IA or Appeal without following the timelines as prescribed under Section 42 and further averred that Claim was rejected on 2.6.2023 and a clarification letter was issued on 17.6.2023. It is further averred that under Sec 42 of IBC, the creditor may appeal to the Adjudicating Authority within 14 days of receipt of such decision, whereas the Appeal was filed on 27.8.2023 with a delay of more than 25 days.
- 3.3 It is averred that the appellant did not enclose her appointment letter, instead she has enclosed her aadhar card and ID card of the company which contains only photo, Name, T No and Department. It is humbly submitted that the appellant has not produced any document as to her employment since 07.06.1987. further averred that applicant stated before the Hon'ble Labour Court, that she joined the Corporate Debtor in the year 1990 (Page 12 para 3) which indicates that she has not approached this Hon'ble Tribunal with facts.
- 3.4 It is averred that the appellant stated simply that she has submitted her claim during the CIRP period in Form D without furnishing the response of the IRP to her claim, whereas no claims of workmen have been admitted by the IRP and the claims from the workmen were shown as NIL in the records received from the IRP.
- 3.5 It is averred that the Respondent in compliance to the orders in IA 1321/2022 communicated his decision vide letter dated 02.06.2023 with corrigendum letter dated 17.06.2023 (pages 38 to 40 of the subject IA) and the claim based on lapsed award cannot be considered by the

Liquidator. Further averred that in the instant case the applicant preferred EP before the Hon'ble Presiding Officer Labour Court II Hyderabad and the Presiding Officer opined that the EP is not liable to be implemented under the circumstances narrated in the order and EP is dismissed, accordingly the Liquidator is not obligated to consider the applicant's claim based on award which has no validity as on date of submission of the claim and there is no provision of interest in the award and the applicant has claimed the interest at an exorbitant rate.

- 3.6 It is averred that the Liquidator could not find any policy framed/approved by the Corporate Debtor with regard to payment of gratuity and no records are available. Moreover as per Payment of Gratuity Act, an employee is entitled to gratuity provided he/she worked for 240 days in a year to consider gratuity for that year and in the instant application the calculation submitted for gratuity at Rs 1,01,550/- appears to be incorrect. The Gratuity calculation as per the claim made by the applicant is: Basic pay, DA is Rs.3385/- No. of Years service is 26 years. Gratuity is @15 days salary as per last drawn salary for every completed year. Month means 26 days. Thus, the gratuity works out to $3385 \times 15 / 26 \times 26$ years Rs.50775/-, Whereas the claim made is for Rs. 1,01,550/-.Further averred that even if it is presumed that she worked for the Corporate Debtor for a period of 26 years it is not clear in how many years she complied with the condition of 240 days working and She left the service in 2012, not clear as to how she has not received her Gratuity and not make any representation to the

then management of the Corporate Debtor for redressal of her claim and after a period of nearly 9 years, the applicant is now making a claim.

3.7 It is averred that there is no provision in the IBC or Regulations to entertain any correspondence once the claim is rejected and no calculation chart is enclosed either to this IA or to her letter dated 24.06.2023 addressed to the Liquidator, except a small table containing some numbers as evident from the information furnished in the IA. Further averred that the Liquidator does not have any record available with him of having knowledge that she was recognized by the Corporate Debtor as a best worker in the years 1995 and 97.

3.8 It is averred that the Liquidation period has reached its final stage as brought to the notice of this Hon'ble Tribunal and proceeds of assets realized are distributed as per waterfall mechanism as outlined in Sec 53 of IBC 2016 and again if this IA is allowed, the Liquidator is apprehended that the Liquidation process cannot reach to its logical conclusion as the Liquidation process is time bound programme to be adhered to by the Liquidator.

4. Brief of the averment in Rejoinder filed by Applicant:

4.1 It is averred that herein denies all the allegations, averments, and contentions made by the Liquidator unless those specifically admitted by the Applicant herein.

- 4.2 It is averred that there has been no delay by the Applicant in fulfilling this Application as stated by respondent as in the letter dated 02.06.2023, the Liquidator stated that no calculation had been provided by the Applicant regarding how the claim amount of Rs.12,08,433,38 was arrived at and applicant has elucidated the same through letter dated 24.06.2023.
- 4.3 It is averred that it is mentioned in the award given by the Hon'ble Labour Court, the Applicant had joined the CD on 07.06.1987 and on 21.11.2008 a letter was given by CD to the Applicant stating that they are confirming her as a permanent employee of the company w.e.f 01.02.1990; which is after 18years. Even if we consider that letter dated 21.11.2008; 01.02.1990 does not reflect the date of joining, it only confirms her status as a permanent employee and the same is enclosed with rejoinder.
- 4.4 It is averred that in accordance with Section 11(9) of the Industrial Disputes Act, 1947, every award, order, or settlement made by or before a Labour Court, Tribunal, or National Tribunal shall be executed following the procedure laid down for the execution of orders and decrees of a Civil Court under Order 21 of the Code of Civil Procedure, 1908. As mentioned by the Liquidator, an award given by the Hon'ble Labour Court remains in effect for one year from the date it becomes enforceable. Adhering to due process, the Applicant filed an Enforcement Petition, which was subsequently dismissed by the Hon'ble Labour Court. The dismissal was based on the grounds that all the assets of the Company were under hypothecation to various

consortiums of banks, and the proceedings of the CD were pending before the Board for Industrial and Financial Reconstruction (BIFR) and Hon'ble Labour Court suggested that the Applicant should have appeared before BIFR for the settlement of dues, given the ongoing proceedings and the contention of the Liquidator that lack of obligation to accept the claim based on the lapsed award, is legally unfounded and the interest claim is founded on the principles of natural justice and equity.

