



NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.2
IA/373(MP)2024
in
TP 199 of 2019 [CP(IB) 424 of 2019]

Proceedings under Section 60(5) of IBC, 2016 r.w. Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

Regional Provident Fund Commissioner, Employees Provident Fund OrganizationApplicant
V/s	
Satyendra Prasad Khorania, RP of CMM Infraprojects LtdRespondent

Order delivered on 11/11/2024

Coram:

Chitra Ram Hankare, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant	:	
For the Respondent	:	

ORDER

IA/373(MP)2024

This case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

-sd-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

A. Bhadauria

-sd-

CHITRA RAM HANKARE
MEMBER (JUDICIAL)



THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

IA/373/MP/2024
In
TP/199/MP/2019, CP(IB)/424/2019

In the matter of: IA/373/MP/2024

*(Application under section 60(5) of the Insolvency and Bankruptcy Code, 2016
r.w. Rule 11 of the NCLT Rules, 2016)*

Regional Provident Fund Commissioner

Employees Provident Fund Organization, Indore

Address: 7, Race Course Road,

IDA Building, Indore,

Madhya Pradesh- 452003

.....Applicant

Versus

Satyendra Prasad Khoraniya

Resolution Professional of CMM Infraprojects Ltd

Address: 402, 4th Floor, OK Plus DP Metro,

In Front of Pillar No. 94, Sanganer Road,

Jaipur, Rajasthan- 302019

.....Respondent

In the main matter of: TP/199/MP/2019, CP(IB)/424/2019

(Application under section 9 of the Insolvency and Bankruptcy Code, 2016)

Ramdev Infra

.....Operational Creditor

Versus

CMM Infraprojects Ltd

.....Corporate Debtor

Order Pronounced On: 11.11.2024

Coram: Chitra Ram Hankare, Member (J)

Kaushalendra Kumar Singh, Member (T)

Appearance:

For Applicant: Ld. Adv. Ms. Darshana Baghel a.w. Ld. Adv. Ms. Nupur Rao
& Ld. Adv. Ms. Shalbha Singh

For Respondent: Ld. Adv. Mr. Amol Vyas a.w. Mr. Satyendra Prasad
Khorania (RP in person)



JUDGMENT

1. This present application has been filed on 03.09.2024, by Regional Provident Fund Commissioner (Applicant) under section 60(5) of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 11 of the NCLT Rules, 2016, against Mr. Stayendra Prasad Khoraniya, Resolution Professional (RP) of the corporate debtor i.e., CMM Infraprojects Limited, seeking directions to the RP to consider the claim and also SRA to amend the resolution plan to provide for the claim of the applicant.

2. The averments made by the applicant in the present application and as argued by the learned counsel are summarized as under:

(i) The corporate debtor is an establishment covered under the provisions of the EPF and MP Act, 1952 (the Act) and allotted EPF Code No. MP/IND/MP/12880.

(ii) The corporate debtor was legally duty bound to comply with the provisions of the EPF Act and the schemes framed thereunder by remitting the dues and submitting returns as provided under the Act in due manner and time since its date of inception.

(iii) This Adjudicating Authority vide order dated 15.12.2022 appointed Mr. Navin Khandelwal as the IRP of the corporate debtor and therefore, a claim for an amount of Rs 55,347/- was submitted to the said IRP on 28.11.2023.

(iv) The corporate debtor has committed default in remitting the provident fund and allied dues for the period from April 2017 to January 2024 and therefore proceedings as provided under provisions i.e. 7-A, 14-B/7-Q of the Act were initiated against the said corporate debtor with a view to determine the dues and recover the same.

(v) On 24.05.2023, inspection of the corporate debtor was allotted to the Enforcement Officer (EO). The EO submitted its report on 30.08.2023. Thereafter, inquiry u/s 7A was initiated on 15.09.2023 for determination of dues, wherein the respondent himself had participated and even during such inquiry, the respondent had abstained from



providing any compliance position to the applicant on the ground that during moratorium period no assessment proceedings can take place. Thus, it is clear that everything was well within the knowledge of the respondent about the non-compliance by the corporate debtor.

(vi) The details of such proceedings of EPF and allied dues against the corporate debtor is furnished below:

S.No.	Nature of Dues	Period	Amount	Documents
1	Dues u/s 14B	01.2018 to 03.2021	11,346/-	RRC No. 42 dated 25.04.2024
2	Dues u/s 7Q	01.2018 to 03.2021	19,585/-	RRC No. 42 dated 25.04.2024
3	Dues u/s 7A	04.2017 to 03.2022	10,75,861/-	RRC No. 28 Dated 05.03.2024
4	Dues u/s 14B	01.04.2021 to 27.06.2023	12,715/-	RRC No. 112 Dated 01.05.2024
5	Dues u/s 7Q	01.04.2021 to 27.06.2023	11,701/-	RRC No. 112 Dated 01.05.2024
6	Dues u/s 14B	28.06.2023 to 23.01.2024	9,61,020/-	RRC No. 113 Dated 01.05.2024
7	Dues u/s 7Q	28.06.2023 to 23.01.2024	6,39,446/-	RRC No. 113 Dated 01.05.2024
Total			27,31,674/-	

According to the above details, there is a statutory liability to the tune of Rs 27,31,674/- against the corporate debtor for different period.

