



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I, CHENNAI

IA/(IBC)/922/CHE/2023 in IBA/1045 & 1169/2019
(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of Easun Reyrolle Ltd.

A. Kamatchinathan

Emp ID : 1221

Designation – Chief Financial Officer,
New No.14, 4th Street, Vasantham Colony,
West Anna Nagar, Anna Nagar, Chennai – 600 040

Applicant

-Versus-

M/s. Easun Reyrolle Ltd.

Rep. by its Liquidator

Mr. CA Mahalingam Suresh Kumar
SPP & Co., Chartered Accountants,
No.27/9, Nivedhvikas, Pankaja Mill Road, Pullyakulam,
Coimbatore – 641045

Respondent

Present:

For Applicant : A. Rajaram, Advocate
P. Thangam, Advocate

For Respondent : B. Dhanaraj, Advocate

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 30th November 2023

ORDER

(Heard through Video Conferencing)

IA(IBC)/922(CHE)/2022 is an application filed by the Applicant
under Section 42 of the Insolvency and Bankruptcy Code, 2016 seeking
reliefs as follows:



(a) Therefore in the light of aforesaid facts and circumstances of the case, this Hon'ble Court may be pleased to condone the delay of 358 days for filing the present application against the rejection order of the respondent dated 06.05.2022 and thus render justice.

(b) It is therefore prayed that this Hon'ble Tribunal may be pleased to declare the rejection order dated 06.05.2022 by the respondent is illegal and against the principles of natural justice and consequently direct the respondent to accept the applicants entire claim including gratuity in FORM E dated 15.03.2022 under 53(1)(a) of IBC, 2016. And pass any such order or direction may deem fit and proper in the facts and circumstances of the case and thus render justice.

2. The Corporate Insolvency Resolution Process in respect of the Corporate Debtor was initiated by this Tribunal on 05.05.2020 and one Mr. Parameshwar Udupa was appointed as IRP. The applicant herein was appointed as Chief Financial Officer in the Corporate Debtor on 03.10.2016. It is submitted that the salary of the Applicant was fixed as Rs.1,75,000/- per month by the Corporate Debtor. Thereafter on 25.11.2019, the Corporate Debtor revised the monthly salary of the applicant to the tune of Rs.2,50,000/-.

3. It is stated that the Corporate Debtor was ordered for Liquidation by this Tribunal vide order dated 17.02.2022 and the Respondent herein was appointed as Liquidator. The Liquidator issued public



announcement on 21.02.2022 calling upon the stakeholders of the Corporate Debtor to submit the proof of claims on or before 19.03.2022.

4. It is stated that as per the public announcement the applicant submitted his Form-E before the Liquidator on 15.03.2022. A total claim under the following heads was filed before the Liquidator.

Salary	Rs.78,91,667/-
Credit	Rs. 6,98,116/-
Total	Rs.85,89,783/-

5. It is stated that the Respondent/Liquidator vide letter dated 06.05.2022 partially rejected the claim of the applicant. The reasons stated by the Liquidator/Respondent are as follows:

"We are in receipt of your claim for Rs.8,589,783.00 (including interest) in Form E against the Corporate Debtor M/s. Easun Reyrolle Limited (In Liquidation).

The claim has been verified under Section 40(1) of Insolvency and Bankruptcy Code, 2016 as under:

- 1) Verified with the books of accounts and the payroll register.*
 - 2) Claim admitted under Employee category*
 - 3) Salary due from July 2019 to 4th May 2020 for Rs.12,69,148/- is admitted under Section 53(1)(f).*
 - 4) Salary claim from 5th May 2020 to Aug 2020 is admitted as per COC Resolution under section 53(1)(a) for Rs.4,71,417/-*
 - 5) Gratuity Claim is rejected as per your CTC.*
- Further your claim is categorized as Employee.*



The liquidation proceeding will be distributed as per the provision of Section 53 of Insolvency and Bankruptcy Code, 2016 as and when it is realized from the assets of the Corporate Debtor."

6. Aggrieved by the said decision of the Liquidator, the applicant has filed the present appeal before this Tribunal.

7. The Respondent/Liquidator has filed Reply.

8. The Learned Counsel for the Liquidator submits that the claim of the Appellant was partly rejected on 06.05.2022. As per Section 42 of IBC, 2016 the Applicant ought to have filed the Application before this Tribunal within a period of 14 days i.e. on 20.05.2022, however, the Applicant has filed the present application before this Tribunal only on 11.05.2023 with a delay of 358 days. Further, the appellant has not made any averments in the application with respect to the reason for condoning the delay in filing the present application.