5. Both sides filed written submissions by reiterating the facts mentioned in the Application, counter and other documents.
6. In the light of the aforesaid *contest* the points that arise for our consideration are:
 1. Whether the delay in filing this appeal can be condoned?
 2. Whether the Applicant is entitled to the claim of Rs.12,08,433/- from the Corporate Debtor, represented by the Liquidator?
7. We have heard MS Mano Ranjani Learned Counsel, for the Petitioner, Ld.PCS/liquidator, Mr. Krishna Mohan Gollamudi, for respondent/personal guarantor. Perused the record and the written submission.

Point No 1: Whether the delay in filing this appeal can be condoned?

8. The claim of the Applicant was rejected by the Respondent/Liquidator by way of a communication dated 03.08.2022. Liquidator contended

that this application is not maintainable as the Applicant ought to have approached this Tribunal under Section 42 of IBC within 14 days from the date of the rejection of the claim but that the Applicant approached this Tribunal under Section 60(5) read with Section 40 of IBC, that too after the lapse of 14 days from the date of rejection. The respondent did not submit any explanation to the delay, nor filed any application for condonation of delay.

Section 42 of IBC, 2016 reads as under:

Section 42. Appeal against the decision of Liquidator

A creditor may appeal to the Adjudicating Authority against the decision of the liquidator accepting or rejecting the claims within fourteen days of the receipt of such decision

9. At the outset it is to be stated that in terms of Section 42 of IB Code, the Applicant whose claim is rejected can approach this Tribunal within 14 days from the date of rejection of this claim. In the case on hand since the Applicant whose claim has been rejected has not approached this Tribunal within the above stipulated time.
10. According to the Respondent the Applicant has not sought for condonation of delay by filing an application besides the provision of law under which application is filed is incorrect. Hence, this application is liable to be dismissed.
11. However, Learned Counsel for the Applicant submitted that the Applicant is being unaware of the period of limitation besides on

account of illness of the applicant could not approach this Tribunal within the prescribed period of time and delay may be condoned.

12. It is to be stated that Hon'ble NCLAT in Canara Bank Vs. Commercial Tax Department, Company Appeal (AT) (Insolvency) No.655 of 2023 held that

“The Adjudicating Authority has the power to condone the delay in filing an appeal under Section 42 of IB Code, by exercising the power under Section 5 of the Limitation Act.”

It is settled law that delay can be condoned without an application being filed.

13. The Applicant herein is an Ex-workman and has approached this Tribunal basing on the Award which was passed by the Labour Court in his favour on 06.02.2017. According to the Respondent the said Award requires to be enforced within one year and extension of time for enforcing award has not been granted by the appropriate Government as such the claim itself non-enforceable.
14. A bare perusal of Section 19 of the Industrial Disputes Act reveals that the said provision relates to enforcement of the Award, before the Labour Court. Here the Petitioner is only praying for his claim be considered under the provisions of IB Code and not seeking any specific execution.
15. In this case considering the background that the Applicant was a workmen and lost employment as his employer was admitted into CIRP

and now under Liquidation, we intend not to be pedantic in our approach. Therefore, we are of the view that delay in filing this appeal can be condoned in the interest of justice. Accordingly, the delay is condoned. The point is answered accordingly.

Point no 2: Whether the Applicant is entitled to a claim of Rs.12,08,433/- from the Corporate Debtor, represented by the Liquidator?

16. The Applicant submits that he has filed the claim on the basis of compensation of Rs.3,00,000/- in lieu of reinstatement, EPF and Gratuity and other emoluments awarded by Labour Court-II, Hyderabad (hereinafter referred as Labour Court) on 06.02.2017 vide I.D. NO.53 OF 2013. The applicant further submits that claim amount of Rs 12,08,433/-is arrived after adding interest @24% per annum in the award amount.
17. The Liquidator/ respondent firstly disputed the employment of the Applicant with the Corporate Debtor on various ground and submitted that applicant has not submitted any appointment letter as a proof of employment. The Respondent/Liquidator further contended that claim of the Applicant is time barred as the award of the Labour Court was in force only for a period of one year from the date of publication of the award and thus it expired in the year 2008 itself . The liquidator further contended that the Petition filed by the Applicant for execution of the award was dismissed and hence, the claim of the Applicant can not be considered.

Our findings:

18. We reproduce hereunder the relevant extract from the award of Labour Court-II, Hyderabad (hereinafter referred as Labour Court) on 06.02.2017 vide I.D. NO.53 OF 2013

“In the result, the respondent (the Corporate Debtor) is directed to pay compensation of Rs.3,00,000/- (Rupees Three Lakhs only) in lieu of reinstatement. Apart from that, the Petitioner is entitled for EPF and Gratuity and other emoluments.”

19. Since, the Labour Court before passing the award must have clearly dealt with the questions pertaining to the employment of the Applicant, therefore respondents questioning on his employment and asking for appointment letter is not acceptable. Since, the award does not speak of any interest to be paid the applicant is not correct in charging interest @24% per annum.

20. A perusal of the award discloses that a sum of Rs.3,00,000/- was ordered to be paid as compensation. The Applicants claimed interest over the sum and arrived at a sum of Rs.12,08,433/- towards claim. Admittedly the Applicant was an Ex-workman who lost the employment, Therefore, we are of the view that this claim can be partly allowed by directing the Liquidator to consider the claim only for a sum of Rs.3,00,000/- and pay the same at the earliest and not later than 10 days from the date of this order and file compliance.

21. In the result, the Application is partly allowed to the extent of direction to the Liquidator to consider claim of the Applicant of a sum of Rs.3,00,000/- only and pay the same within 10 days from the date of this order.

Sd/-

Charan Singh
Member Technical

Sd/-

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Chennu Bhargavi/ Sridher