

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**COURT - 2**

ITEM No.307  
**IA/767(AHM)2022**  
in  
**CP(IB) 66 of 2017**

**Order under Section 42 IBC r.w 292 (4) of Co. Act, 2013**

**IN THE MATTER OF:**

Siddharth C Rathod

.....Applicant

V/s

Ramchandra D Choudhary Liquidator for Anil Limited & Ors

.....Respondents

**Order delivered on: 20/03/2024**

**Coram:**

**Mrs. Chitra Hankare, Hon'ble Member(J)**

**Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)**

**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

Sd/-

**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

Sd/-

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD  
DIVISION BENCH  
COURT-II**

**IA 767/NCLT/AHM/2022**  
in  
CP(IB)/66/NCLT/AHM/2017

**IA 767/NCLT/AHM/2022**

**In the matter of:**

Mr. Siddharth S/o Chanabhai Rathod,  
aged 41 Occupation Advocate, in the  
capacity of Workman of M/s Anil Ltd.  
(In Liquidation) having place of  
residence at 275/D/90, Nirmal Pura,  
Saraspur, Ahmedabad – 380018

.... Applicant

Versus

- 1) Mr. Ramachandra D. Choudhary  
Official Liquidator of M/s Anil  
Limited, Having office address at  
9B, Vardan Tower, Near Vimal  
House, Lakhudi Circle,  
Navrangpura, Ahmedabad-380014
- 2) Shri Vishad Jagasheth, Trustee of  
The Anil Starch Employees Group  
Gratuity Fund Trust, and The Anil  
Starch Employees Provident Fund  
Trust, having place of business at,  
J/702, Shilalekh, Opposite Police  
Stadium, Riverfront, Shahibaug  
Ahmedabad-380004
- 3) Shri Amol Sheth, Chairman and  
Managing Director of The Anil  
Starch Employees Group Gratuity  
Fund Trust, and The Anil Starch  
Employees Provident Fund Trust.  
Having place of business at, 96/6,  
Aangan Farm House, Village  
Koteshwar, District Gandhinagar

- 4) Shri Mohabatsingh P Rajput, Trustee of The Anil Starch Employees Provident Fund Trust. Having place of residence at, B/94, Trilokpark, Mahadevnagar Tekro, Vastral Road, Ahmedabad 382418
- 5) Vipul Devjibhai Parmar, Trustee of The Anil Starch Employees Provident Fund Trust. Having place of residence at, Shankar Ghanchi ni chali, Rajpur, Gomtipur, Ahmedabad – 380021
- 6) The Anil Starch Employees Group Gratuity Fund Trust, having place of business at, J/702, Shilalekh, Opposite Police Stadium, Riverfront, Ahmedabad – 380004
- 7) The Anil Starch Employees Provident Fund Trust, having place of business at, J/702, Shilalekh, Opposite Police Stadium, Riverfront, Ahmedabad – 380004
- 8) Assistant Provident Fund Commissioner, Employees Provident Fund Organisation, having place of business at, P.F. Office Naroda, Saijpurbogha, Naroda Road, Ahmedabad-382345

..... Respondents

**Order Pronounced on 20.03.2024**

**Coram**

**Mrs. Chitra Hankare, Member(J)**

**Dr. Velamur G Venkata Chalapathy, Member(T)**

**Appearance:**

For the Applicant : Mr. Minal Shelat, Advocate.

For Respondent No.1/  
Liquidator : Mr. Atul Sharma, Advocate.

**JUDGMENT**

1. This application is filed by the applicant under Section 42 of the Insolvency and Bankruptcy Code, 2016 (the Code) read with Section 292(4) of the Companies Act, 2013, seeking directions to take necessary and effective steps to realize and disburse the rightful claim amount against gratuity and provident fund as well as to pass necessary directions to permit continuation of proceedings being bearing No. Reference (LCA) No.571/2014 before the Hon'ble Labor Tribunal.
2. Applicant submitted that he had joined as a workman on 11.03.2024 in M/s. Anil Limited (in Liquidation) and illegally terminated from service on 19.02.2014. So, he challenged termination before Labour Court, Ahmedabad, bearing No. Reference (LCA) No. 571 of 2014. The Presiding Officer, Labour Court No.2, Ahmedabad, vide order dated 15.12.2018, confirmed and declared that termination of the applicant as illegal. Applicant has not produced on record any document in respect of application filed before Labour Court.
3. It is further stated that this Bench passed liquidation of the Company vide order dated 25.10.2018 and appointed liquidator. Accordingly, he filed claim of Rs. 7,70,817/- on

