

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING  
HELD ON **09.05.2024** THROUGH VIDEO CONFERENCING

**PRESENT:** HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)  
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

**IN THE MATTER OF** : Canara Bank  
Vs  
Easun Reyrolle Ltd

**MAIN PETITION NUMBER** : IBA/1045&1169/2019

**(IA/MA) APPLICATION NUMBERS**

IA(IBC)/2261(CHE)2023; IA(IBC)/2262(CHE)2023; IA/1928/(CHE)/2023 in IA/887/2021;  
IA/1927/(CHE)/2023 in IA/887/2021; IA(IBC)/2033(CHE)2023; IA(IBC)/2034(CHE)2023;  
IA(IBC)/2344(CHE)2023; IA/2319(CHE)/2023

**ORDER**

**IA(IBC)/2261(CHE)2023 ; IA(IBC)/2262(CHE)2023**

Present: None for the Applicant

Ld. Counsel Ms. Sangamithra Loganathan for the Respondent /  
Liquidator.

Vide common order announced in Open Court, the applications are  
**dismissed.**

**IA/1928/(CHE)/2023 in IA/887/2021 ; IA/1927/(CHE)/2023 in  
IA/887/2021**

Present: None for the Applicant

Ld. Counsel Ms. Sangamithra Loganathan for the Respondent /  
Liquidator.

Vide common order announced in Open Court, the applications are  
**dismissed.**

**IA(IBC)/2033(CHE)2023; IA(IBC)/2034(CHE)2023**

Present: Ld. Counsel Shri. B Sarath Babu for the Applicant.

Ld. Counsel Ms. Sangamithra Loganathan for the Respondent /  
Liquidator.

Vide common order announced in Open Court, the applications are  
**dismissed.**

**IA(IBC)/2344(CHE)2023; IA/2319(CHE)/2023**

Present: Ld. Counsel Shri. B Sarath Babu for the Applicant.

Ld. Counsel Ms. Sangamithra Loganathan for the Respondent /  
Liquidator.

Vide common order announced in Open Court, the applications are  
**dismissed.**

**Sd/-**

**(VENKATARAMAN SUBRAMANIAM)**  
MEMBER (TECHNICAL)

MG

**Sd/-**

**(SANJIV JAIN)**  
MEMBER (JUDICIAL)

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

**IA/(IBC)/2261/CHE/2023 in IBA/1045 & 1169/2019**

*(Filed under Section 42 of the Insolvency and Bankruptcy Code, 2016 read with  
Section 5 of the Limitation Act and Section 60(5) & (6) of IBC,2016)*

**Easun Reyrolle Workers Union**

Reg No: 140/DRP

No.33, 5<sup>th</sup> Cross, Shanthi Nagar West,

Hosur,

Krishnagiri District – 635 109

..... *Applicant*

-Versus-

**Mr. CA Mahalingam Suresh Kumar**

**Liquidator of M/s. Easun Reyrolle Ltd. (In Liquidation)**

SPP & Co.,

No.27/9, Nivedhvikas, Pankaja Mills Road, Puliyankulam,

Coimbatore – 640 028

**Canara Bank,**

Having its Head Office at

No.112, J.C.Road,

Bengaluru, Karnataka – 560 002

Having its Hosur Main Branch at

M.M.Reddy Complex,

Old Bangalore Road,

Hosur – 635 109

**State Bank of India,**

Stressed Assets Management Branch,

Rep by Assistant General Manager,

Monteith Road,

Egmore, Chennai

..... *Respondents*

*Along with*

**IA/(IBC)/2262/CHE/2023 in IBA/1045 & 1169/2019**  
*(Filed under Section 42 of the Insolvency and Bankruptcy Code, 2016)*

*In the matter of Easun Reyrolle Ltd.*

**Easun Reyrolle Workers Union**

Reg No: 140/DRP  
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**State Bank of India,**

Stressed Assets Management Branch,  
Rep by Assistant General Manager,  
Monteith Road,  
Egmore, Chennai

..... *Respondents*

**Present:**

*For Applicant* : *V.Ajay Khose, Advocate*  
*For Respondent* : *B. Dhanaraj, Advocate for R1*

CORAM:

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

*Order Pronounced on 09<sup>th</sup> May 2024*

COMMON ORDER

*(Heard through Video Conferencing)*

IA(IBC)/2261(CHE)/2023 is an application filed by the Applicant under Section 42 of the Insolvency and Bankruptcy Code, 2016 read with Section 5 of the Limitation Act and Section 60(5) & (6) of the IBC,2016 seeking relief as follows:

*(a) to condone the delay of 428 days in filing the appeal under section 42 of the IBC against the adjudication orders of the 1<sup>st</sup> Respondent dated 06.05.2022 and 20.07.2022 and thus render justice.*

2. IA(IBC)/2261(CHE)/2023 is an application filed by the Applicant under Section 42 of the Insolvency and Bankruptcy Code, 2016 seeking to call for the records pertaining to the order dated 06.05.2022 in Ref. MSK/LIQ/ERL/2022-10 and 20.07.2022 in Ref.MSK/LIQ/ERL/2022-219 passed by the 1<sup>st</sup> Respondent in respect of the claims made by the applicant Union on behalf of its members and set aside the same in so far as

*a) Not calculating and admitting the claims towards Gratuity based on the salary payable to the workmen as on the date of liquidation and calculating the same based on the salary as in July, 2019 and reducing and restricting the claim amount and not admitting the entire claim towards Gratuity;*

- b) *Not admitting and paying the claims towards difference in Gratuity based on the last drawn salary payable as on 17.02.2022 under Section 36(4)(a)(iii) IBC;*
- c) *Not including the claims towards PF as dues payable to workers and not including and paying the PF dues under Section 36(4)(a)(iii) IBC and adjudicating the said claim as a claim made by the EPFO and including the said claim under Section 53 (1)(f) instead of including the same under Section 36(4)(a)(iii) IBC;*
- d) *Reducing the claims towards arrears of wages payable as per the award and the bonus payable from the year 2012 and not allowing the same in full and including and showing the said claim under Section 53 (1) (f) instead of including the same under 53 (1)(b)(i) IBC;*
- e) *Refusing to admit and allow the claims towards notice pay and retrenchment / closure compensation and not including the same under 53 (1)(b)(i) IBC;*
- f) *Refusing to admit and allow the claims towards the earned leave salary and not including the same under 53 (1)(b)(i) IBC;*
- g) *Refusing to admit and allow the claims towards service weightage payable to the workmen at the time of retirement which is payable as per the settlement in force and not including the said claim under 53 (1)(b)(i) IBC;*
- h) *Refusing to admit and allow the claims towards wages for the period from Sep, 2022 to 17.02.2022 and not including the same under Section 53(1)(a);*
- i) *Refusing to admit and allow the claims towards the amount deducted from the salary of the workmen but not remitted to the thrift and credit society and not including the same under 53 (1)(b)(i) IBC;*
- j) *Refusing to admit and allow interest for all the claims and including the same under respective category and priority and*

*consequently, direct the 1 Respondent to admit and accept all the claims made by the applicant union in full under each head / category and under the respective priority as claimed and prayed for by the applicant union and pass any other appropriate and suitable orders and directions as this Hon'ble Tribunal may deem fit in the facts and circumstances of this case and thus render justice.*

3. 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.

4. 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.

5. It is stated that at the time when the factory was started, about 200 permanent workers were employed. After 2003, 50% of the permanent workmen retired under the Voluntary Retirement Scheme.

6. It is stated that the above factory/management granted pay revision to the workmen, by entering into settlements with the members of the Works Committee, once in three years.

7. It is stated that since the members in the Works Committee could not bargain effectively, the workmen formed and joined the Applicant / Appellant union, namely, Easun Reyrolle Workers Union, which is affiliated to CITU.

8. It is stated that since the year 1989, the Applicant / Appellant union negotiated and entered into wage revision settlements under Section 12(3) of the ID Act, once in three years, on behalf of the

workmen. Similarly, the Applicant / Appellant union also entered into settlements with the Management, once in a year, with regard to bonus. The last wage revision settlement was signed in the year 2011, for a period of 3 years.

9. It is stated that the management failed and refused to pay bonus to the workmen continuously from the accounting year 2011-2012 onwards. Similarly, though the wage revision settlement expired on 31.03.2014, but the management did not come forward for any new wage revision settlement thereafter, though the Applicant / Appellant union had submitted to them their demands on 04.04.2014.

