

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH - BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
Through web based video-conferencing Platform

I.A 38 of 2023
In
CP (IB) No.216/BB/2018
Under Sections 60 (5) of IBC, 2016
R/w. Rule 11 of the NCLT Rules, 2016

IN THE MATTER OF I.A 38 OF 2023

Khushboo Sharma

Daughter of Mr. Kamal Sharma

No. 319, B-Block DS-Max Signature Apartment,

Devinagr, LKR Nagar, Bangalore – 560094

...

Applicant

Versus

1. Mr. Pathukasahasram Raghunathan Raman

Company Liquidator of Corporate Debtor ...

Respondent No.1

2. Ghanshyam Das Mundra

Erstwhile RP of Corporate Debtor ...

Respondent No.2

3. Karuturi Global Limited

Corporate Debtor ...

Respondent No.3

Order delivered on: 19.04.2024

Coram: 1. Hon'ble Justice (Retd). T.Krishnavalli, Member (Judicial)

2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicant

:

Shri Sachin K Jhankal

Ms. Khushboo Sharma

For the Liquidator

:

Shri. Tushar Tyagi

ORDER**Per: Bench**

1. This Application has been filed on 07.12.2022 by Khushboo Sharma (Applicant), against Mr. Pathukasahasram Raghunathan Raman (Company Liquidator of Corporate Debtor/Respondent No.1), Mr. Ghanshyam Das Mundra (Erstwhile RP of Corporate Debtor/Respondent No.2) and the Karuturi Global Limited (Corporate Debtor/CD/respondent No.3) filed U/s. 60(5) of the IBC, 2016 R/w. Rule 11 of the NCLT Rules, 2016 R/w. 5(13) of the IBC R/w. Regulation 31 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 inter alia seeking direction to Respondent No.1 to take on record unpaid salary dues of Rs. 7,34,374 of the Applicant for the entire duration of CIRP as part of CIRP costs and to impose cost on respondents no. 1 and no. 2 due to their unjust, unreasonable and arbitrariness such that gullible unpaid applicant can meet the legal expenses incurred by her and to grant condonation of delay of 274 days from 08.03.2022 to 07.12.2022 in filing this application for the reasons mentioned in the application.
2. Brief facts of the case
 - a) The applicant herein approached the Resolution Professional (Respondent No. 2) to consider the unpaid salary as Company Secretary of the Corporate Debtor (Respondent No. 3) as part of the CIRP costs, as against the total salary dues of Rs. 7,34,374 during the CIRP period from 02.08.2019 to 15.01.2021. Applicant being aggrieved by the arbitrary deduction of her salary by Respondent No. 2 has filed this application before this Hon'ble Tribunal.
 - b) It is submitted that the Hon'ble NCLT vide its order dated 01.12.2021 in the IA 53/2021 disposal of the application with a direction to liquidator (Respondent No. 1) *"to consider the claim of the applicant in accordance with the Code and regulations made thereunder and shall pass a reasonable*

order thereof within 2 weeks from the date of receipt of this order and to communicate the same to the applicant.”

- c) Based on the order of the Hon’ble tribunal, the applicant herein approached the Respondent No. 1 (liquidator) enquiring about the claim settlement vide email as she had not received any communication. It is further submitted that the respondent no.1 replied to the email dated 28.01.2022 stating that the order of the Hon’ble NCLT has only directed to communicate the acceptance of your claim and not settlement of the claim. Based on the order he further added that the claim has been admitted and duly reflected in the claim register.
- d) It is further submitted that pursuant to the above communication, the applicant herein feared that her claims had not been admitted as part of the CIRP costs and therefore the applicant wrote another email dated 31.01.2022 to respondent No.1 enquiring whether her unpaid claims has been admitted as CIRP costs.
- e) It is further submitted that the Respondent No. 1 despite being in notice of the claims before him and the orders of the Hon’ble NCLT showed a very arbitrary and casual approach vide an email dated 06.02.2022.
- f) It is further submitted that the Respondent No. 1 did not take into account the acceptance of the unpaid salary as part of CIRP cost by the Respondent No. 2 (erstwhile RP).
- g) The applicant further submitted that despite clear acceptance of unpaid salary as CIRP costs by Respondent No. 2 (capacity as RP), the same was denied arbitrarily by Respondent No. 1 (capacity as the liquidator).
- h) It is further submitted that the respondent no. 1 without looking at the evidences provided by the applicant that she worked as Company Secretary of the Corporate Debtor during entire period of CIRP, the Respondent No. 1 did not consider

them and denied them arbitrarily and did not pass a reasoned order as directed by Hon'ble NCLT. It is submitted that the applicant remained as a Company Secretary of the Corporate Debtor till 15.01.2021 (date of order of liquidation) and she could not take up employment elsewhere.

- i) It is further submitted that the Hon'ble Tribunal prima facie agreed the claim of applicant's to be included as part of CIRP costs. The Respondent No. 2 admitted the claim of applicant as part of CIRP costs partially i.e., Rs. 80,712/-.
- j) It is submitted that the only question for which the Liquidator was supposed to pass a reasoned order over whether the deduction of salary made by Respondent No. 2 was right or wrong. However, it is submitted that the Liquidator acted arbitrarily by not considering the applicant's claims properly and assigned it wrongly as "remuneration due to employee" which shall be paid as per waterfall mechanism u/s 53 of the code.
- k) Further, it is submitted that the applicant seeks condonation of delay in filing this application due to paucity of funds and had to borrow funds for paying fees for professionals.
- l) The respondents No.1 and No.3 have filed their objections vide diary no: 1152 dated 28.02.2023 and reiterated the same in the written submissions vide diary no: 573 dated 29.01.2024 by contending that the application has been filed with unreasonable delay of 274 days. The liquidator has time and again sought for documents from the applicant, it is stated that the applicant has not provided any documents which establishes that she was employed with the corporate debtor and she assisted the CIRP of the CD. Further stated that the respondent no.2 has admitted the claim of Rs. 80,712/- vide email dated 21.01.2021 subject to verification of employment documents. Since the applicant remained absent from work during the period from 13.09.2019 to 27.08.2020 and

therefore, no question of salary dues during the period of CIRP from 13.09.2019 to 27.08.2020 arises.