05.09.2020 to the liquidator/respondent. Liquidator partly admitted the claim of Rs.3,49,032/- i.e. Salary, Leave encashment and Bonus (vide communication dated 24.12.2020. However, applicant sent a communication to the liquidator for clarification against payment towards Provident Fund and Gratuity. Liquidator vide letter dated 05.03.2001 directed applicant to approach the Trust for claims against Provident Fund and Gratuity, as the company maintained a trust for such purposes. So, applicant communicated by phone on 10.03.2021 and by Whatsapp on 12.03.2021 (on mobile number 9724671604) with the trust's authorized representative. The authorized representative of the trust, however, directed the applicant to approach the respondent regarding all claims. Hence, applicant sought clarification from the respondent regarding its claim against provident fund and gratuity through a letter dated 16.03.2021, which remains unanswered. No response was received from liquidator, applicant filed claim to the Assistant Provident Fund Commissioner, Sub-regional office, Naroda, Ahmedabad on 17.02.2020 posted on 20.03.2021. As per instruction from the aforesaid office, he submitted details in Form 19 dated 28.05.2021 to the office of Assistant Provident Fund Commissioner, Ahmedabad. The Assistant Provident Fund Commissioner, sent a letter dated 14.06.2021 to Respondent No.2 i.e. trustee of M/s. Anil Starch Employees Provident Fund to take necessary action and to submit report of action taken. However, there was no response from Respondent No.2 to the aforesaid communication. Hence, applicant sent a legal notice to the liquidator/respondent no.1 sought his final decision. The liquidator replied to the aforesaid notice, vide

reply dated 29.03.2022, and denied claim of the applicant as the name of the applicant is not found in the employees list.

4. Applicant submitted that he has not been able to get even an appropriate reply from any of the respondents, hence, he filed this application before this Tribunal seeking directions to take necessary and effective steps to realize and disburse the rightful claim amount against Gratuity and Provident Fund as well as to pass necessary directions to permit continuation of proceedings being bearing No. Reference (LCA) No.571/2014 before the Hon'ble Labor Tribunal.
5. In response to notice served upon respondents, Respondent Nos.1 and 5 appeared through their counsels. Respondent no.1/ Liquidator filed reply and written submissions. No reply or written submissions has been received from other respondents.
6. Liquidator submitted that prayer no.2 of the application is to direct for continuation of proceedings in Reference (LCA) No. 541/2014 before Ld. Labour Curt. It is submitted that Ld. Labour Court dismissed the case of applicant vide order dated 14.12.2022 under Industrial Dispute Act, 2010 on account of being non-maintainable. Applicant deliberately not disclosed the true material facts to this Tribunal nor taken any steps to amend the present application and mischievously chosen to file the inflated claim before the liquidator pertaining to the period beyond the year 2014 for the purpose of extorting exorbitant amount. No relief can be

sought by the applicant sleeping for 595 days over its rights to file the present appeal under Section 42 of the Code.

7. Liquidator further stated that applicant (ex-employee of corporate debtor i.e. applicant was recruited by the corporate debtor on 11.03.2004 and terminated on 19.02.2014 upon departmental investigation) filed this application against rejection letter dated 24.12.2020, i.e. rejection of partial claim of applicant, after lapse of 595 days. The period of limitation for preferring such appeal is only 14 days as per Section 42 of the Code. Further, there is neither any application seeking condonation of delay nor any relief has been sought in this regard. In accordance with Section 35(1)(a) of the Code, is duly verified the claim received from the applicant and admitted claim of applicant to the extent of Rs.3,49,032/-. The reasons and calculations of such partial admission of claim was duly apprised to applicant vide his letter dated 24.12.2020. Applicant sought clarification through email dated 04.03.2021 regarding claim towards gratuity and provident fund. Vide letter dated 05.03.2021, informed applicant that the corporate debtor maintained separate corpus for the purpose of maintaining gratuity and provident fund as the same has been distributed by its Trustees as per Employee List maintained by the corporate debtor. He has also provided details of trustees of the corpus to applicant and guided the applicant to approach the concerned person i.e. Trustees for seeking redressal for his grievances. From letter dated 05.03.2021 also this application is not within limitation.