10. It is stated that therefore, they raised an industrial dispute on the charter of demands for wages revision and other benefits before the Labour Officer, Krishnagiri. In spite of prolonged conciliation, the management did not come forward for any settlement. Therefore, the Labour Officer submitted his failure report on 12.01.2016.

11. It is stated that since the period of 3 years from 2014 got expired on 31.03.2017, the Applicant/Appellant union once again submitted a charter of demands for wage revision and other benefits on 19.09.2017. Since, the management did not call for talks, the Applicant/Appellant

union raised an industrial dispute. The conciliation in the said dispute also ended in failure and the conciliation officer submitted his failure report on 02.01.2018.

12. It is stated that first dispute with regard to wage revision and other benefits from the year 2014 was referred for adjudication to the Labour Court, in G.O. (D) No. 163, by the Labour and Employment Department, dated 01.03.2018. The second dispute regarding wage revision for the period commencing from the year 2017 was referred for adjudication to the Labour Court, in G.O. (D) No. 345, by the Labour and Employment Department, dated 24.07.2020.

13. It is stated that the above two references were taken on file for adjudication by the Labour Court, Hosur in ID Nos. 160 of 2019 and 2 of 2021. The Labour Court, Hosur passed an award in ID No. 160 of 2019 on 22.01.2021 and allowed the claims as prayed and granted a wage increase of Rs. 4000/- per month, with effect from 01.04.2014. Similarly, the Labour Court, Hosur revised the 4 scales of pay and also allowed the pay fixation and fitment at the appropriate stage corresponding to the stage in the pre-revised scales of pay. Further, the Labour Court, Hosur also increased the fixed dearness allowance by Rs.3000/- every month from 01.04.2014. The Labour Court, also accepted the rate of variable

dearness allowance per point as Rs.6/- every month from 01.04.2014. The Labour Court also granted service weightage at the rate of Rs.80, Rs.100, Rs.125, Rs.150 and Rs.200, based on the number of years of service completed. The Labour Court also increased the house rent allowance by Rs.3000 per month. The travelling allowance was increased by Rs.2500/- per month. The hill allowance was increased by Rs.2000/- per month. The washing allowance was increased by Rs.1000/- per month. The Labour Court also directed the management to pay one month's basic pay as medical allowance. Further, the Labour Court also directed the management to provide one Jerkin and one Sweater for each year alternatively and to provide overcoat for the workmen who were working in the maintenance department. All the above benefits were directed to be paid and extended to all the workmen numbering 72, with effect from 01.04.2014.

14. It is stated that the Labour Court, Hosur passed an award in ID No. 2 of 2021 on 26.03.2021. In the award also, the Hon'ble Labour Court allowed all the claims as prayed for by them, for the next settlement period commencing from 01.04.2017 i.e., the Labour Court retained the scales of pay revised in the previous award revised, with effect from 01.04.2014 for the period commencing from 01.04.2017 also. However,

the Labour Court granted a wage increase of Rs. 6000/- per month. Further, the Labour Court, Hosur increased the fixed dearness allowance by Rs.5000/- every month from 01.04.2017. The Labour Court, also accepted the rate of variable dearness allowance per point as Rs.6/- every month from 01.04.2017. The Labour Court also granted service weightage at the rate of Rs. 100, Rs.200, Rs.250, Rs.300 and Rs.500, based on the number of years of service completed. The Labour Court also increased the house rent allowance by Rs.6000 per month. The travelling allowance was increased by Rs.3000/- per month. The hill allowance was increased by Rs.3000/- per month. The washing allowance was increased by Rs. 1500/- per month. The Labour Court directed the management to pay one month's basic pay as medical allowance. Further, the Labour Court also directed the management to provide one Jerkin and one Sweater for each year alternatively and to provide overcoat for the workmen who were working in the maintenance department. All the above benefits were directed to be paid and extended to the all-workmen who were in service as on 31.03.2017, with effect from 01.04.2017.

15. It is stated that the award dated 22.01.2021 in ID No. 160 of 2019 was communicated to the Applicant / Appellant Union by the Labour

Officer by his letter dated 24.12.2021. As per the said letter, the award was published on their notice board on 21.12.2021. Therefore, the said award has become enforceable after 30 days from 21.12.2021, however, it was to be given effect with effect from 01.04.2014. The said award was to remain in force for a period of 3 years, i.e., up to 31.03.2017.

16. It is stated that the award dated 26.03.2021 in ID No. 2 of 2021 was communicated to the Applicant / Appellant union by the Labour Officer by his letter dated 24.12.2021. As per the said letter, the award was published on their notice board on 21.12.2021. Therefore, the said award became enforceable after 30 days from 21.12.2021. However, it was to be given effect from 01.04.2017.

16. It is stated that though the management deducted employees' contributions of PF every month from the salary payable to each workman, but it failed to remit the PF contributions along with the employer's contributions, with effect from January 2016 and committed default in making/ remitting the PF Contributions to the EPF Organization.

18. It is stated that similarly, though the workmen had actually worked, the management failed to pay them the earned salary for the

period from August 2019 to 24th March 2020, till the total lock down was imposed due to outbreak of COVID-19.

19. It is stated that out of 89 workmen who were in service, 26 of them have already retired from service on various dates on reaching the age of superannuation. They were paid and settled with only the Gratuity amounts from and based on the policy taken from the Life Insurance Corporation of India that too, only based on the actual last drawn salary which they received in July 2019 or the last drawn salary payable to them as on the date of their retirement. They were not settled with any other benefits, such as PF, earned salary, bonus and service weightage amount, which were payable on the date of their retirement, as per the earlier wage revision settlements. Though the above awards were passed subsequent to their retirement but with retrospective effect from 01.04.2014 and 01.04.2017 respectively, the benefits flowing from the awards were also not paid and settled to them.

20. It is stated that out of 63 workmen who were in service as on 05.05.2020, 8 of them retired from service, on various dates, on reaching the age of superannuation. The 8 workmen have been paid Gratuity amount alone, based on the policy taken with the LIC. Like other 26 workmen who already retired prior to 05.05.2020, these 8 workmen were

not settled with the other terminal benefits and also the benefits flowing from the above two awards as mentioned above.

21. It is stated that consequent to the order of liquidation and deemed discharge of the services of the workmen, the factory at Hosur is deemed to have been closed and all the remaining 55 workmen who were in service as on the date of order of this Tribunal were deemed to have been retrenched from service under the Industrial Dispute Act, 1947 with effect from the said date, since all the workmen are "Workmen" within the meaning of Section 2(s) of the ID Act.

22. It is stated that since it is an establishment employing more than 50 workmen but less than 100, the provisions contained in Section 25FFA of the ID Act 1947 are applicable to the retrenchment of the above 55 workmen and hence they are entitled to two months' notice pay and also the retrenchment compensation as provided under Section 25F and 25FFF of the ID Act, 1947.

23. It is stated that in addition to the notice pay and retrenchment compensation, the 55 workmen are entitled to the monetary and other benefits, with arrears as per the above two awards for the period from 01.04.2014 to 17.02.2022. They are also entitled to Gratuity, earned leave

salary for the entire service up to 17.02.2022, based on the salary payable to them as on 17.02.2022, as per the above two awards. Similarly, they are also entitled to bonus from the year 2011- 2012 to 17.02.2022.

24. It is stated that the claims made by the Applicant were inclusive of the PF dues defaulted and not paid by the company to the EPFO. Similarly, the claims were also inclusive of the claims towards compensation for the remaining service of 55 workmen, who were on the rolls, as on 17.02.2022, the date of liquidation.

25. It is stated that, the 1<sup>st</sup> Respondent has admitted the claims of the Applicant / Appellant union on behalf of the 55+34-89 workmen, only to the extent of Rs. 15,62,78,659/-, whereas the actual claim is Rs.49,37,55,825/- plus interest. Further, the total claim as mentioned by the 1<sup>st</sup> Respondent is Rs.43,63,64,206/-, when the claim of the Applicant / Appellant union was actually Rs. 49,37,55,825/- . i.e. the claim made by the Applicant / Appellant union towards PF dues have been excluded from the total claims by the 1<sup>st</sup> Respondent Liquidator.

26. It is stated that out of the total claims which are admitted, a sum of Rs. 2,45,77,082/- has been admitted under Section 36(4)(a)(iii) of the IBC towards Gratuity. Similarly, a sum of Rs. 46,64,981/- has been

admitted under Section 53(1)(a) of the IBC towards the wages for the period from 05.05.2020 to Aug, 2020. Further, a sum of Rs. 98,77,844/- has been admitted under Section, 53(1)(b)(i) of the IBC, 2016 towards wages due from 17.02.2022 to 04.05.2022. 1<sup>st</sup> Respondent has admitted a sum of Rs.11,71,58,752/- under Section 53(f) of the IBC.

