



**BEFORE SH. KUNWAR MANOJ SINGH: AUTHORITY
UNDER THE DELHI SHOPS & ESTABLISHMENT ACT, 1954
GOVT. OF NCT OF DELHI, LABOUR DEPARTMENT
OFFICE OF THE DY. LABOUR COMMISSIONER
(EAST & NORTH EAST DISTRICT)
VISHWAKARMA NAGAR, JHILMIL COLONY, DELHI-110095**

No.SE/ED/20/2020/1929-1935

Dated: 15/06/22

In the matter of:-

Ms Rhea Chakravarti
R/o I-1689, IInd Floor, Chittranjan Park,
New Delhi-110019

... Claimant

V/s

M/s Enlive Solutions (India) Pvt. Ltd.
Through its M.D Sh. Ashish Saboo
M-304, Dharma Apartment, Plot No.2
Delhi-110092

... Respondent No.1

Deleted vide proceeding dated 29.12.2020

M/s Enlive Solutions (India) Pvt. Ltd.
Through its CEO, Sh. Rajat Bansal
M-304, Dharma Apartment, Plot No.2
I.P. Extension, Delhi-110092

... Respondent No.2

Deleted vide proceeding dated 29.12.2020

M/s Enlive Solutions (India) Pvt. Ltd.
Through its CEO, Sh. Divyanshu Sharma
M-304, Dharma Apartment, Plot No.2
I.P. Extension, Delhi-110092

.... Respondent No.3

M/s Enlive Solutions (India) Pvt. Ltd
Through its Director Sh. Prakash Chandra Saboo
Sharda Niwas, Opp. Dana Pani Restaurant, Janpath,
Shyamnagar, Jaipur, Rajasthan -302019

.. Respondent No.4

Deleted vide proceeding dated 29.12.2020

M/s Enlive Solutions (India) Pvt. Ltd
Through its Director Sh. Navneet Khandelwal
Unique Techno Associates Pvt. Ltd.
A2, Opposite Udyog Bhawan, Tilak Marg,
Jaipur, Rajasthan-302012

.. Respondent No. 5

Deleted vide proceeding dated 29.12.2020



Order

1. Vide this order, I will dispose off the claim application filed by the claimant under the Delhi Shops & Establishment Act, 1954 (hereinafter referred to as an 'Act') stating therein that she was working with the respondents since 18.09.2017 on the post of Manager Luxury Brands and Sales pursuant to offer letter dated 15.09.2017 and has been discharging her duties efficiently and enthusiastically and there was no complaint against her work aptitude or ability. The claimant has further stated that she has incurred an expense of Rs.876/- and she intimated for reimbursement of the same which was not reimbursed despite repeated reminders regarding which she wrote to Managing Director also who has also not shown any concern about her being harassed, aggrieved or to resolve and asked her to work free for the month of February, 2018, when he called her on 29.01.2018 as the respondent was building up pressure on her and threatened of termination. The claimant has further submitted that she was asked to resign on 30th January, 2018 by the respondent and accordingly due to above circumstances and duress created by the respondent, she tendered her resignation on 30th January, 2018. The claimant has further submitted that when she approached them for reimbursement in the month of January, 2018 the respondent behaved in a bad manner. The claimant has



further stated that after her resignation, she demanded for her full and final settlement dues and other necessary documents on which the respondent imposed condition of completing certain "exit formalities" which were malicious, arbitrary and imposed only to harass and embarrass her even then she agreed to complete the same after her full and final settlement was done and all necessary documents were issued. The claimant has stated that the due payment of Rs.57,350/- has not been made to her and the respondent has also not issued necessary documents. The claimant has further stated that she served a legal notice dated 08.08.2019 and a revised legal notice dated 11.02.2020 with additional claims pertaining to bonus salary for the notice period, leave, etc. In the last, the claimant has prayed to direct the respondent to pay a sum of Rs.57350/- alongwith one month salary amounting to Rs.1,50,000/- as notice period and Rs.37,500/- towards 7.5 paid leaves. The claimant has also filed an application mentioning reasons for delay in filing the claim mentioning therein that there has been consistent reassurance from respondents till November, 2018 that the matter will be sorted and her dues will be paid and therefore she could not file the claim within one year and she has exchanged messages with the respondents and legal counsel of the respondent regarding same.

