

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 245 of 2022

[Arising out of Order dated 11.05.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in IA(IB) 1332/KB/2020 in CP(IB) No.1724/KB/2018]

In the matter of:

**Regional Provident Fund Commissioner,
EPFO Regional Office
Jamshedpur
Vs.**

....Appellant

**Ms. Mamta Binani,
Resolution Professional & Ors.**

...Respondents

For Appellant:	Mr. B.B. Pradhan, Mr. Kishore Kumar Behunia, Advocates.
For Respondents:	Ms. Surbhi Anand, Advocate for R-1. Mr. Shatadru Chakraborty, Mr. Tanishq Sharma, Advocates for R-2. Mr. Sunil Choudhary, Advocate for R-3. Mr. Kumar Anurag Singh, Mr. Zain A Khan, Mr. Anish A., Advocates State of Jharkhand.

**JUDGMENT
(13th March, 2024)**

Ashok Bhushan, J.

This Appeal by Regional P.F. Commissioner has been filed challenging the order dated 11.05.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in IA(IB) No. 1332/KB/2020 by which order the Adjudicating Authority has allowed the application filed by the Resolution Professional for approval of the Resolution Plan.

2. Brief facts of the case necessary to be noticed for deciding this Appeal are:-

2.1. The Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor- 'R.D. Rubber Reclaim Limited' commenced by the order dated 25.10.2019. On 02.11.2019, public announcement was made. The Appellant- Regional P.F. Commissioner submitted its claim on 28.08.2020 for Rs.1,02,84,785/- under Section 7A, Rs.75,62,576/- under Section 7Q and Rs.1,05,63,927/- under Section 14B of the Employees' Provident Funds & Miscellaneous Provisions Act 1952 (hereinafter referred to as "1952 Act"). The Resolution Professional admitted the entire amount claimed under Sections 7A, 7Q and 14B which was communicated to the Resolution Professional vide letter dated 28.08.2020. The Resolution Plan was submitted by Resolution Applicant which was approved by the Committee of Creditors (CoC) with 100% vote share on 06.11.2020. The Resolution Professional filed an application before the Adjudicating Authority for approval of the plan which Resolution Plan has been approved by order dated 11.05.2021 and under the Resolution Plan, the amount proposed to be paid to the Appellant as Rs.1,02,84,785/- i.e. the amount which was claimed under Section 7A. With regard to amount claimed under Sections 7Q and 14B, no payment was proposed. In paragraph 15, the Adjudicating Authority has noticed the details of the amount claimed, amount admitted and the amount proposed to be paid in the plan. Appellant aggrieved by the order dated 11.05.2021 passed by the Adjudicating Authority approving the Resolution Plan in which only amount proposed was amount under Section 7A has come up in this Appeal.

2.2. Notices were issued on 14.03.2022 in this Appeal noticing the submission of the Appellant which order is as follows:-

“14.03.2022: *Learned Counsel for the Appellant submits that although Amount under Section 7A of the EPF Act has been paid. The Amount as determined under Section 7Q and 14B has not been paid in the Resolution Plan. He submits that he was entitled for entire payment which was also admitted by the IRP.*

2. Issue Notice. Learned Counsel for the Respondent appears and accepts notice. Respondent to file Reply-Affidavit within two weeks. Rejoinder, if any, may be filed within two weeks, thereafter.

List this Appeal ‘For Admission (After Notice)’ on 12th April, 2022.”

2.3. A reply has been filed by the Resolution Professional as well as the Successful Resolution Applicant.

3. We have heard Shri B.B. Pradhan, Learned Counsel for the Appellant, Ms. Surbhi Anand, Learned Counsel appearing for the Respondent No.1- Resolution Professional, Shri Shatadru Chakraborty, Learned Counsel appearing for the Respondent No.2 and Shri Sunil Choudhary, Learned Counsel for the Respondent No.3 and Counsel appearing for the CoC.

4. Learned Counsel for the Appellant submits that when the Appellant filed its claim under Sections 7A, 7Q and 14B, the entire amount towards provident fund dues were required to be paid. It is submitted that the claim which was entitled to be paid first and there can be no denial of the amount.