27. It is stated that as per Abstract-1, which was annexed to the claims dated 09.03.2022 and as per Serial No. 1 under the head salary due for the period from August 2019 to 17.02.2022, based on the actual salary drawn by each workman either up to their actual retirement or up to 17.02.2022, a sum of Rs.6,75,17,816/- was claimed by the Applicant/Appellant union. Towards arrears of salary and other benefits for the period from 01.04.2014 to 31.03.2017, a sum of Rs.4,71,68,850 was claimed by the Applicant / Appellant Union. It is stated that this claim was made as per the award in I.D. No. 160 of 2019. Similarly, towards arrears of salary and other benefits for the period from 01.04.2017 to 17.02.2022, a sum of Rs.21,21,93,190/- was claimed by the Applicant / Appellant Union. It is stated that this claim was made as per the award in ID No. 2 of 2021. Thus, under the above 3 heads in Serial No. 1 of Abstract-1 & 2, totally a sum of Rs.32,68,79,886/- was claimed by the Applicant/Appellant Union. It is stated that a sum of

Rs.38,50,000/- was claimed, towards bonus for the years 2012 to 17.02.2022 by the Applicant/ Appellant union.

28. It is stated that the 1<sup>st</sup> Respondent / Liquidator clubbed all the claims towards unpaid salary and arrears of salary and other benefits for the above two settlement periods as per the above two awards and also towards the claims for bonus together. The claims under these two heads comes to Rs.35,80,82,539/-.

29. It is stated that when the said amount is the actual claim made by the Applicant, the 1<sup>st</sup> Respondent has admitted only a sum of Rs.11,71,58,752/- towards arrears of wages payable to both the serving and retired workmen. Further, even this admitted amount is allowed for payment only under Section 53(1)(f) by the 1 Respondent, instead of allowing it under Section 53(1)(b)(i) of the IBC.

30. It is stated that in Para 6 of his order dated 06.05.2022, the 1<sup>st</sup> Respondent has admitted the wages payable for the period from 17.02.2020 to 04.05.2020 under Section 53(1)(b)(i) and quantified the same as Rs.98,77,844/-, when the said amount ought to have been admitted under Section 53(1)(a) of the IBC, since it is a claim for wages

for the period from 05.05.2020 to August 2020 which has been admitted under Section 53(1)(a).

31. It is stated that as announced by the IRP in terms of the decision taken in COC's that each workman would be paid 50% of salary for the lockdown period, the 1<sup>st</sup> Respondent has admitted a sum of Rs.46,64,981/- towards 50% of salary for the period from 05.05.2020 to August 2020. It is stated that this claim has been admitted by the 1<sup>st</sup> Respondent under Section 53(1)(a).

32. It is stated that the Applicant / Appellant union has claimed a sum of Rs.3,19,01,807/-, towards the Gratuity amounts payable to 55 workmen who were on the rolls as on 17.02.2022, based on the salary payable to them for the above two settlement periods and as per the two awards as on the date of their discharge/retrenchment on 17.02.2022, by taking into account the remaining service up to the actual date of superannuation.

33. It is stated that the gratuity amount based on the actual salary received and for the service up to the date of superannuation is Rs.2,90,35,207/-. The Applicant/ Appellant union, based on the 1 settlement period claimed a sum of Rs.6,49,000/- towards difference in

gratuity. Similarly, a sum of Rs.22,17,600/- was claimed towards difference in gratuity for the 2nd settlement period. Put together, as stated above a sum of Rs.3,19,01,807/- was claimed towards Gratuity for the 55 workmen.

34. It is stated that the 1 Respondent under Para 5 of his order, has admitted the claim towards gratuity payable to 55 workers who were in service as on 17.02.2022 as Rs.2,45,77,082/-. It is stated that the admission of this claim was made by the 1 Respondent, based on the last drawn salary of each workman and not based on the salary payable to them as per the awards and as on 17.02.2022. This claim was admitted under Para 36(4)(a)(iii) of the IBC.

35. It is stated that the gratuity amounts payable to the above 55 workmen by the LIC based on the policy taken, has already been credited to the separate account which is being maintained and administered by the 1 Respondent / liquidator.

36. It is stated that instead of paying and settling the said amounts to the 55 workmen, the 1st Respondent was retaining the same under his control and he has informed the workmen that those amounts would be disbursed only along with the amounts payable to all the creditors,

including the financial creditors, namely, the Respondents 2 and 3 and others, after the sale and disposal of the properties would be over.

37. It is stated that though they have made a claim for payment of the defaulted PF contribution which are not paid to the EPFO since 2016, the same was rejected by the 1<sup>st</sup> Respondent/liquidator in Para 7 of his order, on the ground that the said amount was payable only to be PF Department and not to the workmen or union.

38. It is stated that the 1<sup>st</sup> Respondent failed to see that the PF contribution defaulted to be paid by Corporate Debtor, were the dues payable to the workers and hence the same ought to have been included and shown as dues payable to the workmen and the entire PF dues ought to have been admitted under Section 36(4)(a)(iii) of the IBC, However, while adjudicating the claims made by EPFO separately, the 1 Respondent adjudicated the PF dues payable to the EPFO as Rs.3,60,31,245/- under Section 36 (4)(a)(iii) and the remaining Rs.57,78,006/- has been admitted only under Section 53(1)(f) instead admitting the said amount also under Section 36(4)(a)(iii) of IBC as stated above.

39. It is stated that the 1 Respondent/liquidator rejected the claim towards encashment of earned leave in Para 8 of his order dated 06.05.2022, on the ground that such payment is permissible as per the company policy, only in case of retirement or resignation and hence according to him when the employees were discharged as per the orders of this Tribunal, they were not entitled to encashment of earned leave salary.

40. It is stated that the liquidator rejected the claim for extra Gratuity and compensation up to the date of the retirement of the each of 55 workmen, under Para 9 of his order dated 06.05.2022. The Applicant / Appellant Union is not questioning this part of his order.

41. It is stated that under Paras 10 and 11 of his order dated 06.05.2022, the 1 Respondent Liquidator has rejected the claim for wages and bonus for the period from September, 2020 to February 2022, on the ground that the company has declared lock down with effect from 30.08.2020.

42. It is stated that the 1<sup>st</sup> Respondent/Liquidator has informed the Applicant/Appellant union and workmen that the amount adjudicated by him as mentioned above would be distributed as per Section 53 of

the IBC, as and when the amounts are realized from the assets of the corporate debtor.

43. It is stated that the actual PF dues for the earned salary for the period from Jan, 2016 to Feb, 2020 and the PF dues for the moratorium period from Feb, 2020 to 17.02.2022 ought to have been paid by the 1 Respondent directly to the EPFO and the above dues payable by him ought to have been admitted either under Section 36(4)(ii) for the period up to 17.02.2022 and the PF dues payable for the period from 17.02.2020 to 17.02.2022 ought to have been admitted under Section 53(1)(a) when the revival plan was under the process.

44. It is stated that after receipt of the order dated 06.05.2022 from the liquidator, the Applicant / Appellant union made a representation dated 08.06.2022 and made its objections and also made its additional claims i.e., the Applicant/ Appellant union pointed out that the amounts adjudicated to be payable to the workmen as per the Labour Court Awards were less than the amounts which were actually due to them and as claimed by them as per the Awards and also pointed out that those amounts were payable to them under 53(1)(b)(i) and not under 53(1)(f) as mentioned by the liquidator.

45. It is stated that the Applicant/Appellant union pointed out that the claims of their members towards Gratuity were not adjudicated based on the salary payable to them, as per the two awards and for their entire service up to the date of the liquidation and the amounts actually due to them were not adjudicated correctly. The Applicant / Appellant Union also enclosed an annexure along with its letter dated 08.06.2022, showing the correct amounts payable to them towards Gratuity.

46. Further, their claim towards additional Gratuity and compensation in the original claims up to the respective date of their retirement were rejected by the 1 Respondent/liquidator.

47. However, all the members of the Applicant/Appellant Union claimed that since all of them were discharged from the date of liquidation, they were entitled to two months' notice pay and retrenchment compensation under Section 25FFA, read with Section 25F and 25FFF of the ID Act, 1947. They also enclosed the calculation showing the notice pay and retrenchment compensation payable to each of the 55 workmen as annexure-2, along with their letter dated 08.06.2022.