2. That notices were served to the respondent and the respondent during the proceedings on 28.08.2020 filed an application under Section 21 of the Act mentioning therein that the claimant has attached Annexure 'F' i.e reason for delay in filing the claim dated 17.02.2020 wherein it is

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mentioned that the application has been filed beyond limitation period and there is no mention of period of delay in application , the claimant has neither shown sufficient cause nor any supporting documents has been filed to substantiate the reasons for not making the application within the period of one year. The respondent has also submitted that no notice in respect of application of condonation of delay has been filed and they have all right to reply and contest. The respondent has also submitted that notice to respondent shall be issued before deciding application of condonation of delay under principle of natural justice in the matter of High Court of Judicature at Patna v/s Madan Mohan Prasad & Ors. and has prayed to dismiss the claim application of the claimant.

3. That the claimant filed reply to the application dated 10.10.2020 (already filed during the proceedings on 28.08.2020) mentioning therein that the application has been filed by the respondent to delay the proceedings and to harass her. The claimant has further submitted that the respondent has failed to explain the merits of the claim application despite admitted liability of Rs.57,350/- as already enumerated vide e-mail dated 15.05.2018. The claimant has further stated that there is sufficient cause for filing the claim by her as the matter is subject to continuous cause of action and she had been regularly assured by the respondents. The claimant has also stated that she sent first legal notice to the respondent in August, 2019 and reminder in November, 2019. She also filed a complaint before Labour Commissioner in November, 2019 where the respondent failed to appear. She has

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mentioned that the reasons for delay has already been enumerated in Annexure 'F' with the application that she was continuously pursuing the matter with the respondents and has prayed to condone the delay and reject the application of the respondent filed under Section 21 of the Act. The claimant has also filed a list of documents in support of condonation of delay application i.e. 30.01.2018- Under extreme duress claimant submitted her Resignation Letter; April 2018 to May 2018- Text messages exchanged between claimant and OP officials for the full and final settlement of the claimant; Till 24.07.2018- E-mail communications between parties for the full and final settlement of the claimant; 15.09.2018- Claimant communicated with her counsel to pursue legal recourses for recovery of her claim from OPs; 13.11.2018- Claimant met Mr. Ashish Saboo & Mr. Ritesh Jain of OP at the lobby of Aloft Hotel at Aerocity, where they assured the Claimant that her full and final settlement would be looked into and cleared within next 6 months time; 08.08.2019 & 03.09.2019- Legal Notice was sent by the Claimant to the OPs through Speed-Post on 08.08.2019 and then through email dated 03.09.2019, but the OPs didn't bother to reply the same; 14.11.2019- Claim Petition was filed by the Claimant before the Ld. Labour Commissioner at Sham Nath Marg, Civil Lines, New Delhi-110054 and then the claim petition was transferred to the Labour Authority at Jhilmil Colony, New Delhi and 17.02.2020- Subsequently, as per the advice of the Ld. Labour Inspector at Jhilmil Colony Authority, the claimant



filed the present claim petition under the Delhi Shops and Establishment Act, 1954.

4. That the respondent filed written arguments mentioning Section 21 of the Act where it is provided that the claim application should be presented within one year from the date of claim which has not been done in this case. The respondent has also mentioned Section 29(2) of the Limitation Act, 1963 which is as under:

“Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law”.

Section 5 of the Limitation Act, 1963 which is as under:

“Extension of prescribed period in certain cases-Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. Explanation-The fact that the appellant or the applicant was misled by any order, practice or judgement of the High Court in ascertaining or computing the



prescribed period may be sufficient cause within the meaning of this section."