It is submitted that the issue is well settled by this Tribunal in ***“Jet Aircraft Maintenance Engineers Welfare Association vs. Ashish Chhawchharia, Resolution Professional of Jet Airways (India) Ltd. & Ors.- Company Appeal (AT) (Insolvency) No.752 of 2021”*** . It is submitted that the dues under Section 7Q and Section 14B are also PF dues and are entitled to be paid. He has relied on the judgment of the Hon’ble Supreme Court in ***“Maharashtra State Cooperative Bank Limited vs. Assistant Provident Fund Commissioner and Others- (2009) 10 SCC 123”***. Learned Counsel for the Appellant has also relied a judgment of the Chennai Bench of this Tribunal in ***“Mrs. C.G. Vijyalakshmi vs. Shri Kumar Ranjan, Resolution Professional and Ors.- Company Appeal (AT) (CH) (Ins.) No.29 of 2021”*** decided on 08.02.2023.

5. Learned Counsel for the Resolution Professional refuting the submissions of the Counsel for the Appellant submits that the Appellant has filed this Appeal only on 21.02.2022 against the order dated 11.05.2021 i.e. more than 9 months from passing of the order. It is submitted that the Resolution Plan has already been implemented and the amount payable to the Appellant under Resolution Plan has already been paid which has been accepted by the Appellant. The amount claimed by the Appellant under Section 7A has been 100% paid. Payments to all stakeholders have been made and plan have been fully implemented and the Respondent No.1 has no role to play. On 02.02.2022, implementation report has already been sent to the CoC.

6. Learned Counsel for the Successful Resolution Applicant (SRA) also submits that the entire amount under the plan has already been distributed. Admitted claim of the Appellant under Section 7A of Rs.1,02,84,785/- has been paid in full. It is submitted that the SRA has observed that all existing employees of the Corporate Debtor and employees are working without any objection or protest. There is no illegality of approval of the Resolution Plan which has been approved by 100% voting share of the CoC. No irregularity has been committed in the process of the CIRP. SRA has successfully implemented the plan. Implementation report of the plan dated 02.02.2022 has been submitted. Appellant having received the amount as proposed in the plan is not entitled to file this Appeal.

7. We have considered the submissions of the Counsel for the parties and perused the record.

8. The claim submitted by the Appellant and the claim admitted by the Resolution Professional as well as the amount proposed have been noticed in paragraph 15 of the judgment of the Tribunal, which is as follows:-

“15. The Applicant submit the relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Resolution Applicant, i.e., Glix Securities Pvt. Ltd., under the said Resolution Plan is tabulated as under:-

Sl. No.	Creditor	Amount claimed	Amount Admitted	% share in CoC	Amount proposed in Resolution Plan (in Rs.)

Financial Creditors					
1.	Indian Overseas Bank	24,44,73,641	24,44,73,641	100%	7,92,00,000
Operational Creditors					
2.	Jharkhand Bijli Vitran Nigam Limited	7,66,69,324	6,60,20,682	NA	10,09,458
3.	Jharkhand Industrial Area Development Authority	32,58,563	32,58,563	NA	49,824
4.	Deputy Commissioner State Tax, Adityapur Circle, Jamshedpur	2,75,56,320	2,75,56,320	NA	4,21,337
5.	Employees Provident Fund Organisation, Jharkhand-				
	u/s 7A of EPF & MP Act	1,02,84,785	1,02,84,785	NA	1,02,84,785
	u/s 7Q of EPF & MP Act	75,62,576	75,62,576	NA	-
	u/s 14b of EPF & MP Act	1,05,63,927	1,05,63,927	NA	-
6.	Employees State Insurance Corp, WB	4,28,159	1,65,165	NA	2,525
7.	Shouryavansh Enterprises	1,49,67,640	1,49,67,640	NA	2,28,856
	Total	39,57,64,935	38,48,53,299	100%	9,11,96,785

9. From perusal of the aforesaid, it is clear that the amount claimed under Section 7A of Rs.1,02,84,785/- has been paid in full. However, no payment has been made towards amount claimed under Section 7Q and Section 14B.