48. It is stated that the liquidator has sent a reply dated 20.07.2022 to the Applicant / Appellant union. In the said letter, he has stated that the earned wages payable to them for the period from August 2019 to February 2020 have been admitted and accepted and not disallowed as mentioned by the Applicant/Appellant union in its letter. He informed further that the said admitted claim was due to them under Section 53(1)(f). He has also informed that bonus and wages were admitted as per Section 53 under water fall mechanism and that the wages payable to the workmen for the period from 17.02.2020 to 04.05.2020 have been admitted under Section 53(1)(b)(i) and that the wages payable to the workmen for the period from 05.05.2020 to 31.08.2020 have been admitted under Section 53(1)(a). Similarly, it was informed by him that so far as the wages payable for the period from September 2020 to February 2022, only the employees who were actually engaged for work during that period alone were entitled to wages and that the persons who were not actually engaged for work during that period were not entitled to any wages.

49. It is stated that the liquidator in the said letter, has further informed that the Gratuity was calculated as per the last drawn salary paid by the company as per their pay roll register as in July, 2019 and that the said calculation was in accordance with law.

50. It is stated that the liquidator further informed that since the workmen were relieved from service as per the orders of this Tribunal, they were not entitled any retrenchment compensation. It was also informed by him that since the workmen were discharged as per the orders of this Tribunal and since they were not relieved from service either due to the attaining the age of superannuation or resignation, the workmen are not entitled to encashment of the earned leave and the reiterated his findings and conclusion which he made in his earlier order dated 06.05.2022. It is stated that such a finding is contrary to the Explanation (ii) to Section 53 of the IBC, read with Section 326 of the Companies Act, 2013. Therefore, the Applicant has filed this application against the orders dated 06.05.2022 and 20.07.2022 passed by the 1<sup>st</sup> Respondent, in so far as disallowing and reducing the claims under various heads and in so far as not adjudicating the claims based on the salary payable to them as per the two awards and in so far as not giving them correct priority.

51. It is stated that when the workmen are entitled to the arrears of salary for the two settlement periods as per the two awards, that is Rs.11,39,91,483/- for the period from 01.04.2014 to 31.03.2017 and Rs. 10,34,99,280/- for the period from 01.04.2017 to 17.02.2022 respectively,

the liquidator was not correct and justified in adjudicating the amounts payable for both the settlement periods at Rs. 11,71,58,752/-, particularly when it was also inclusive of the bonus according to him. Further, when the total amount for both periods comes to Rs.21,74,90,763/, the liquidator was not correct in reducing the said amount to Rs. 11,71,58,752/.

52. It is stated that the Liquidator has not given any reason for disallowing the balance amount of Rs.10,03,32,011/-. It is stated that disallowing this amount is nothing but nullifying and modifying the judicial orders namely, the award passed by the Labour Court, Salem. Therefore, the workmen are entitled to the above difference amount of Rs.10,03,32,011/- towards arrears of wages payable to them as per the awards, in addition to the amounts adjudicated and allowed by the liquidator and they are entitled to get the amount under Section 53(1)(b)(c) and non under Section 53(1)(1) IBC, as adjudicated by the 1 Respondent.

53. It is stated that all other claims of the workmen were made based on the last drawn salary arrived at for each workman as on 17.02.2022 as per the above two awards. Therefore, the liquidator ought to have allowed all other claims, based on the salary payable to each workman

as per the awards as on 17.02.2022. Therefore, adjudicating and allowing the other claims by the 1 Respondent/liquidator only based on the salary paid to them as in July, 2019 and not based on the salary payable to them as per the awards and as on 17.02.2022 is contrary to the two awards passed by the Labour Court, Hosur.

54. It is stated that when the Gratuity is payable to each workman as claimed by the Applicant / Appellant union, based on the last drawn wages payable to them as per the above two awards and when the total amounts payable to 55 workmen was Rs.3,19,01,807/-, the liquidator has adjudicated the amount payable towards Gratuity only at Rs.2,45,77,082/-. Hence, the same is unsustainable in law.

55. It is stated that in the reply dated 20.07.2022, the 1<sup>st</sup> Respondent / liquidator has admitted that the Gratuity amounts payable to the 55 workmen have been calculated only based on the last drawn salary fixed and paid by the employer prior to the initiation of the liquidation process. It is stated that reducing the Gratuity amount and calculating the same based on the actual last drawn wages received by each worker, instead of calculating the same based on the last drawn wages payable to them as per the two awards would amount to nullifying the awards and also it is contrary to Section 14 of Payment of Gratuity Act, 1972.

56. It is stated that the workmen are entitled to a sum of Rs.73,24,725/- towards difference in Gratuity, in addition to the amount already adjudicated by the liquidator and which are already paid to the workmen based on the maturity amounts received from the LIC and these amounts should be paid to them under Section 36 (4)(a)(iii) IBC.

57. It is stated that every employee is entitled to encash the earned leave salary on the date of his exit from his employment, that is, not only in case of retirement/superannuation and resignation but also even in the case of his dismissal, discharge and termination from his service. Therefore, the 1<sup>st</sup> Respondent /liquidator is not correct in disallowing the amounts claimed towards earned leave salary on the ground that the same is payable only in case of retirement and resignation and not payable in the case of discharge pursuant to the order of liquidation. Therefore, the 55 workmen and 8 retired workmen are entitled to a sum of Rs.97,17,885/-towards earned leave salary. These amounts shall be paid to them under Section 53(1)(b)(i) IBC.

58. It is stated that similarly, though the workmen are discharged with effect from 17.02.2022, based on the order of liquidation passed by this Tribunal but it is a retrenchment in the eye of law, consequent to

closure of the corporate debtor company and its business as per Section 2(oo) and 2(c) of the ID Act and hence they are entitled to notice pay and retrenchment compensation as per Sections 25F, 25FFA and 25FFF of the ID Act. Therefore, the 1st Respondent / liquidator is not correct in disallowing the claims under this head by his order dated 20.07.2022. Therefore, the 55 workmen are entitled to a sum of Rs.4,51,68,691/- towards notice pay and retrenchment/closure compensation. It is stated that such a finding and rejection of this claim is contrary to Explanation (ii) to Section 53 of the IBC read with Section 326 of the Companies Act, 2013 and particularly contrary to the definition of "workmen's dues" as defined in Explanation (b)(i) to (iv) to Section 326 of the Companies Act, 2013.

59. It is stated that the claim towards arrears of wages as per the two awards for two settlement periods, were also inclusive of the wages payable for the period from August 2019 to 16.02.2020, during which the workmen had worked but not paid the earned wages. Similarly, it also included the wages payable from 17.02.2020 to 17.02.2022. Though the liquidator has allowed the claim towards wages for the work done for the period from August 2019 to 16.02.2020 and the claim towards wages for the period from 17.02.2020 to 04.05.2020 and for the period from 05.05.2020 to 31.08.2020 but he disallowed the claim for wages for the

period from September 2020 to February 2022, that is up to 17.02.2022, on the ground that only the employees who were called for work alone were entitled to wages for this period and on the ground that the workers who were not called for work during this period were not entitled to wages. It is stated that when the workmen were on the rolls, until they were discharged from service with effect from 17.02.2022, wages cannot be denied for this period, on the ground that they were not called for work. Therefore, the workmen are entitled to difference in wages. Further, though the workers due are confined to 24 months preceding to the date of liquidation on 17.02.2022, since the awards were passed only on 22.01.2021 and 26.03.2021, the arrears of salary and other benefits flowing from the two awards shall also be taken as dues payable to them during this 24 months' period preceding 17.02.2022.

60. It is stated that as per the public announcement, the applicant submitted the Form-F before the Liquidator on 09.03.2022. A total amount of claim to the tune of Rs.49,37,55,825/- was claimed before the Liquidator.