- m) It is further submitted that the liquidator is not bound by the actions of the erstwhile resolution professional (respondent no. 2) during CIRP, and each claim has to be seen afresh upon commencement of the Liquidation proceedings.
 - n) It is submitted that the applicant withdrew her resignation vide email dated 28.08.2020 however, as per erstwhile Resolution Professional, there was a delay on the part of the applicant in assisting the Resolution Professional.
 - o) It is further submitted that the applicant herein did not show any direct involvement in the CIRP of the Corporate Debtor and the documents submitted also does not establish the fact she assisted in the CIRP of the Corporate Debtor and therefore the claim of the applicant was not covered under Section 5(13) of the code.
 - p) The respondent has placed reliance on the decisions of Hon'ble Supreme Court in the matter of Committee of Creditors of Essar steel India Limited vs Satish Kumar Gupta & Ors. Dated 15.11.2019.
3. The applicant filed a rejoinder on 08.06.2023. The applicant submitted that upon a public search of Master data of companies in "List of Signatories" on MCA website, the name of "Khushboo Sharma" (applicant) is still being shown as the Company Secretary of the Corporate Debtor and submitted her claim in Form E vide email dated 17.03.2021.
4. It is further submitted that the Respondent No.1 chose to ignore all the records for verification of employment of Applicant as the Company Secretary such as verified SBI bank statement, letters from HR confirming salary revision.
5. The applicant further contested the submission made by the Liquidator stating that she had not worked/assisted the Corporate Debtor during the CIRP. It is submitted that the order of this Hon'ble Tribunal dated

21.08.2020 copy of IA No. 403/2020 along with copy of order of Hon'ble Tribunal dated 21.12.2020 were submitted to the Respondent, which sufficiently describes the assistance given by the applicant during the CIR process.

6. It is further submitted that even if the liquidator is not bound by the actions of Respondent No. 2/erstwhile Resolution Professional that does not entitle Respondent No. 1 / Liquidator to completely ignore the documents available before it for making its own conclusions. It is further submitted that the liquidator has failed in its statutory duty by completely ignoring the orders passed by this tribunal.
7. It is submitted that the liquidator has admitted the applicant's position as an employee as per email dated 22.02.2023 – "As such, your claim is admitted as remuneration due to employee which shall be paid as per the waterfall mechanism u/sec 53 of the I&B Code, 2016, which you may kindly note....". It is further submitted that this email demonstrates that the liquidator on its own has admitted that the applicant was indeed an employee of the Corporate Debtor.
8. Heard learned Counsel for the Applicant and for the Respondents. We have carefully perused the pleadings on record by the respective parties.
9. It is noted that in the written submissions made by the applicant clearly indicates that the applicant is co-operating the Erstwhile RP from the initiation of CIRP and the applicant was doing her duties along with the RP as it is evident from this Tribunal Order dated 21.08.2020 where the applicant was directed to assist the RP. Further, it is noted from the Order dated 01.12.2021 this Tribunal directed the Liquidator to give reasonable order to consider her claim. It is seen that from the initial stage of admission of CIRP the applicant is claiming for the salary of unpaid dues from the Erstwhile RP and the Liquidator. With regards to the contention of Respondent No.1 the applicant was not providing the relevant documents relating to her employment. It is pertinent to mention that the status of applicant regarding her employment details

has been shared with the liquidator as it is shown in Master data in MCA website.

10. It is relevant to refer the decision of Hon'ble Supreme Court in the matter of *Sunil Kumar Jain and others Versus Sundaresh Bhatt and others* dated 14.04.2022, (2022) ibclaw.in 23 SC "If it is found that in fact the IRP/RP managed the operations of the corporate debtor as a going concern during the CIRP and the concerned workmen/employees actually worked during CIRP, their wages and salaries be considered and included in CIRP costs and they will have to be paid as per Section 53(1)(a) of the IB Code in full before distributing the amount in the priorities as mentioned in Section 53 of the IB Code".
11. This Tribunal observed that since the applicant is approaching this Tribunal from the initial stage of submitting her claim before the respondents and the reasons stated in the application for the delay of 274 days in filing this application has been condoned.
12. Having considered the abovementioned reasons including the Hon'ble Supreme Court decision referred to above we are of the considered opinion that the Liquidator is bound to consider the claim as there were the relevant documents and communications available between the Erstwhile RP and the applicant in the admitting the claim and the same has been produced before the liquidator for admitting the claim. Moreover, the applicant assisted the Erstwhile RP during the CIRP of CD. Accordingly, **I.A. No.38 of 2023 in C.P.(IB)No.216/BB/2018** is hereby **disposed of** with the above directions. The Liquidator is directed to settle the claim within 30 days of this order and file a compliance affidavit with the registry within a week thereafter.

-Sd/-

MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

-Sd/-

T.KRISHNAVALLI
MEMBER (JUDICIAL)