The respondent has also mentioned that the period or number of days of delay of condonation has not been mentioned and no sufficient cause of reason of delay has been mentioned. The claimant has cited the following judgement in support of his contentions: No sufficient cause for the reason of delay- Bharat Sanchar Nigam Ltd. v/s Aarogyasri Health Care Trust on 15 November, 2018; Postmaster General v/s Living Media India Ltd.(2012) 3 SCC 563; Supreme Court of India: University of Delhi v/s Union of India on 17 December, 2019; Supreme Court of India: Esha Bhattacharjee v/s Mg. Commit of Raghunathpur Nafar on 13 September, 2013; Electronic Evidence required compliance of section 65B of Indian Evidence Act: Abdul Rahaman Kunji v/s State of West Bengal, Hon'ble High Court; In the matter of Anvar P.V. v/s P.K. Basheer, Supreme Court of India; The proof of a sufficient cause is a condition precedent for the exercise of the discretionary power vested in the court. If sufficient cause is not shown nothing further has to be looked into. The application for condoning delay has to be dismissed on that ground alone: In the matter of Ramlal, Motilal and Chhotelal vs Rewa Coalfields Ltd. reported in AIR 1962 S.C. 361, the Hon'ble Supreme Court; Settlement talks not ground/ no sufficient cause has been shown for condonation of delay: In the matter of Haryana Power Purchase Centre V/s Magnum Power Generation Ltd. Anr., Appellate Tribunal and Even if, there were talks of settlement, the same did not prevent the plaintiff from filing

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a Chamber Appeal within the prescribed time. There is no explanation, save of the settlement talks, for the condonation of delay in filing the appeal and which is no explanation: In the matter of, New Delhi Television Ltd. v/s M.J. Akbar & Ors., Delhi High Court.

5. That the arguments were heard from both the sides and the delay in filing the application filed by the claimant was condoned and the proceedings dated 18.11.2020 is reproduced as under:

“Respondent filed written arguments against the condonation of delay in filing the application and stated that no proper application has been filed by the applicant for condonation of delay. The respondent stated that there is no sufficient cause for reason of delay. The respondent stated that there is no compliance of Section 65-B of Indian Evidence Act.

The applicant stated that she has filed reason for delay in filing the complaint as Annexure-F dated 17.02.2020 with the main application. The applicant stated that she has already submitted the reason for delay along with proof i.e e-mails dated 10.02.2018 to 24.07.2018, phone calls and legal notice dated 07.08.2019. The applicant submitted that there is a recent judgment in civil appeal no. 20825 and 20826 of 2017 of Hon'ble Supreme Court where it has been decided that the certificate regarding 65-B of Indian Evidence Act can be submitted at a later stage during the trial and she stated that she will file the same later on.”



6. That the claimant filed certificate under Section 65-B of the Indian Evidence Act alongwith the affidavit copy of which was given to the respondent.
7. That the respondent no.3 moved an application mentioning therein that he has been authorized by all the respondents and stated that the suit filed by the claimant against the respondent no.1 to 5 is not maintainable as per provisions of Order 1 Rule 3 (A), Order 1 Rule 10 (2) of the Code of Civil Procedure Code, 1908 and has requested to delete Respondent No.1 to 5 from array of parties and has cited the case titled as Tristar Consultants v/s V Customer Services India Pvt. Ltd. and Anr. 139 (2007) DLT 688 and Section 230 of the Indian Contract Act, 1872 and has prayed to delete the names of respondents 1 to 5 from the array of parties and also to dismiss the claim application.
8. That the claimant filed reply to the application of mis-joinder mentioning that respondent no. 1 to 4 have not come with clean hands in their application and have concealed the true and material facts and are not entitled to any relief. Respondent No.1 i.e Mr. Ashish Saboo was taking care of the day to day affairs and business of the Company where she was working and to whom she complained regarding harassment done upon her by the respondent no.2 and she was forced to resign in duress under the illegal pressure from respondents 1,2 and 3. The claimant have further stated that R-2 i.e. Mr. Rajat Bansal harassed and humiliated her at work place by abusing, shouting, name calling and threatening her of terminating from service with dire consequences and the criminal



[Handwritten signature]

complaint has already been made by her against the respondent no.2 which is under investigation in Noida, U.P. R-3 issued the appointment letter to the claimant and was involved in day to day affairs of the company. R-4 and R-5 are the directors of the Company and are also involved in day to day affairs of company and therefore the application of mis-joinder of the parties filed by respondent should be rejected.