10. Learned Counsel for the Appellant submitted that the amounts under Section 7Q and Section 14B also form part of the amount due from the employer. He has relied on the judgment of the Hon'ble Supreme Court in

“Maharashtra State Cooperative Bank Limited” (supra) where the Hon’ble Supreme Court after noticing the provisions of Sections 7Q and 14B has held that the amounts claimed under Section 7Q and Section 14B are amounts which have priority of payment under Section 11 of the Employees’ Provident Funds & Miscellaneous Provisions Act 1952. We, thus, are of the clear view that all the amounts claimed by the Appellant under Sections 7A, 7Q and 14B were part of provident fund dues.

11. Learned Counsel for the Appellant has relied on the judgment of this Tribunal in **“Jet Aircraft Maintenance Engineers Welfare Association”** (supra) where it was held that the PF dues of the employees have to be paid in full and one of the Appeals which was considered in the judgment was Company Appeal (AT) (Insolvency) No. 987 of 2022 filed by the Regional Provident Fund Commissioner which Appeal was allowed by this Tribunal and the Successful Resolution Applicant was directed to make payment to the Appellant of provident fund dues as admitted by the Resolution Professional. Counsel for the Appellant has relied on paragraph 134(II) of the judgment which is as follows:-

“(II) Company Appeal (AT) (Insolvency) No.987 of 2022- Regional P.F. Commissioner vs. Ashish Chhawchharia, Resolution Professional for Jet Airways (India) Ltd. & Anr.- is allowed. The Successful Resolution Applicant is directed to make payment to the Appellant of provident fund dues as admitted by the Resolution Professional.”

12. Judgment relied by the Counsel for the Appellant in Company Appeal (AT) (Insolvency) No.29 of 2021 also do support the submissions of the Appellant. In paragraphs 28, 29 and 30, this Tribunal held:-

“28. Having regard to the ratio of the Judgement in ‘Jet Aircraft Maintenance Engineers Welfare Association’ (Supra) of this Tribunal, upheld by the Hon’ble Apex Court, this Tribunal is of the earnest view that ‘PF’ and ‘Gratuity’ is to be paid in full as per the provisions of EPF and NP Act, 1952 and payment of Gratuity Act, 1972. Since admittedly the amounts paid are only 35.13% having treated them as ‘Secured Creditors’, we are of the considered view that indeed there was a violation of the provisions of Section 30(2) of the Code, with respect to the payment of ‘PF’ and ‘Gratuity’ only.

29. As regards the other allegations, raised by the Appellant with respect to undervaluation and the scope and performance of SRA in taking over the unit are sans evidence and this ‘Tribunal’, does not find any other ‘material irregularity’, in the ‘Approval’ of the ‘Resolution Plan’. Rest of the prayers are declined and this ‘Tribunal’, does not find any other case / issue for interfering with the ‘Order’ of the ‘Adjudicating Authority’, approving the ‘Resolution Plan’, except for issuing this ‘direction’ to the ‘Successful Resolution Applicant’, to make payment of unpaid ‘Provident Fund’ and ‘Gratuity Fund’ and ‘pending dues’ to the ‘Workmen’ / ‘Employees’, till the date of ‘Corporate Insolvency Resolution Process’, after deducting the amount already paid towards ‘Provident Fund’, in the ‘Resolution Plan’, as per the

principles laid down in ‘Jet Aircraft maintenance Engineers Welfare Association’ (Supra), upheld by the Hon’ble Supreme Court in Civil Appeal No. 407/2023 dated 30.01.2023, which is the law of the land and is binding on all ‘Courts’ & ‘Tribunals’ of India.

30. Accordingly, these ‘Appeals’ are ‘allowed’ in ‘part’, to the extent indicated supra. The connected pending ‘Interlocutory Applications’, if any, are closed.”

13. Claim of the Appellant submitted under Sections 7A, 7Q and 14B having been admitted, we are of the view that the Appellant’s entire claim require consideration and payments in the Resolution Plan.

14. Learned Counsel for the SRA submitted that their plan has already been implemented and all employees and workmen have been allowed to work in the SRA. It is submitted that the Appeal was filed after 9 months from the order and on the date when the Appeal was filed, the entire plan was already implemented and at this stage, if SRA is directed to make the entire payment running company may have to be closed. SRA submitted that in any view of the matter the SRA has already paid the entire dues under Section 7A which was the dues of the provident fund, the damages under Section 14B are not to be recovered and the SRA be exempted from payment of the said amount under Section 14B.