(vii) After completion of the assessment proceedings of 7A inquiry, provident fund dues were filed by the applicant with the RP on 06.03.2024, which was again revised after completion of assessment proceedings of 14B and 7Q inquiry on 17.05.2024, and a claim of Rs 27,31,674/- was filed on 17.05.2024 to the RP towards the dues under the EPF Act in desired manner.



(viii) In turn the RP vide his email dated 23.05.2024 without any cogent reason and justification, has advised the applicant to revise its claim to the extent of bifurcation showing the claim amount separately for Pre-CIRP period and Post-CIPR period i.e. dues pertaining up to 15.12.2022 and for the period thereafter. The applicant has submitted the same vide letter dated 20.06.2024.

(ix) The delay in claiming the dues was on account of delay in adjudication of section 7A proceedings under the Act and the same was not intentional. It is pertinent to mention that the RP vide communication dated 23.05.2024 requested the applicant to submit the bifurcated dues, on one hand knowing very well that the application for approval of resolution plan had already been filed by him in the month of February 2024 and on the other hand has rejected the claims of this applicant on the ground that CoC has approved the resolution plan on 18.12.2023 and application for approval of the same is pending before the Adjudicating Authority.

(x) The RP, being in dialogue with the applicant, with respect to the claim of EPFO, the claim could not have been rejected by the RP at a later stage. This conduct of RP in the matter is malafide, improper and illegal.

(xi) Further, assessment order under section 7A of the Act for determination of EPF dues is not a violation of moratorium as per section 14 of the Code, and during the said inquiry, the recovery officer of EPFO has not taken any coercive action in accordance with section 8B to 8G of the Act.

(xii) Resolution process of the corporate debtor is still pending, and the condonation of delay will not hamper the process and no prejudice, harm or loss would be cause to any stakeholders.

3. In this context, defense placed by respondent in its affidavit in reply and submissions made thereon and as presented/argued by the learned counsel for respondent are summarized as under:



- (i) The claim of the applicant was rejected by the RP vide email dated 28.08.2024, on the ground that the resolution plan in the instant matter has already been approved by the CoC in its meeting dated 18.12.2023 and an application for approval of resolution plan was filed before the Adjudicating Authority, therefore, the claim having been received belatedly cannot be considered in view of the Judgement of the Hon'ble Supreme Court of India.
- (ii) The applicant has not submitted its claim on 28.11.2023 as being alleged in the present application. A bare perusal of the Annexure A-3 (the letter dated 28.11.2023) annexed with the application would show that neither the claim is in the format as prescribed under the Code, nor any proof with regard to the sending of the alleged letter dated 28.11.2023 was ever given to the IRP.
- (iii) Respondent herein was appointed as RP by the Adjudicating Authority vide order dated 27.04.2023. Therefore, there was no point of the applicant sending the said letter dated 28.11.2023 to the erstwhile IRP who was no more involved in the matter at that point of time. The applicant has fabricated the aforesaid letter only to show that the claim was filed by the applicant in the month of November 2023.
- (iv) Bare perusal of the order dated 08.03.2024 by EPFO would clearly shows that the RP appeared in the proceedings conducted in respect of determination of dues under section 7A of the EPF & MP Act, 1952. The order further records the submissions of the RP that under the provisions of the Code, the demand notice sent by the EPFO department is not tenable as the claim of the EPFO is to be filed in a prescribed format. Further, department representative also appeared in the proceedings and he has stated in its report that he was well aware of the appointment of the present RP while filing report dated 27.10.2023. Therefore, the department was well aware of the fact that the present RP is in-charge of the corporate debtor, then why the alleged claim letter dated 28.11.2023 has been sent to the erstwhile IRP.



(v) Even if it is assumed that the application has been filed on the basis of the correct facts then also it is relevant to point out that the applicant initially demanded vide said letter dated 28.11.2023 an amount of Rs 55,347/- only from the IRP, thereafter despite having notice that a moratorium under section 14 of the Code is in existence, applicant continued with the quasi-judicial proceedings which is prohibited under the Code, and thereafter demanded an exorbitant amount of Rs 27,31,674/- which is impermissible in the eyes of law.