8. The Learned Counsel for the Respondent/Liquidator submitted that the Applicant had filed the claim for a sum of Rs.85,89,783/- towards the alleged arrears of salary and gratuity. The Respondent/Liquidator by its letter dated 06.05.2022 had informed the



Applicant on the part admission of the claim. The details of the same are as follows:

Date	Particulars	Amount
Amount Admitted u/s 53(1)(f)		
Jul-19	Salary @ 25% balance payable.	33,435
Aug-19	Salary payable as per company records	1,33,708
Sep-19	Salary payable as per company records	1,98,988
Oct-19	Salary payable as per company records	2,00,250
Nov-19	Salary payable as per company records	2,00,234
Dec-19	Salary payable as per company records	2,00,218
Jan-20	Salary payable as per company records	68,754
Feb-20	Salary payable as per company records	68,784
Mar-20	Salary payable as per company records	67,534
Apr-20	Salary payable as per company records	67,534
May-20	Salary for 4 days as per company records	29,710
Total		12,69,148
Amount admitted u/s 53(1)(a)		
May-20	Salary for 27 days @ 50% balance payable Salary Payable as per company records.	1,25,125
Jun-20	Salary @ 50% payable Salary Payable as per company records.	1,25,125
Aug-20	Salary @ 50% payable Salary Payable as per company records.	1,25,125
Total		4,71,417



9. Learned Counsel submitted that the Liquidator by his letter dated 13.08.2022 had informed the Applicant that the remaining amount of Rs.2,96,417/- admitted by the Liquidator under Section 53(1)(a) of the Insolvency and Bankruptcy Code, 2016 has been disbursed to the Applicant vide Cheque no. 096636 dated 13.08.2022.

10. Learned Counsel submitted that the CIRP of the Corporate Debtor commenced only on 05.05.2020. Thereafter, the Resolution Professional employed the Applicant during the CIRP of the Corporate Debtor and the salary of the CIRP period was duly admitted by the Liquidator under Section 53(1)(a) of Insolvency and Bankruptcy Code, 2016 and the same was also received by the Applicant.

11. Learned Counsel submitted that as per Section 4 of Payment of Gratuity Act, 1972, a person is entitled to gratuity only upon the employment of continuous service for a period of not less than 5 years. In the present case, the Applicant had completed only 4 years 10 months and 28 days. Hence the claim in respect of the Gratuity was rejected by the Liquidator.

12. Under such circumstances, the Learned Counsel for the Liquidator has sought for dismissal of the application.

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13. Heard the submissions made by the Learned Counsel for both the parties and perused the record.

14. The claim was partially rejected by the Liquidator on 06.05.2022. As per Section 42 of IBC, 2016 the Applicant ought to have filed the Appeal before this Tribunal within a period of 14 days i.e. on 20.05.2022. However, the present Application has been filed only on 11.05.2023. Admittedly there is a delay of 358 days in filing the present Appeal under Section 42 of IBC, 2016.

15. We have perused the entire averments made in the Application. The Appellant has not given any reason whatsoever for the delay in preferring the Appeal under Section 42 of the IBC, 2016. It is a well-considered principle of law that the delay cannot be condoned without assigning any reasonable, satisfactory and proper reasons. The Hon'ble Supreme Court in the matter of **Majji Sannemma @ Sanyasirao -Vs- Reddy Sridevi & Ors; 2021 SCC OnLine SC 1260** has held

18. In the case of **P.K. Ramachandran (supra)**, while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to



extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously.

20. In the case of **Basawaraj (supra)**, it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression "sufficient cause" cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.

(emphasis supplied)

16. Applying the law laid down by the Hon'ble Supreme Court in the matter referred *supra* to the facts of the present case and also considering the fact that no explanation much less a sufficient or a satisfactory explanation has been made by the Applicant in the present Application, the delay in preferring the Appeal under Section 42 of IBC, 2016 cannot be condoned.

17. Even on merits the claim of the Appellant is not maintainable since the Liquidator has admitted the claim as per the provisions of IBC, 2016. He also treated the salary of the Appellant in terms of Section 53(1)(a) of IBC, 2016 and distributed the amount to the Appellant.



Further, the Appellant has not completed the period of 5 years of service in order to claim gratuity, hence, we are of the view that the Liquidator was right in partially rejecting the claim of the Applicant.

18. In view of the reasons aforesaid IA/922(CHE)/2023 stands **dismissed**. No costs.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond