IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP No.1934/MB-IV/2019

Under Section 42 of the I&B Code, 2016

In the matter of:

Munesh Kumar Goel

…Applicant/Petitioner

V/s

1. **Mr. Rakesh Chaturvedi**
2. **OTC Exchange of India**
3. **Mr. Subhash Chandra Bhargava**
4. **Mr. Deepak Gupta**
5. **M. Luke Benedict Fernandez**

... Respondents

Order pronounced on : 12.04.2023

Coram:

Mr. Prabhat Kumar Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s)	:	Mr. Harshul Shah, Advocate
For the Respondent No.1	:	Ms. Prachi Wazalwar, Advocate
For Respondent No.2	:	Ms. Vidhi Chikal, Advocate

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an Appeal filed by Mr. Munesh Kumar Goel u/s 42 of Insolvency and Bankruptcy Code,2016, against the decision of liquidator rejecting his claim for payment of Rs. 74,68,468/- in the voluntary liquidation process of M/s OTC Exchange of India and for declaration of proceedings of creditors meeting held on 07.03.2019 without notice to the applicant as void.
2. The Appellant submits that the liquidator has rejected his claim for benefits for ex-gratia under Compulsory Retirement Scheme ("**Scheme**") of the Corporate Person; 3-month notice pay as per scheme; interest on ex-gratia and delayed payments on gratuity. The Appellant submits that he was entitled to 22 Months gross pay under the scheme and Three month notice period.
3. The Liquidator vide email dated 13.05.2019 informed the Appellant that -

i. *On perusal of the records of the Company, the Board in its meeting held on 29.08.2016 which was also attended by you, decided that the name of Mr. Munesh Kumar Goel will be considered for Compulsory Retirement Scheme till the time he was employee of the Company and before taking charge as Managing Director & CEO of OTC Exchange of India (OTEI) i.e. 21.10.20211. Therefore, his gross salary just before his appointment as Managing Director be considered for arriving at the ex-gratia amount strictly in the same manner and on the same basis as has been applicable to other employees.*

ii. *Based on your eligibility under the scheme as approved by the Directors in their meeting held on 29th August 2016, you are eligible under OTCEI Compulsory retirement scheme based on your salary drawn as on October 21, 2011 Rs.1,21,162/- pm for a period of 11 years till October 21, 2011 only, which comes to 22 times of your salary drawn on October 21, 2011 ie Rs. 26,65,564/- and Interest of Rs.5,37,345/-, which has already been* *paid to you by the Company on 21st September 2018 as is evident from exhibit XIX of your submission.*

iii. *As per Books of Accounts as produced before me, it appears that you had already been paid salary for 3 months on 30th August 2018 after termination of your employment as Managing Director on 20th June 2018 which is also evident from exhibit XIX of your submission. Hence Claim related to 3 Months' Notice period is also not payable to you.*

iv. *I understand that the Company has created a trust/ taken a policy with LIC for payment of gratuity amount as and when due and the liability of payment if any in accordance with Gratuity Act is with such Trust formed under OTC Exchange of India Employees' Group Gratuity Assurance Scheme unless the funds available under the policy / with trust are insufficient. Hence, I am unable to accept your claim for payment of interest on delayed payment of gratuity if applicable at this stage. The same shall be examined / dealt with separately in accordance with the trust deed / scheme / Provisions of Gratuity Act and I shall intimate you in the due course.*

4. The Liquidator has filed reply dated 24.09.2019 placing the minutes of the meeting held on 29.08.2016 referred in his rejection grounds and drew our attention on item No. 11 thereof. Further, Respondent No. 3 to 5 i.e. Chairman, Director and Managing Director of the Corporate Person respectively have filed reply dated 27.09.2019 whereby they have submitted the company has duly computed the amount that were to be payable as ex-gratia (at the discretion of the Company) to applicant and the same were duly communicated to the Applicant/Petitioner. Therefore, the Respondent No. 1 has rightly rejected the claims of the said Petitioner after giving detailed reasons.

5. We find that the Corporate Persons was admitted to voluntary liquidation process w.e.f. 01.03.2019. We agree with the contention of liquidator on interest on delayed payment of gratuity as the same was payable by the gratuity fund and corporate person was only to facilitate. Hence, no claim lies against corporate person on this account. Further, we also find that the Appellant has already been paid the amount payable under the scheme which is born out from the minutes of meeting of Board of Directors of the Corporate Person held on 29.08.2016, the relevant extracts read as "*as agreed by IDBI the name of Mr. Munesh Kumar Goel will be considered for compulsory retirement scheme till the time he was employee of the Company and before taking charge as Managing Director and CEO of OTC Exchange of India (OTEI) i.e. October 21, 20211. Therefore, his gross salary just before his appointment as Managing Director be considered for arriving at the ex-gratia amount strictly in the same manner and on the same basis as has been applicable to other employees. The Board authorized the Chairman to take further steps to implement the above decision*".

6. In view of above decision of the Board arrived at after taking into consideration the relevant facts of the case, we find that the Appellant claim under the scheme has already been settled by the Corporate Person in accordance to such decision and we do not find any reason to go beyond the decision of Corporate Person in this regard.

7. Accordingly, we do not find any reason to interfere with the order of liquidator rejecting the claim of the Appellant. Hence, CP No. 1934/2019 is dismissed.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)