8. It is further submitted by the liquidator that during pre-CIRP period, corporate debtor maintained a separate corpus for Gratuity and it had taken policy of Aviva Life Insurance for maintaining the gratuity fund for its workmen in the name of “The Anil Starch Employees Group Gratuity Trust”. Corporate debtor was not functioning from 19.04.2017 and liquidation order was passed against the corporate debtor by this Tribunal vide order dated 25.10.2018. It is further stated that in compliance of Section 35 of the Code, he has taken custody and handover all the assets of corporate debtor including the aforementioned fund and same has been distributed to all employees and workmen of the corporate debtor whose name were duly reflected in the Gratuity Fund list of “The Anil Starch Employees Group Gratuity Trust”. As the name of the applicant was not in the list of workmen, no gratuity was given to the applicant. As the applicant was terminated from the service and the application was dismissed by the Labour Court, his name was not appeared in the list of workmen and therefore no gratuity was distributed by the liquidator to the applicant. He further stated that throughout the entire process, guided the applicant to approach the concerned person, i.e., trustees, for seeking redressal for his grievance and no wrong/injustice is caused to the applicant. Hence, this application in the guise of Section 42 of the Code deserves to be rejected.
9. Heard Ld. Counsel for the applicant and Ld. Counsel for the Liquidator also gone through the records available on record. The applicant stated that Labour Court admitted his application and set aside termination order. However,

respondent/liquidator submitted that the Labour Court dismissed applicant's application. To find out whether application was allowed or dismissed the application, applicant has not filed order of Labour Court. The burden is on the applicant to prove the fact which is not discharged by him.

Though the applicant stated that, by way of affidavit, he has served notice along with copy of the application to all the respondents no proof of service is produced on record. Respondents 1 and 5 appeared through their advocate, however, respondents 2,3,4,6,7 and 8 have not appeared. It is not clear whether service is actually effected upon respondents 2,3,4,6,7 and 8. The matter is already reserved for orders, it is the duty of the applicant to serve notice upon all the respondents and file service affidavit along with proof of service which is not done by the applicant.

According to liquidator, the corporate debtor maintained separate fund i.e. respondents 6 and 7, for gratuity and provident fund of workmen and has distributed gratuity as per list of workmen. Liquidator denied all the averments, contentions and allegations raised in the application.

10. On perusal of the record, it is observed that the Liquidation order was passed on 25.10.2018 by this Adjudicating Authority. Thereafter, i.e. on 05.09.2020, after two years, the applicant filed his claim of Rs.7,70,817 before the Liquidator. The Liquidator partly admitted the claim i.e. Rs.3,49,032/- in accordance with the provisions of the Code. The Liquidator

informed the applicant to approach the concerned persons i.e. Trustees-The Anil Starch Employees Group Gratuity Trust” for claiming Provident Fund and Gratuity. It is also observed that this application is also filed at a belated stage i.e. on 22.08.2022. The limitation to file appeal/application against rejection of claim by the liquidator is 14 days as per Section 42 of the Code, 2016. Further, the applicant has not produced on record any document relating to application filed before the Labour Court. This application is not maintainable before this Adjudicating Authority.

11. In view of the submissions and the arguments, it is observed that the Liquidator has acted in terms of the provisions of the Code in partially admitting the claim and rejecting the ineligible claims. In view of the same, we pass the following order:-

**ORDER**

Application is rejected.

Sd/-

**DR. V. G. VENKATA CHALAPATHY  
MEMBER (TECHNICAL)**

Sd/-

**CHITRA HANKARE  
MEMBER (JUDICIAL)**