61. 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.49,37,55,825 (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 Workmen category*
- 3) Wages due from August 2019 to 16th Feb2020, and bonus is admitted under section 53(1)(f) for Rs. 11,71,58,752/- after the consideration of increment of your wages as per court order for both existing workmen and retired workmen*
- 4) Wages claim for 5th May to Aug 2020 is admitted as per COC Resolution under section 53(1)(a) for Rs. 46,64,981/- after the consideration of increment of your wages as per court order for both existing workmen and retired workmen*
- 5) Gratuity due is admitted under section 36(4)(a)(iii) for Rs. 2,45.77,082 (workings is based on last drawn wages as per Gratuity Act)*
- 6) Wages due from 17th Feb 2020 to 4th May 2020 is admitted under section 53(1)(b)(i) for Rs. 98,77,844/-*
- 7) Provident Fund Claim is rejected as it is payable to Provident Fund Department*
- 8) As per Company Policy, the leave encashment is encashable only upon retirement or resignation. As the Company into liquidation, the same is not payable, hence rejected.*
- 9) Your claim regarding Extra Gratuity Compensation is rejected as per CTC.*

*On liquidation of the company, the service weightage pay is also not payable, hence rejected*

- 10) The Company has declared lockdown w.e.f 30/08/2020 and no wages is payable after that date. Hence wages claim from Sep 2020 to Feb 2022 is rejected*

11) *The Company has declared lockdown w.e.f 30/08/2020 and no bonus is payable after that date. Hence bonus claim from Sep 2020 to Feb 2022 is rejected.*

*Further your claim is categorized as Workmen.*

*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."*

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

63. The Respondent/Liquidator has filed Reply.

64. The Learned Counsel for the Liquidator submits that the claim of the Appellant was partially 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 Appellant has filed the present application before this Tribunal only on 26.09.2023 with a delay of 428 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.

65. The Learned Counsel for the Respondent/Liquidator submitted that the Appellant had filed the claim for a sum of Rs.49,37,55,825/- towards the alleged arrears of salary, gratuity Provident Fund Dues, Retirement Benefits, Leave Encashment, Society and Bonus. The

Respondent/Liquidator by its letter dated 06.05.2022 had informed the Applicant on the part admission of the claim for a sum of Rs.15,62,78,659/-. The details of the same are as follows:

**A. Salary:**

- i. The Liquidator admitted a sum of Rs.46,64,981/- towards wages for a period from 5<sup>th</sup> May, 2020 to August, 2020 under Section 53(1)(a) of I&B Code, 2016, after the consideration of increment of workers wages as per Court Order to both existing and retired workmen.

| Amount Admitted u/s 53(1)(a) |                  |
|------------------------------|------------------|
| CIRP Cost                    | 46,64,981        |
| <b>Total</b>                 | <b>46,64,981</b> |

- ii. The Liquidator admitted a sum of Rs.11,71,58,752/- towards wages and bonus for a period from August 2019 to 16.02.2020 under Section 53(1)(f) of I&B Code, 2016.
- iii. The Liquidator admitted a sum of Rs.98,77,844/- towards wages due from 17.02.2020 to 04.05.2020 under Section 53(1)(b)(i) of I&B Code, 2016.
- iv. Claim for alleged Salary for a period from September, 2020 to February, 2022 was rejected by the Liquidator since the Corporate Debtor was closed on 31.08.2020 and hence, no salary was accrued to any of the Employees of the Corporate Debtor.

**B. Leave Encashment** – The Liquidator rejected the claim towards Leave Encashment owing to the fact that as per the policy of the Corporate Debtor, the leave encashment is encashable only upon retirement or resignation. However, as per the company records, there is no payable in the books and hence no specific admission has been dealt in this regard.

**C. Gratuity** – The Liquidator admitted a sum of Rs.2,45,77,082/- under Section 36(4)(a)(iii) of I&B Code, 2016, based on the last drawn wages.

**D. Provident Fund Dues** – The Liquidator rejected the claim towards Provident Fund Dues since the same is directly payable to the Provident Fund Department.

**E. Service Weightage** – The Liquidator rejected the entire sum claimed by the Applicant.

66. Learned Counsel submitted that the Liquidator by his letters dated 13.08.2022, 30.08.2022, 22.09.2022, 29.03.2022 and 27.10.2023 had informed the Applicant that the sum of Rs.2,68,95,504/- admitted by the Liquidator under Section 53(1)(a), Sec 36(4)(a)(iii), Sec 53(1)(b)(i) of the Insolvency and Bankruptcy Code, 2016 was partly distributed from the sale of the assets of the Corporate Debtor to the Applicant as detailed below:

| S.No. | Cheque No. | Date       | In Favour of                 | Amount     |
|-------|------------|------------|------------------------------|------------|
| 1.    | 96626      | 13.08.2022 | Easun Reyrolle workers Union | 262,48,124 |
| 2.    | 96659      | 30.08.2022 | Easun Reyrolle workers Union | 30,000     |
| 3.    | 96745      | 22.09.2022 | Easun Reyrolle workers Union | 4,63,963   |
| 4.    | 96850      | 28.03.2023 | Easun Reyrolle Workers Union | 22,268     |
| 5.    | Via RTGS   | 27.10.2023 | Easun Reyrolle Workers Union | 18,150     |
| 6.    | 518473     | 28.12.2023 | Easun Reyrolle Workers Union | 1,12,999   |

67. 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 wages for the CIRP period were duly admitted by the Liquidator under Section 53(1)(a) of Insolvency and Bankruptcy Code, 2016 and the same were also received by the Applicant.

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

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

70. 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 26.09.2023. Admittedly there is a delay of 428 days in filing the present Appeal under Section 42 of IBC, 2016.

71. 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)*

72. 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.

73. Even on merits the appeal filed by the Applicant is not maintainable since the Liquidator has admitted the claim as per the provisions of IBC, 2016. He has also treated the salary of the Appellant

in terms of Section 53(1)(a) of IBC, 2016 and distributed the amount to the Applicant. Hence, we are of the view that the Liquidator was right in partially rejecting the claim of the Applicant.

74. In view of the reasons aforesaid IA(IBC)/2261(CHE)/2023 and IA(IBC)/2262(CHE)/2023 stand **dismissed**. No costs.

**-Sd-**

**VENKATARAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

**-Sd-**

**SANJIV JAIN**  
MEMBER (JUDICIAL)

*Sriram Ananth.V*

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

**IA/(IBC)/1927/CHE/2023 in IBA/1045 & 1169/2019**

*(Filed under Section 42 of the Insolvency and Bankruptcy Code, 2016)*

*Along with*

**IA/(IBC)/1928/CHE/2023 in IBA/1045 & 1169/2019**

*(Filed under Section 5 of the Limitation Act read with Rule 11 of NCLT, 2016)*

*In the matter of Easun Reyrolle Ltd.*

**C.Muthu,**  
1/473, A.M.G.R.Nagar,  
Mookandapatti,  
Hosur – 635 126  
Krishnagiri District

..... *Applicant*

-Versus-

**Shri. CA Mahalingam Suresh Kumar,**  
**Liquidator of M/s. Easun Reyrolle Ltd.**  
No.27/9, Nivedhvikas, Pankaja Mill Road, Puliakulam,  
Coimbatore – 640 028

..... *Respondent*

Present:

*For Applicant* : *R.Marudhachalamurthy, Advocate*  
*For Respondent* : *B. Dhanaraj, Advocate*

**CORAM:**

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

*Order Pronounced on 09<sup>th</sup> May 2024*

## **ORDER**

*(Heard through Video Conferencing)*

IA(IBC)/1927(CHE)/2023 is an application filed by the Applicant under read with Section 42 of the Insolvency and Bankruptcy Code, 2016 seeking reliefs as follows:

*(a) To direct the respondent to pay the wages due and other orders passed by the Hon'ble Labour Court at Hosur in I.D.No.51 of 2014 dated 25.10.2018 and C.P.No.13 of 2022 dated 20.06.2022.*

*(b) To pass such further or other orders as this Hon'ble Tribunal may deem fit and proper on the circumstances of the case and thus render justice.*

2. IA(IBC)/1928(CHE)/2023 is an application filed by the Applicant under Section 5 of the Limitation Act read with Rule 11 of the NCLT Rules, 2016 seeking to condone the delay of 466 days in filing the appeal and pass further or other orders as this Hon'ble Tribunal may deem fit and proper on the circumstances of the case and thus render justice.

### **COMMON FACTS:**

3. 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 joined in the respondent company on 02.01.1989, in Assembly Department.

4. 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 22.02.2022 calling upon the stakeholders of the Corporate Debtor to submit the proof of claims on or before 19.03.2022.

5. It is stated that the applicant right from the day one of joining the duty rendered his unblemished service without getting any remarks. All of sudden, on 10.12.2012 the respondent company dismissed the applicant from service without giving any proper notice. On enquiry by the applicant, the management gave improper explanation and also, they have made false allegations as against the applicant to substantiate their dismissal order dated 10.12.2012.

6. It is stated that the applicant aggrieved by the order of dismissal, challenged the order by filing the petition bearing I.D.No/ of 2014 before the Labour Court. The Labour Court on affording opportunity to the parties to the proceedings, enquired and rendered judgment in the above proceedings on 25.10.2018 and set aside the order of dismissal dated 10.12.2012 and directed the respondent management to reinstate the applicant in service with back wages and all attended

benefits. The order of labour court dated 25.10.2018 had been communicated to the Government and the same was notified in the Government Gazette on 26.12.2018.