(vi) It is not disputed that the RP received a claim letter dated 06.03.2024, however, the same was not in prescribed format and as such could not be considered in view of the provisions of the Code. Thereafter, the claim of the EPFO was received first time by the RP on 17.05.2024, when the RP vide email dated 13.05.2024 requested the applicant to file the claim in a proper format. However, instead of filing the claim upto the date of commencement of CIRP, the applicant filed its claim by calculating the amount upto the date of filing. Therefore, the RP requested the EPFO department to file its claim upto the date of the CIRP, but instead of complying with the same, the applicant after referring the judgement of NCLT, New Delhi requested the RP to admit the full claim and not upto the date of initiation of CIRP.

(vii) The RP cannot accept the claim as the resolution plan has already been approved by the CoC on 18.12.2023. The issue as to whether any claim by any of the creditor of the corporate debtor can be accepted by the RP after the approval of the resolution plan by the CoC but before the order approving the resolution plan application is passed by the Adjudicating Authority was considered by the Hon'ble Supreme Court of India in the matter of *RPS Infrastructure Ltd. Vs. Mukul Kumar & Anr.* reported in (2023) ibclaw.in 102 SC, wherein it was held that even though an application for approval of the resolution plan is pending before the Adjudication Authority, a claim filed belatedly by the creditor of the corporate debtor cannot be accepted by the RP.



(viii) In view of the judgment of the Hon'ble Supreme Court of India, the RP is duty bound to comply with the same and therefore, is unable to accept the claim of the applicant until and unless the Adjudicating Authority issues the directions.

4. We have heard the learned counsel appearing for both the parties, and have perused the relevant documents available on record. It is noted that the applicant vide letter dated 28.11.2023 addressed to IRP had filed its claim for Rs 55,347/- and had also sent a reminder letter dated 16.02.2024 to the IRP of the corporate debtor. Further, the applicant department initiated proceedings against the corporate debtor for assessment of dues under section 7A, 14B/7-Q of the EPF and MP Act, 1952. Following the completion of this assessment, the applicant vide letter dated 17.05.2024 submitted its revised claim of Rs 27,31,674/- to the RP. The RP vide email dated 23.05.2024 requested the applicant to submit a bifurcated claim for the period prior to CIRP and period during the CIRP.

5. The RP has taken several pleas in its defense that the claim of the applicant was rejected vide email dated 28.08.2024, on the ground of belated filing after approval of the resolution plan on 18.12.2023 by the CoC; that, the initial claim filed on 28.11.2023, did not adhere to the prescribed format under the Code and was submitted to the erstwhile IRP, whereas the current RP was already appointed on 27.04.2023.

6. After considering the facts and circumstances of the present matter, it is clear that the applicant had filed its claim on 28.11.2023, before the approval of the resolution plan by the CoC, however, not in a proper format as prescribed under the Code. The said letter was however, addressed to the IRP namely Mr. Navin Khandelwal, whereas by that time RP namely Mr. Satyendra Prasad Khoraniya was already in place and the address of IRP was also different. Nevertheless, the applicant has filed its revised claim to the present RP as per the assessment made under the proceedings initiated under the EPF & MP Act, 1952 on 06.03.2024 and then on 17.05.2024. The RP herein has rejected the claim of the applicant on the basis of belated filing after the approval of resolution plan by the CoC on 18.12.2023.



7. Based on the above, we are of the considered view that the claim however filed belatedly on 28.11.2023 in improper format and to the IRP, is only a technical issue that can be overlooked and condoned.

8. Moreover, in the present case the applicant vide its letter dated 06.03.2024 and 17.05.2024 addressed to the RP has claimed dues of Rs 27,31,674/- which includes interest and damages as assessed under the proceedings under section 7Q and 14B of the EPF Act. The issue relating to the claim of interest and damages under sections 7Q and 14B of the EPF Act was dealt by the Hon'ble NCLAT in the matter of *Anuj Bajpai versus Employee Provident Fund Organisation, Regional Office and others (2024 SSC Online NCLAT 886)* where it was ruled that all dues under EPF Act, including those pertaining to interest and damages, do not form part of the liquidation estate of the corporate debtor, these amounts are outside the scope of distribution under section 53 of the Code. Further, the Hon'ble NCLAT while deciding the matter had also relied on the Hon'ble Supreme Court judgment in the case of *Maharashtra State Cooperative Bank vs. Provident Fund Commissioner* [(2009) 10 SSC 123] wherein the Hon'ble Supreme Court interpreted the expression "any amount due from an employer" in section 11(2) of the EPF Act to include not only principal dues but also interest payable under section 7-Q and damages under section 14-B of the EPF Act. The relevant portion of the judgement is reproduced as under:

"51. The Hon'ble Supreme Court laid down that there is no reason to give restrictive meaning to expression "any amount due from the employer" and confine to only amount determined under section 7A of the EPF Act. The Hon'ble Supreme Court further held that interest payable by the employer under section 7Q and the damages levied under section 14B of the EPF Act will also be covered as dues from the employers for the purpose of section 11(2) of the EPF Act.