9. That the claimant has also filed an application dated 04.12.2020 under Order 1 Rule 10 of CPC for amendment of Memo of Parties mentioning therein that a legal notice has already been served upon the proposed respondent i.e Enlive Solutions (India) Pvt. Ltd., addressed at M-304, Dharma Apartment, Plot No.2, I.P Extension, Delhi-110092 and has mentioned that she has made all the Directors as well as persons as already who were involved in day to day affairs i.e Respondent No.1 to 5 and has inadvertently not made the proposed respondent i.e Company as the party in the present claim application and has requested to amend the memo of parties by adding the proposed respondent i.e. M/s Enlive Solutions (India) Pvt. Ltd.
 10. That respondent has filed reply to the application dated 04.12.2020 of the claimant mentioning therein that the claimant has not mentioned anywhere in the claim application that the respondent no. 1 to 5 were involved in day to day affairs of the company and there is no disclosure of cause of action against respondent no.1 to 5.
- respondent has also submitted that the claimant has



made Respondent 1,2,3,4 & 5 which is bad by law as one company cannot be made respondents five times in the same claim through different five representatives and have requested not to amend the claim application.

11. That the respondent also filed rejoinder to the reply of claimant on mis-joinder of respondent mentioning therein that the respondent no.1 i.e Ashish Saboo stays mostly out of India and hence never been involved in the day to day affairs of the company. R-1 has also resigned from the company in 2019 therefore there is no cause of action against him in the present claim application. The respondent no.3 has also stated that he is legal representative and to act as the authorized person on behalf of the company under the Companies Act, 2013 and therefore he was to be kept as only authorized representative of the company and not in his personal/individual capacity. The respondent has also mentioned that respondent no.4 and 5 are newly appointed directors and have been appointed after resignation of the claimant and has prayed to delete the name of respondent no.1,2,4 & 5 from the array of the parties and to put R-3 as the authorized representative of the company.
12. That the arguments were adduced by both the parties and both the parties agreed to delete the respondent no.4 & 5 from the array of parties as mentioned in original claim application. The respondent submitted that R-1 has resigned even before filing present claim and R-2 looks after their actions and hence are not liable to be impleaded as party. A.R of applicant agreed to the statement made by

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the A.R of respondent and in view of submissions made by respondent, R-1,2,4 & 5 were deleted from the memo of party from respondent side. R-3 i.e. Sh. Divyanshu Sharma and the Company i.e Enlive Solutions (India) Pvt. Ltd. were impleaded as the main parties. The respondent requested for time to file reply, the respondent filed reply dated nil during the proceedings of 04.01.2021 mentioning therein that the brief history of the matter for the period before 29.12.2020 vide which their application for misjoinder of parties was decided. The respondent has stated that their application for dismissal of claim due to non-compliance of condonation of delay procedure was decided by this authority vide order dated 18.11.2020 and their application for misjoinder of parties was decided on 29.12.2020 and thereafter the claimant should have filed amended memo of parties which has not yet served by the claimant and they are filing reply without prejudice to legal rights and remedies available to them. The respondent has further stated that the claimant was working on the probation period and never signed the offer letter and resigned voluntarily from her job without any notice despite their request and therefore she is not entitled for notice period. They also requested the claimant to complete the exit formalities which includes confidentiality agreement but the claimant refused and failed to sign exit formalities and has further stated that by referring the exit formalities documents and they were always ready to settle the account in peaceful manner but the claimant never completed and complied with exit formalities. The respondent in their reply has differentiated



between wages as mentioned in Section 2 (30) Act and the earned wages as mentioned in Section 21(1) of the Act and has stated that the claimant worked with them for 136 days against which an amount of Rs.6,20,000/- is payable to her and as per offer letter only two components i.e Basic Salary@ Rs.52,500/- and Monthly Rent Allowance@ Rs.26,250/- totaling to Rs. 78,750/- is to be considered and as per daily wages the amount comes to Rs.78,750/- i.e Rs.26,25/- and thus for the total period for 136 days, the total amount comes to Rs.3,57,000/-. The claimant is entitled for 05 days of earned wages which amounts to Rs.2625 x 5days = Rs.13,125/- and thus totaling to Rs.3,70,125/- whereas they have paid an amount of Rs.6,20,000/- to the claimant and thus they have paid an additional amount of Rs.2,49,875/- and therefore claimant is not entitled to receive any amount. The respondent has denied all the contents of the claim filed by the claimant and prayed to dismiss the claim petition.