7. It is stated that based on the order passed by the labour Court in I.D.No.51 of 2014, the applicant continuously approached the respondent management in person and also sent a letter dated 05.01.2019 insisting to implement the order of Labour Court by reinstating him in service with all attended benefits, but the respondent management failed to comply the order of Labour court dated 25.10.2018.

8. It is stated that in view of respondent management disobedience in complying the order of Labour court as stated supra, the applicant approached Labour court and filed appropriate petition in C.P.No.13 of 2022 by invoking Sec.33(c)(2) of Industrial Disputes Act. In this petition the applicant claimed the back wages with interest and other expenses and the same was duly considered and ordered by the Labour court vide order dated 20.06.2022.

9. It is stated that the Labour court in C.P.No. 13 of 2022 passed an order directing the respondent management to pay sum of

Rs.47,47,021/-with interest at the rate of 9% for the period from 01.12.2012 to 31.3.2022.

10. It is stated that even though the liquidator was aware of the proceedings initiated by applicant in C.P.No. 13 of 2022 on the file of Labour Court, Hosur, the Liquidator sent a communication dated 06.05.2022 to the applicant and informed the applicant that he is eligible to the sum of Rs.32,62,132/-.

11. It is stated that the applicant received another communication from the liquidator on 25.06.2022 wherein the liquidator stated that the applicant claim form received after the last date of submission of claims and stakeholders list was already finalized and any modification in it can only be done as per provision of Liquidation Regulation of IBC.

12. 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.1,11,27,053.00 (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 Workmen category*
- 3) Wages due from June 2012 to 25.10.2018 along with bonus is admitted under Section 53(1)(f) for Rs.29,38,374 after consideration of increment as per court order.*
- 4) Gratuity due is admitted under section 36(4)(a)(iii) for Rs.3,23,758/-*

*Further your claim is categorized as Workmen or Employees.*

*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."*

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

14. The Respondent/Liquidator has filed Reply.

15. The Learned Counsel for the Liquidator submits that the claim of the Appellant was partially 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 26.09.2023 with a delay of 466 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.

16. The Learned Counsel for the Respondent/Liquidator submitted that the Applicant had filed the claim for a sum of Rs.1,11,27,053/- towards the alleged wages due, gratuity and other orders passed by Labour Court, Hosur . 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:

**A. Salary:**

- i. The Liquidator admitted a sum of Rs.32,62,132/-. As per court order the increment is considered and included with salary due from June 2012 to 25<sup>th</sup> October, 2018 along with bonus u/s 53(1)(f).

| Date                                       | Particulars                | Amount           |
|--|----------------------------|------------------|
| <b>Amount Admitted u/s 53(1)(f)</b>        |                            |                  |
| June 2012 to 25 <sup>th</sup> October 2018 | Salary - 21886*79 months   | 17,28,994        |
| 2014 - 2017                                | Salary Increment- 18116*36 | 6,52,176         |
| 2017 - 25/10/2018                          | Salary Increment- 27116*19 | 5,15,204         |
|  | Bonus- 7000*6              | 42,000           |
|  | <b>Total</b>               | <b>29,38,374</b> |

- B. Gratuity** – The Liquidator admitted a sum of Rs.3,23,758/- under Section 36(4)(a)(iii) of I&B Code, 2016.

17. Learned Counsel submitted that the Liquidator by its letter dated 13.08.2022 had informed the Applicant that the amount of Rs.3,23,758/- admitted by the Liquidator towards gratuity under Section 36(4)(a)(iii) of I &B code, 2016 has been disbursed to the Applicant vide Cheque no. 080483 dated 13.08.2022.

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

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

20. 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 26.09.2023. Admittedly there is a delay of 466 days in filing the present Appeal under Section 42 of IBC, 2016.

21. 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)*

22. 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.

23. 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. Hence we are of the view that the Liquidator was right in partially rejecting the claim of the Appellant.

24. In view of the reasons aforesaid IA/1927(CHE)/2023 and IA/1928 (CHE)/2023 stands **dismissed**. No costs.

**-Sd-**

**VENKATARAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

**-Sd-**

**SANJIV JAIN**  
MEMBER (JUDICIAL)

*Sriram Ananth.V*

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

**IA/(IBC)/2033/CHE/2023 in IBA/1045 & 1169/2019**  
*(Filed under Section 42 of the Insolvency and Bankruptcy Code, 2016 read with  
Section 60(5) of the IBC, 2016)*

*Along with*

**IA/(IBC)/2034/CHE/2023 in IBA/1045 & 1169/2019**  
*(Filed under Rule 11 of the NCLT Rules, 2016 read with Section 60(5) of the  
Insolvency and Bankruptcy Code, 2016)*  
*In the matter of Easun Reyrolle Ltd.*

**P.M.Nagaraju**  
**S/o Munusamy**  
D.No.2/3, Periya Elasagiri,  
Nallur, Begapalli Post,  
Hosur - 635 126  
Tamil Nadu

..... Applicant

-Versus-

**Shri. CA Mahalingam Suresh Kumar,**  
**Liquidator of M/s. Easun Reyrolle Ltd.**  
No.27/9, Nivedh vikas, Pankaja Mill Road, Puliakulam,  
Coimbatore – 641 045

..... Respondent

**Present:**

|                       |   |                                |
|-----------------------|---|--------------------------------|
| <i>For Applicant</i>  | : | <i>B.Sarath Babu, Advocate</i> |
| <i>For Respondent</i> | : | <i>B. Dhanaraj, Advocate</i>   |

*Order Pronounced on 09<sup>th</sup> May 2024*

**CORAM:**

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

## ORDER

(Heard through Video Conferencing)

IA(IBC)/2033(CHE)/2023 is an application filed by the Applicant under Section 42 of IBC,2016 read with Section 60(5) of IBC, 2016 seeking reliefs as follows:

*(a) To direct the liquidator to accept my claim petition and to pay the following balance due amount*

*1. Admit the claim under workman category*

*2. Salary due from July 19 to 4th May 2020 Rs.3,86,047*

*3. Additional 50% Salary from 5th May 2020 to Aug 2020*

*Rs.82,802-*

*4. Salary due from Sep 2020 to Jan 2021 for Rs.2,20,300/-*

*5. Salary due from Feb 2021 to Feb 2022 for Rs. 5,72,780/-*

*6. Balance gratuity as per judgment: Rs. 2,77,767/-10% interest*

*7. Provident Fund dues from Jan 2016 to Feb 2022 with applicable Interest*

*8. Privilege Leave encashment due-Rs 88,120/-*

*9. Co-Operative society due Rs 11,850-*

*10. Service weightage des Rs 340,00/-*

*(b) To direct the liquidator to amend the list of stakeholders by including the claim of applicant*

*(c) To pass such further or other order as it may deem fit and proper in the circumstances of the case and thus rnder justice.*

2. IA(IBC)/2034(CHE)/2023 is an application filed by the Applicant under Rule 11 of NCLT, 2016 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking reliefs as follows:

*(a) The applicant prays that the Hon'ble Tribunal consider the application by giving a fillip for condone the delay of 510 days to accept the claim and adjudicate the claim by modifying the list of stakeholders as per the claim in form-E filed on 15.03.2022.*

*(b) To pass such other orders or direction as this Hon'ble Tribunal may deem fit in the interest of justice.*

**COMMON FACTS:**

3. 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 recruited as Learner, in the corporate debtor for Relay Assembly section as on 12.10.1987 and further placed on probation till 31.12.1989 by the corporate debtor.

4. Thereafter, the applicant herein was appointed as permanent workman with effect from 01.01.1990 on a fixed salary Rs. 2.04/- per hour with other allowances like DA, HRA. TA and Educational Allowances fixed by the Corporate Debtor, As on 01.04.2018 the applicant was promoted as Senior Engineer JM2 Level, worked 34 years 4 months of full service with the corporate debtors with more

appreciation and was relieved from the employment from 17.02.2022 due to liquidation of the CD: At the time of retirement, the applicant last drawn salary was Rs. 34,100/- (BASIC+ SPECIAL ALLOWANCE).

5. 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 22.02.2022 calling upon the stakeholders of the Corporate Debtor to submit proof of claims on or before 19.03.2022.