52. We note that in the present appeal the amount which has been claimed by the employer are covered under section 7A, 7Q and 14B of the EPF Act and therefore are fully governed by the judgment Maharashtra State Cooperative Bank (Supra).



54. We also note that the Hon'ble Supreme Court of India in Sunil Kumar Jain vs Sundresh Bhatt [(2022) 7 SCC 540] held that the dues of the gratuity and pension shall be governed by section 36(4) of the Code. It is reiterated that section 36(4)(iii) of the Code specifically excludes "all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund", from the ambit of liquidation estate assets. Therefore, section 53(1) of the Code cannot be made applicable to such dues, which are to be treated outside the liquidation estate assets under the Code. Section 36(4) of the Code clearly gives protection to workmen's dues under provident fund, gratuity fund and pension fund which are not to be treated as liquidation estate assets and the liquidator cannot claim over such dues."

9. In the present case, no liquidation proceedings have started. Rather, the Resolution Plan is placed for approval of this Adjudicating Authority. Nevertheless, in view of the decision held by the Hon'ble NCLAT in the matter of *Anuj Bajpayee (Supra)* relying upon the Hon'ble Supreme Court decision in the case of *Maharashtra State Cooperative Bank vs. Provident Fund Commissioner* [(2009) 10 SSC 123], it is very evident that the dues towards provident fund, gratuity and pension will have to be paid. In this context, it is noted that as per the provisions of the EPF Act, the employer is responsible for deducting the employee's contribution from their salary and pay the same to the account of the provident fund together with the employer's contribution thereon within the prescribed time under the said act. Later at the time of retirement, the provident fund department pays this amount to the concerned employees together with the interests earned thereon. Thus, in case, any employer defaults in depositing these contributions in the required provident fund account and retains the same to itself, then such amount retained by the employer will be the amount kept by the employer under trust. **Therefore, the same will have to be considered as a liability payable to the EPFO Department even in the process of resolution of the Corporate Debtor.** We also note that during the hearings made as regards the approval of the resolution plan (IA/152/MP/2024), the Successful Resolution Applicant (SRA) has modified its plan by putting an addendum by way of new clause no.



22 on page no. 48 of the resolution plan, and this said addendum has been approved by the CoC by 91.15% votes. The said addendum has been filed by the RP through an affidavit dated 30.09.2024. For ready reference, the same is reproduced as under:

“Notwithstanding anything contents anywhere in the resolution plan, the resolution applicant will also make the payment of the claim amount of the EPFO which was due as on the CIRP commencement date, subject to adjudication of the said claim by appropriate forum and the same attains finality over and above to the amount mentioned in clause 7.2 of this resolution plan and this payment will not make any impact over the payment proposed to other creditors in the resolution plan.”

10. Therefore, considering the facts as discussed herein above, we first condone the delay on the part of the EPFO Department in putting their claim before the RP. As regards the contention raised by the RP that the said order is passed in violation of the moratorium period we find that there is a difference between assessment of the claim and recovery of the claim and in the instant case the EPFO has never initiated any recovery proceedings against the RP. There is no bar in carrying out for assessment of the dues even during moratorium period which would be payable by RP and/or SRA in terms of the provisions of the EPF Act and included accordingly in the resolution plan.

11. We also note that EPF due are now computed for the year 2018 & onwards. It is not understood why the office of the EPF had not initiated any action against the corporate debtor/erstwhile management. They have initiated their enquiry/assessment proceedings after almost 5 years. We further note that the claim raised by the EPFO does not specifically mention the details of the individual employees in whose respect the PF dues have been computed by the EPFO. Their claim based upon the notional computation cannot be considered as payable to the EPFO.

12. In view of the above, we are of the considered view that the EPFO will have to provide the name & number of employees with year-wise details of the employees with respect to whom assessment have been made by them,



together with the detailed computation based on which the claim has been raised. Such details will have to be furnished by the EPFO to the RP. Then RP and/or SRA, in case resolution plan gets approved, will be at liberty to raise their objection as regard computation made by the EPFO and in that case the EPFO will have to consider the objection and revise their computation.

13. With these above directions the application i.e. IA/373/MP/2024 in TP/199/MP/2019, CP(IB)/424/2019, stands **disposed of**.

-sd-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

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CHITRA RAM HANKARE
MEMBER (JUDICIAL)

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