13. That rejoinder was filed by the claimant side denying the contents of reply and reiterating the contents of claim application.
14. That on pleadings of both the parties following issues were framed as agreed by both the parties:-

(i) Whether the Claimant Ms. Rhea Chakarvati is entitled for wages for the period as claimed in her claim application ?

(ii) And if so, at what rate & to what amount she is entitled to?



15. That the claimant filed evidence by way of affidavit dated 16.03.2021 duly attested by Notary Public as Exbt. CW1/A along with documents Exbt. CW1/1 to CW1/7 i.e copy of offer letter dated 15.09.2017 and business card (colly.1-18), copy of resignation by e-mail dated 29.01.2018 (colly.19-20), copy of acceptance by E-mail dated 30.01.2018, copy of police complaint against management to police (colly.22-31), copy of police complaint against management (colly.32-36), copy of the mail exchanged with management (colly.37-72), copy of legal notice dated 10.02.2019 (colly.73-81). The claimant has also filed an affidavit Section 65 B of Indian Evidence Act for treating printout of e-mails as certified copy which she tendered on 12.04.2021.
16. That the claimant was crossed by A.R of respondent on 04.10.2021 and thereafter respondent stopped appearing in the proceedings and was proceeded ex-parte on 23.12.2021. The claimant side argued the matter mentioning the same as stated in the application of claim and the matter was reserved for orders.
17. That on perusal of the documents filed by both the parties, copy of e-email sent by Sh. Sumit Maheshwari (Assistant Manager Finance) from e-mail id sumit@mansionly.com to the claimant at agave.ree@gmail.com with Cc to Divyanshu Sharma, Rajat Bansal, Ayush Dadhich, Ashish Saboo, it is seen that Sh. Sumit Maheshwari has confirmed that the amount of settlement is Rs.57,350/- which is the same amount as claimed by the claimant in claim application towards earned wages. So, there remains no

dispute in payment of earned wages as the amount of Rs.57,350/- is admitted by both the parties.

18. That Section 21 of the Act deals with claims relating to wages and the wages is not disputed. So, the claimant is held entitled for Rs.57,350/- towards earned wages as claimed by her.
19. That the claimant has filed a judgment dated 17.03.1960 of Hon'ble Supreme Court of India in the matter of Dalmia Cement (Bharat) Limited, New... V/s Their Workman and Another wherein it is mentioned that "we have to consider however in this connection the provisions of Section 22 of the Delhi Shops & Establishment Act, 1954". On perusal of the contents of the above cited judgment, it is noted that the above cited judgment has been passed on the order/award passed by Tribunal. This Authority does not have power to deal with the wages towards leave. Therefore, as far as claim related to notice period, leave and bonus is concerned, the claimant may file application before appropriate forums. Since, the respondent has not paid the earned wages to the claimant on time though they knew it and have withheld it illegally therefore, an additional compensation/penalty of Rs.20,000/- is imposed on the respondent.
19. That as discussed above, it is held that claimant is entitled to receive the above payment of due earned wages under the Act. Hence, in exercise of powers conferred upon this authority by Sub-Section 3 of Section 21 of the Act, Respondent is hereby directed to pay the claimant his due earned wages as decided above i.e. Rs. 57,350/- alongwith



penalty of Rs.20,000/-for not making the payment of due earned wages and withholding the same illegally. The respondent shall make the payment of earned wages totaling to Rs.77,350/- within 30 days from the date of this order, under intimation to this Authority failing which proceedings to recover the same shall be initiated as per the provisions of Section 21 of the Act.

Given under my hand and seal on 15th Day of June, 2022.



(KUNWAR MANOJ SINGH)
AUTHORITY

Under The Delhi Shops & Establishment Act, 1954