6. It is stated that as per the public announcement the applicant submitted his Form-E before the Liquidator on 16.03.2022. A total claim under the following heads was filed before the Liquidator:

- 1. Pending Salary from July 2019 to April 2020 for Rs.3,83,477/-**
- 2. Pending Salary from May 2020 to Aug 2020 for Rs.88,120/-**
- 3. Pending Salary from Sep 2020 to Feb 2022 for Rs.7,71,050/-**
- 4. Gratuity for total 34 years Rs. 4,08,538/-**
- 5. Provident fund for the period from Jan-2016 to Feb 2022 for Rs.3,63,384/-**
- 6. Leave encashment for 60 days Rs. 41,200/-**
- 7. Society Rs.11,850/-**
- 8. Service weightage for Rs. 34,000/-**

7. 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.21,01,619.00 (including interest) in Form E against the Corporate Debtor M/s. EasunReyrolle 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 4<sup>th</sup> May is admitted under Section 53(1)(f) 2020 for Rs.3,86,047/-*
- 4) Salary claim from 5<sup>th</sup> May 2020 to Aug 2020 is admitted as per COC Resolution under section 53(1)(a) for Rs.82,802/-*
- 5) Gratuity due is admitted under section 36(4)(a)(iii) for Rs.3,91,118/-*
- 6) The Company has declared lockdown w.e.f 30.08.2020 and no salary is payable after that date, hence salary claim from Sep 2020 to Feb 2022 is rejected.*
- 7) Provident Fund claim is rejected as it is payable to Provident Fund Department.*
- 8) As per Company Policy, the leave encashment is encashable only upon retirement or resignation. As the Company in to liquidation, the same is not payable, hence rejected.*
- 9) Society due is paid to concerned society, hence rejected*
- 10) On Liquidation of the company, the service weightage pay is also not payable, hence rejected.*

*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."*

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

9. The Respondent/Liquidator has filed Reply.

10. The Learned Counsel for the Liquidator submits that the claim of the Appellant was partially 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 17.10.2023 with a delay of 510 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.

11. The Learned Counsel for the Respondent/Liquidator submitted that the Applicant had filed a claim for a sum of Rs.21,01,619/- towards the alleged arrears of salary, gratuity, Provident Fund Dues, Leave Encashment, Society and service weightage. 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:

**A. Salary:**

- i. The Liquidator admitted a sum of Rs.82,802/- towards Salary for a period from May, 2020 to August, 2020 under Section 53(1)(a) of I&B Code, 2016.

| Amount Admitted u/s 53(1)(a) |               |
|------------------------------|---------------|
| CIRP Cost                    | 82,802        |
| <b>Total</b>                 | <b>82,802</b> |

- ii. The Liquidator admitted a sum of Rs.3,86,047/- towards Salary for a period from July, 2019 to May, 2020 under Section 53(1)(f) of I&B Code, 2016 as follows:

| Date                         | Particulars   | Amount |
|------------------------------|---------------|--------|
| Amount Admitted u/s 53(1)(f) |               |        |
| Jul-19                       | Salary @ 25%  | 41,485 |
| Aug-19                       | Salary @ 100% | 41,495 |
| Sep-19                       | Salary @ 100% | 40,243 |
| Oct-19                       | Salary @ 100% | 41,499 |
| Nov-19                       | Salary @ 100% | 41,495 |
| Dec-19                       | Salary @ 100% | 41,549 |
| Jan-20                       | Salary @ 100% | 41,547 |
| Feb-20                       | Salary @ 100% | 41,549 |
| Mar-20                       | Salary @ 100% | 40,307 |

|               |                   |                 |
|---------------|-------------------|-----------------|
| Apr-20        | Salary @ 100%     | 40,307          |
| May-20        | Salary for 4 days | 5,685           |
| July 75% paid |                   | -31,114         |
|               | <b>Total</b>      | <b>3,86,047</b> |

- iii. Claim for alleged Salary for a period from September, 2020 to February, 2022 was rejected by the Liquidator since the Corporate Debtor was closed on 30.08.2020 and hence, no salary was accrued to any of the Employees of the Corporate Debtor.

**B. Leave Encashment** – The Liquidator rejected the claim towards Leave Encashment owing to the fact that as per the policy of the Corporate Debtor, the leave encashment is encashable only upon retirement or resignation. However, since the Corporate Debtor is in Liquidation, the same is not payable.

**C. Gratuity** – The Liquidator admitted a sum of Rs.3,91,118/- under Section 36(4)(a)(iii) of I&B Code, 2016.

**D. Co-Operative Society** – The Liquidator rejected the claim towards Society Dues since the same was paid to the Department.

**E. Provident Fund Dues** – The Liquidator rejected the claim towards Provident Fund Dues since the same was paid to the Provident Fund Department.

**F. Service Weightage** – The Liquidator rejected the entire sum of Rs.34,000/- as claimed by the Applicant.

12. Learned Counsel submitted that the Liquidator by its letter dated 13.08.2022 had informed the Applicant that the amount of Rs.4,73,920/- admitted by the Liquidator towards salary during CIRP period under Section 53(1)(a) of the Insolvency and Bankruptcy Code, 2016 and gratuity under Section 36(4)(a)(iii) of I &B code, 2016 has been disbursed to the Applicant vide Cheque no. 080299 dated 13.08.2022.

13. 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 for 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.

14. It is stated that the contentions of the applicant to admit the claim amount from July 2019 to 04.05.2020 is factually wrong and incorrect since the corporate Debtor was not under CIRP and the same cannot be part of insolvency resolution process cost.

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

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

17. 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 17.10.2023. Admittedly there is a delay of 510 days in filing the present Appeal under Section 42 of IBC, 2016.

18. 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)*

19. 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.

20. Even on merits the claim of the Applicant is not maintainable since the Liquidator has admitted the claim as per the provisions of IBC, 2016. He also treated the salary of the Applicant in terms of Section 53(1)(a) of IBC, 2016 and distributed the amount to the Applicant. Hence we are of the view that the Liquidator was right in partially rejecting the claim of the Applicant.

21. In view of the reasons aforesaid IA/2033 (CHE)/2023 and IA/2034(CHE)/2023 stands **dismissed**. No costs.

**-Sd-**

**VENKATARAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

**-Sd-**

**SANJIV JAIN**  
MEMBER (JUDICIAL)

*SriramAnanth.V*

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

**IA/(IBC)/2319/CHE/2023 in IBA/1045 & 1169/2019**

*(Filed under Section 42 of the Insolvency and Bankruptcy Code, 2016 read with  
Rule 11 of NCLT, 2016)*

*Along with*

**IA/(IBC)/2344/CHE/2023 in IBA/1045 & 1169/2019**

*Filed under Section 42 of the Insolvency and Bankruptcy Code, 2016 read with  
Section 40(1) of the IBC, 2016)*

*In the matter of Easun Reyrolle Ltd.*

**S.Raja Reddy**  
**S/o Sidda Reddy**  
No.206, 5<sup>th</sup> Main,  
Swamy Vivekananda Layout,  
Muthanallur Cross, Sulikunte,  
Domasandra, Bangalore – 562 125  
Karnataka

..... *Applicant*

-Versus-

**Shri. CA Mahalingam Suresh Kumar,**  
**Liquidator of M/s. Easun Reyrolle Ltd.**  
No.27/9, Nivedhvikas, Pankaja Mill Road, Puliakulam,  
Coimbatore – 641045

..... *Respondent*

**Present:**

|                       |   |                               |
|-----------------------|---|-------------------------------|
| <i>For Applicant</i>  | : | <i>B.SarathBabu, Advocate</i> |
| <i>For Respondent</i> | : | <i>B. Dhanaraj, Advocate</i>  |

*Order Pronounced on 09<sup>th</sup> May 2024*

**CORAM:**

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

## ORDER

*(Heard through Video Conferencing)*

IA(IBC)/2319(CHE)/2023 is an application filed by the Applicant under Section 42 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT, 2016 seeking reliefs as follows:

*(a) The applicant prays that the Hon'ble Tribunal consider the application to condone the delay of 525 days and to accept the claim.*

*(b) To pass such other orders or direction as this Hon'ble Tribunal may deem fit in the interest of justice.*

2. IA(IBC)/2344(CHE)/2023 is an application filed by the Applicant under Section 42 of the Insolvency and Bankruptcy Code, 2016 read with Section 40(1) of IBC,2016 seeking to accept the claim petition dated 16.03.2022 and direct the liquidator to reconsider the following balance due amount;-

- a) Pending Salary due from July 2019 to April 2020 Rs.3,80,869/-*
- b) Pending Salary due from May 2020 to August 2020 Rs. 82,350/-*
- c) Salary due from Sep 2020 to Feb 2022 Rs. 7,41,150/-*
- d) Gratuity as on 17.02.2022 Rs.3,03,960/- along with 10% of interest.*
- e) Provident Fund for the period from Jan-2016 to Feb-2020 for Rs. 2,73,420/-*
- f) Privilege Leave encashment due - Rs 71,396/-*
- g) Society payment Rs. 8,850/-*
- h) Service Weightage claim Rs.34,000/- Totally Rs. 18,95,995/-*
- i) To direct the liquidator to amend the list of stakeholders by including the claim of applicant.*
- j) To pass such further or other order as it may deem fit and proper in the circumstances of the case and thus render justice.*

**COMMON FACTS:**

3. 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 recruited and placed in Material/stores department in the corporate debtor on 01.11.1988, employed on probation till 31.12.1988. Thereafter, the applicant herein was appointed as permanent worker with effect from 01.11.1989 on a fixed salary Rs.375/- per month with other allowances like DA., HRA., TA and Educational Allowances fixed by the Corporate Debtor, worked 33 years of full service until the date of liquidation with the respondent corporate debtors with more appreciation.

