

Sr.No.112

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CMA-11-2023 &
CAPP-4-2023(O&M)
Date of Decision:24.07.2023

Thandi Ram and others

.....Appellants

versus

M/s Vasu Tech Limited

....Respondent

**CORAM: Hon'ble Mr. Justice G.S.Sandhawalia
Hon'ble Ms. Justice Harpreet Kaur Jeewan**

Present: Mr. P.C.Yadav, Advocate
for the appellants.

Harpreet Kaur Jeewan, J.

CMA-11 of 2023

Appellants have filed an application under Section 5 of the Limitation Act for condonation of delay of 401 days in filing the appeal.

2. Learned counsel for the appellants has submitted that the appellants are not well versed with the intricacies of legal procedure involved in the present appeal, as such delay occurred.

3. In view of the circumstances mentioned in the application and keeping in view the fact that each and every day's delay cannot be explained, the present application is allowed. Delay of 401 days in filing the present appeal is condoned.

CAPP No.4 of 2023(O&M)

4. Appellant Thandi Ram and others have filed the present appeal against the respondent M/s Vasu Tech Limited and the Liquidator Officer under Section 483 of Companies Court Act 1956 (wrongly mentioned as Rule 483 of the Company Court Rules 1959') seeking a prayer for setting aside the order dated 26.11.2021(Annexure P-1) passed in CA-55-2020 in CP-13-2007 titled as M/s Ratnaa Commercial Enterprises Ltd. vs. Vasu Tech Ltd. and CA-27-2021 in CP-13-2007 titled as M/s Ratnaa Commercial Enterprises Ltd. vs. Vasu Tech Ltd. and further seeking a direction that Liquidator Officer respondent No.2 to decide the representation dated 30.01.2023 (Annexure P-12) which was made by the appellant in pursuance to the order dated 19.12.2022 (Annexure P-11) in CAPP No.13 of 2022 passed by the co-ordinate Bench of this High Court.

5. It is the case of the appellants that they were working with M/s. Vasu Tech Limited-respondent No.1 which went into Liquidation (Annexure A-2) and order of winding up was passed on 14.10.2011 in CP No.13 of 2007 whereby the Official Liquidator was also directed to take over the possession of the assets and the existing properties of the company. On 14.10.2011 the Official Liquidator invited the claims from the workmen as well as from the other creditors by way of issuing a public notice in the newspapers. The appellants submitted the claim under Section 529-A of the Companies Act, mentioning the consolidated amount of their claims without mentioning any details. However, revised claims were filed by the workers in the year 2014.

As per the order dated 14.09.2017 (Annexure A-3) passed in

C.A.No.195 of 2017 in C.P.No.209 of 2013, the High Court permitted the Official Liquidator to publish sale notice in the newspaper and also allowed to appoint a Chartered Accountant for scrutiny/verification of the claims of the workmen and the creditors of the company in liquidation. A letter dated 20.03.2019 was received from M/s Navneet & Co. Chartered Accountants for providing requisites documents required for verification of their claims whereby the workmen and the creditors were asked to attend the investigation and produce the documents in the office of Official Liquidator on 12.06.2019. The appellant-workmen visited the office of the Official Liquidator on the said date and submitted their documents. The Chartered Accountant filed claim report dated 29.10.2020 in the office of the Official Liquidator and in the said report it was observed that the workmen have not furnished separate claims. Thereafter, the Official Liquidator issued a letter dated 27.01.2021 (Annexure A-5) to the Chartered Accountant seeking information regarding the funds position of the company in liquidation and asked the Chartered Accountant to re-submit its report referring the proportionate percentage of the amount claimed which are admitted for distribution along with detailed calculation having bifurcation of each workman's claim. The Chartered Accountant submitted revised claim report dated 18.02.2021 whereby he did not show the claim of Employees Provident Fund Organization(EPFO) amounting to Rs. 33,45,949/- in the list of apportionment of funds. The Official Liquidator vide letter dated 22.02.2021 (Annexure A-6) requested the Chartered Accountant to re-examine the report and re-submit the revised report referring that the Chartered Accountant has

shown the claim of EPFO has to be admitted for Rs.33,45,949/-, but the same was not included in the list of apportionment of funds to the creditors.

6. Learned counsel for the appellant has submitted that as per the report of the Chartered Accountant dated 19.03.2021 an application for settlement and approval to pay the dividends to the csreditors of the company (in liquidation) was moved.

7. The Company Court passed the impugned order dated 26.11.2021 (Annexure A-1) without giving any opportunity of hearing to the appellants. No notice was issued to the appellants. The appellants were not given any notice to submit any objections to the report of the Chartered Accountant. The order passed by the Company Court is an ex parte order and even the Chartered Accountant had subsequently submitted a revised report giving all the details of the claims of the workmen including their designation, date of joining, amount claimed, date of filing of the claim and the amount admitted having right of over-riding preferential payments. The said amended report is dated 19.03.2021 (Annexure A-8).

8. Learned counsel for the appellants has further submitted that previously an appeal CAPP No. 16 of 2022 was filed with a prayer for setting aside the order dated 26.11.2021 vide order dated 19.12.2022 the same was dismissed as withdrawn with liberty to approach the Company Court with grievances which were highlighted in the appeal.

Thereafter, the appellants approached Official Liquidator respondent No.2 by way of filing a representation dated 30.01.2023 but

neither the appellants have been called for personal hearing nor the Official Liquidator has decided the said representation. Hence, the present appeal was filed challenging the order dated 26.11.2021(Annexure P-1).

9. Learned counsel for the appellants has further submitted that order dated 26.11.2021 is null and void as no opportunity of hearing was given to the appellants who were the workmen in the company under liquidation and their rights have been prejudiced by accepting the report of the Chartered Accountant dated 19.03.2021.

10. We have considered the aforesaid submissions. As per order dated 26.11.2021 the report of the Chartered Accountant dated 19.03.2021 was accepted on the request of the Official Liquidators for the reasons mentioned in the application and the same being not objected by the non-applicants. The appellants had previously challenged the said order by filing CAPP No.16 of 2022 and the said appeal was dismissed as withdrawn by the appellant with the prayer to first approach the Company Court with the grievances as has been highlighted in the said appeal. The said order dated 19.12.2022 reads as under:-

“Learned counsel for the appellants prays for withdrawal of the present appeal to first approach the Company Court with the grievance as has been highlighted in the present appeal.

Dismissed as withdrawn with liberty aforesaid.”

11. The appellants have not approached the Company Court, highlighting their grievance that they were not heard while accepting the report of the Chartered Accountant dated 19.03.2021, but instead of

approaching the Company Court the appellants have issued a letter/representation to respondent No.2 Official Liquidator, Punjab and Haryana High Court dated 30.01.2023 (Annexure A-12). The said letter is in the shape of a legal notice. The order under challenge was passed by the Company Court and the appellants have sought permission to approach to Company Court for raising their grievances of not being heard before acceptance of the report of Chartered Accountant dated 19.03.2021. In such circumstances issuance of a legal notice to the Official Liquidator is of no consequence and even does not even entitle the appellants to file a fresh appeal on the same cause of action. The present appeal has been filed without complying with the previous order wherein liberty was sought and granted while dismissing the previous appeal. As such, the present appeal cannot be entertained.

12. Consequently, the present appeal stands dismissed.
13. Pending miscellaneous application(s), if any, also stand disposed of.

(G.S.Sandhawalia) Judge	(Harpreet Kaur Jeewan) Judge
24.07.2023 <i>ShivaniKaushik</i>	
Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No