15. We have occasion to consider the similar issue which raised in Company Appeal (AT) (Insolvency) No.808 of 2022- **“Regional Provident Fund Commissioner vs. Shri Manish Kumar Bhagat & Anr.”** decided on 11.10.2023. One of the claims which was not paid by the Resolution Plan in

the said case was also claim under Section 14B of the Employees Provident Fund Miscellaneous Provisions Act, 1952. This Tribunal taking note of the claim under Section 14B took the view that the Central Board is empowered to waive the damages under Section 14B as per the scheme under the 1952 Act. It was observed that Section 14B referred to recommendation by Board under the 1952 Act. The said Act having been repealed and now repealed by the IBC Code, the power of recommendation can be exercised by NCLT. In paragraphs 13 and 14 of the judgment, following was held:-

“13. The above provision indicates that the Central Board is empowered to waive the damages under Section 14B of the Act. The Para 32B of the Scheme provides that Board for Industrial and Financial Reconstruction for reasons to be recorded in its schemes, in this behalf recommends, waiver of damages up to 100 per cent may be allowed. After enforcement of IBC, the provisions of Board for Industrial and Financial Reconstruction and Sick Industrial Companies (Special Provisions) Act, 1985 were repealed and earlier statutory regime for rehabilitation is now substituted by Insolvency Regime as contained in IBC. Thus when Insolvency Resolution Process has been initiated against a Corporate Debtor and Resolution plan has been approved under IBC, power of Central Board to reduce or waive the damages can be exercised with regard to the damages imposed under Section 14B. Paragraph 32 of the 1952 Scheme as extracted above also contemplate recommendation by Board for Industrial and Financial Reconstruction, 1985 Act being not in force and substituted by Insolvency

Regime there can be now no recommendation for waiver of the damages under Section 14B of Board for Industrial and Financial Reconstruction. The power of recommendation as contemplated in paragraph 32B scheme can very well be exercised by the NCLT. We while hearing the Appeal against order of NCLT in an appropriate case can make a recommendation to the Central Board to waive the damages.

14. In the facts of the present case as noted above, we are of the view that Successful Resolution Applicant along with the Order of this Tribunal may pray to the Central Board to waive 100 percent damages of Rs. 31,16,446 imposed by Order dated 25th July, 2017 under Section 14B which step to be taken by SRA within a period of one month from today. We grant liberty to both the parties to make an appropriate application in this Appeal, if any, occasion arises for any further order with regard to wavier as recommended herein. We thus are of the view that no direction need to be issued for payment of damages of Rs. 99,71,315/- which was imposed under Section 14B for reasons indicated above.”

16. This Tribunal ultimate directions in paragraph 18(i) (c) permitted the SRA to make an application to Central Board for waiver of 100 per cent damages along with the copy of the order. In the facts of the present case, we are inclined to grant liberty to SRA to make an application to the Central Board for waiver of the amount of damages under Section 14B as provided in Section 14B of the 1952 Act.

17. Now coming to another part of the claim which was admitted in the CIRP i.e. amount under Section 7Q amounting to Rs.75,62,576/-. We are of the view that the said amount is required to be paid by SRA to the Appellant.

18. In view of the above discussions and our conclusion and following the judgment of this Tribunal in **“Jet Aircraft Maintenance Engineers Welfare Association”** (supra) as well as the judgment of this Tribunal in **“Mrs. C.G. Vijyalakshmi”** (supra), we dispose of this Appeal with following directions:-

- (i) The SRA- Respondent No.3 is directed to make payment of amount of Rs.75,62,576/- within the period of two months from today to the Appellant which was admitted claim under Section 7Q.
- (ii) With regard to amount admitted under Section 14B of Rs.1,05,63,927/-, we grant liberty to the SRA to make an application to the Central Board to waive 100% damages levelled under Section 14B. SRA make an application under Section 14B 2nd proviso for waiver of the damages under Section 14B which application be filed within 30 days from today and the Central Board may consider and take appropriate decision regarding waiver of the damages under Section 14B expeditiously within the period of three months from the date copy of the application is submitted.

19. Subject to directions as above, the impugned order dated 11.05.2021 passed by the Adjudicating Authority is affirmed. Parties shall bear their own cost.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

New Delhi
Anjali