4. 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 22.02.2022 calling upon the stakeholders of the Corporate Debtor to submit proof of claims on or before 19.03.2022.

5. It is stated that as per the public announcement the applicant submitted his Form-E before the Liquidator on 16.03.2022. A total claim under the following heads was filed before the Liquidator:

1. Pending Salary for the periods from June 2019 to April 2020 for Rs.3,80,869/-
2. Pending Salary for the periods from May 2020 to Aug 2020 for Rs.82,350/-
3. Pending Salary for the periods from Sep 2020 to Feb 2022 for Rs.7,41,150/-
4. Gratuity for total 34 years Rs. 3,03,690/-
5. Provident fund for the period from Jan-2016 to Feb 2022 for Rs.3,63,384/-
6. Leave encashment for 60 days Rs. 71,396/-
7. Society Rs.8,850
8. Service weightage for Rs. 34000/-

6. 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.18,95,995.00 (including interest) in Form E against the Corporate Debtor M/s. EasunReyrolle 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 June2019 to 4<sup>th</sup> May 2020 for Rs.3,64,394/- is admitted under Section 53(1)(f).*
- 4) *Salary claim from 5<sup>th</sup> May 2020 to Aug 2020 is admitted as per COC Resolution under section 53(1)(a) for Rs.77,380/-*
- 5) *Gratuity due is admitted under section 36(4)(a)(iii) for Rs.2,88,506/-*

- 6) *The Company has declared lockdown w.e.f 30.08.2020 and no salary is payable after that date, hence salary claim from Sep 2020 to Feb 2022 is rejected.*
- 7) *Provident Fund claim is rejected as it is payable to Provident Fund Department.*
- 8) *As per Company Policy, the leave encashment is encashable only upon retirement or resignation. As the Company in to liquidation, the same is not payable, hence rejected.*
- 9) *Society due is paid to concerned society, hence rejected*
- 10) *On Liquidation of the company, the service weightage pay is also not payable, hence rejected.*

*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."*

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

8. The Respondent/Liquidator has filed Reply.

9. The Learned Counsel for the Liquidator submits that the claim of the Appellant was partially 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 24.11.2023 with a delay of 525 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.

10. The Learned Counsel for the Respondent/Liquidator submitted that the Applicant had filed a claim for a sum of Rs.18,95,995/- towards the alleged arrears of salary, gratuity, Provident Fund Dues, Leave Encashment, Society and service weightage. 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:

**A. Salary:**

- i. The Liquidator admitted a sum of Rs.77,380/- towards Salary for a period from 5<sup>th</sup> May, 2020 to August, 2020 under Section 53(1)(a) of I&B Code, 2016.

| Amount Admitted u/s 53(1)(a) |               |
|------------------------------|---------------|
| CIRP Cost                    | 77,380        |
| <b>Total</b>                 | <b>77,380</b> |

- ii. The Liquidator admitted a sum of Rs.3,64,394/- towards Salary for a period from July, 2019 to 4<sup>th</sup> May, 2020 under Section 53(1)(f) of I&B Code, 2016 as follows:

| Date                                | Particulars       | Amount          |
|-------------------------------------|-------------------|-----------------|
| <b>Amount Admitted u/s 53(1)(f)</b> |                   |                 |
| Jul-19                              | Salary @ 25%      | 39,214          |
| Aug-19                              | Salary @ 100%     | 39,232          |
| Sep-19                              | Salary @ 100%     | 37,976          |
| Oct-19                              | Salary @ 100%     | 39,222          |
| Nov-19                              | Salary @ 100%     | 39,220          |
| Dec-19                              | Salary @ 100%     | 39,222          |
| Jan-20                              | Salary @ 100%     | 39,220          |
| Feb-20                              | Salary @ 100%     | 39,222          |
| Mar-20                              | Salary @ 100%     | 37,982          |
| Apr-20                              | Salary @ 100%     | 37,982          |
| May-20                              | Salary for 4 days | 5,313           |
| July 75% paid                       |                   | -29,411         |
| <b>Total</b>                        |                   | <b>3,64,394</b> |

iii. Claim for alleged Salary for a period from September, 2020 to February, 2022 was rejected by the Liquidator since the Corporate Debtor was closed on 31.08.2020 and hence, no salary was accrued to any of the Employees of the Corporate Debtor.

**B. Leave Encashment** – The Liquidator rejected the claim towards Leave Encashment owing to the fact that as per the policy of the Corporate Debtor, the leave encashment is encashable only upon retirement or resignation. However, since the Corporate Debtor is in Liquidation, the same is not payable.

**C. Gratuity** – The Liquidator admitted a sum of Rs.2,88,506/- under Section 36(4)(a)(iii) of I&B Code, 2016. The Applicant has moved an Application bearing No. PG.No.68/2023 before the Controlling Officer (PO) under Payment of Gratuity Act, 1972 seeking an Order to pay the outstanding amount of Gratuity due to the Applicant with interest. Therefore, the Controlling Officer by Order dated 16.10.2023 directed the Respondent / Liquidator to disburse the balance arrears of the Gratuity Rs.3,39,763/- to the Applicant with 10% interest. It is pertinent to

mention that in accordance with Sec. 33(5) of I&B Code, 2016 *“when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor.*

*Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.”*

That the Hon’ble Supreme Court by its Order dated 26.08.2022 made in Civil Appeal No. 7667 of 2021 in the matter of *Sundaresh Bhatt Vs. Central Board Of Indirect Taxes And Customs* observed that *“54...i) Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.”*

**D. Co-Operative Society** – The Liquidator rejected the claim towards Society Dues since the same is payable to the Department.

**E. Provident Fund Dues** – The Liquidator rejected the claim towards Provident Fund Dues since the same is payable to the Provident Fund Department.

**F. Service Weightage** – The Liquidator rejected the entire sum of Rs.34,000/- as same is eligible only on retirement as an additional ex-gratia payment. As the company is undergoing liquidation, the same is not admitted by the liquidator.

11. Learned Counsel submitted that the Liquidator by its letter dated 13.08.2022 had informed the Applicant that the amount of Rs.3,65,886/- admitted by the Liquidator towards salary during CIRP period under Section 53(1)(a) of the Insolvency and Bankruptcy Code, 2016 and gratuity under Section 36(4)(a)(iii) of I &B code, 2016 has been disbursed to the Applicant vide Cheque no. 080302 dated 13.08.2022.

12. 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 for 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.

13. It is stated that the contentions of the applicant to admit the claim amount from July 2019 to 04.05.2020 is factually wrong and incorrect since the corporate Debtor was not under CIRP and the same cannot be part of insolvency resolution process cost.

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

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

16. 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 24.11.2023. Admittedly there is a delay of 525 days in filing the present Appeal under Section 42 of IBC, 2016.

17. 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)*

18. 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.

19. Even on merits the claim of the Applicant is not maintainable since the Liquidator has admitted the claim as per the provisions of IBC, 2016. He also treated the salary of the Applicant in terms of Section 53(1)(a) of IBC, 2016 and distributed the amount to the Applicant. Hence we are of the view that the Liquidator was right in partially rejecting the claim of the Applicant.

20. In view of the reasons aforesaid IA/2319 (CHE)/2023 and IA/2344 (CHE)/2023 stands **dismissed**. No costs.

**-Sd-**

**VENKATARAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

**-Sd-**

**SANJIV JAIN**  
MEMBER (JUDICIAL)

*SriramAnanth.V*