

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

Company Appeal (AT) (Insolvency) No. 910 of 2023

&

I.A. No. 3093 of 2023

IN THE MATTER OF:

SK Constructions

...Appellant

Versus

Employee Provident Fund Organisation & Anr.

...Respondents

Present:

For Appellant: Mr. Saurabh Kalia, Advocate

For Respondent: Mr. Kaushik Dey, Advocate for R-1

ORDER

25.07.2023: Heard Learned Counsel for the Appellant and Learned Counsel appearing for EPFO and Resolution Professional. This Appeal has been filed against the Order dated 24th May, 2023 passed by the Adjudicating Authority by which order I.A. No. 5939/2022 filed by the Respondent-EPFO and Ors. have been allowed.

2. The Adjudicating Authority allowed the Application filed by the EPFO and issued directions in Paragraph 9 which is to the following effect:

“9. In light of the above judgements, we are of the view that the EPF dues being a statutory liability of the Corporate Debtor cannot be escaped. The delay in claiming the EPF dues was on account of delay in adjudication of Section 7A proceedings under The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952. Section 36(4) of IB Code, 2016 states that all sums due to any workmen or employee from the provident fund, the pension fund and gratuity fund will not be included in the liquidation estate assets and shall not be used for recovery in the liquidation.

Since the EPF dues are not a part of the assets of the Corporate Debtor and are merely in possession of Corporate Debtor, we are of the view that the Applicant was not required to file his claim. Rather, the Resolution Professional was duty bound to release the dues of the Applicant. The EPF dues are to be given priority over all the other creditors during Liquidation. We thereby direct the Respondent/Resolution Professional to consider the claim of the Applicant. Further, since the Resolution Plan has already been approved by the CoC, the Resolution Professional should take steps to apprise the Successful Resolution Applicant (SRA) about the claim of the Applicant to enable the SRA to make amends in the Resolution Plan to provide for the claim of the Applicant. In the alternative, the SRA may file an additional affidavit undertaking to settle the claim of the Applicant.”

3. The Successful Resolution Applicant (SRA) aggrieved by the Order has come up in this Appeal.

4. It is submitted that Resolution Professional did not include the claims of the EPFO in the Information Memorandum hence SRA could not include in the plan.

5. We have considered the submissions of the parties and have perused the record.

6. The Adjudicating Authority in Paragraph 2(iv) has noted that Resolution Professional vide email dated 01.11.2021 has informed the EPFO about the status of the Company. Resolution Professional being in dialogue with the EPFO the claim of the Applicant i.e. EPFO could not have been rejected. We thus do not find any error in the Order of the Adjudicating Authority directing

the claim of the EPFO to be accepted. In so far as the direction issued by the Adjudicating Authority in paragraph 9, now the Appellant is at liberty to submit amended plan before the Committee of Creditors which shall require a fresh consideration and voting. To carry out the order of the Adjudicating Authority, in event the amended plan is given by the SRA, RP shall place the plan for consideration before the CoC and subsequent proceedings may be taken in accordance with the decision of the CoC.

With these observations, we dispose of the Appeal.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

Basant/nn