

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.302

IA/1111(AHM)2023 in CP(IB) 387 of 2020

Order under Section 60(5) IBC r.w Rule 11 of NCLT Rules

IN THE MATTER OF:

The Assistant Provident Fund Commissioner (EPFO)Applicant

V/s

Jaykumar Pesumal Arlani RP of Decent Laminates Pvt. Ltd.Respondent

Order delivered on: 19/10/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH AT AHMEDABAD
COURT-I**

**IA No. 1111 of 2023
In
CP(IB) No. 387 of 2020**

IA No. 1111 of 2023

[An application under 60(5) Insolvency and Bankruptcy Code,
2016 r.w Rule 11 of NCLT, 2016]

In the matter of:

The Assistant Provident Fund Commissioner (Legal),

Employees Provident Fund Organisation,
Ministry of Labour and Employment
Government of India)
Regional Office, Ahmedabad,
Having office at Bhavishya Nidhi Bhavan,
Near R.B.I. Income Tax Circle,
Ahmedabad-380014.
Email ID ro.ahmedabad@epfindia.gov.in

.....Applicant

Versus

Mr. Jaykumar Pesumal Arlani,

Resolution Professional of
M/s. Decent Laminates Pvt. Ltd.
Having office at 305-306, Parul Complex,
Sant Kabir Road, Rajkot-360003.
Email I.D.: arlanijay@gmail.com
decent_lam@yahoo.com

.....Respondent



In the matter of:

CP(IB) No. 387 of 2020

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

Royal Synthetics

....Operational Creditor

Versus

Decent Laminates Private Limited

....Corporate Debtor

Order pronounced on: 19/10/2023

**Coram: SHAMMI KHAN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

Appearance:

For the Applicant : Mr. A. V. Nair, Advocate

For the Respondent :

ORDER

[Per: Bench]

1. This is an application filed by Applicant/EPFO Under Section 60(5) of The Insolvency and Bankruptcy Code, 2016, read-with Rule 11 of the National Company Law Tribunal Rules 2016 against the rejection of a claim by the RP which was communicated on 05.09.2023, seeking the following prayers:-



- a) This Hon'ble Tribunal may be pleased to admit and allow the present application; '
- b) This Hon'ble Tribunal may be pleased to direct the respondent herein Resolution Professional to accept/admit the claim of applicant for the total amount of Rs. 2,35,00,179/- towards Provident Fund Dues of the workmen and employees of the Corporate Debtor, submitted by the applicant on 31/08/2023, and further pleased to direct the Resolution Professional to acknowledge the priority of provident fund dues over the assets of the corporate debtor in the present Insolvency proceedings;
- c) This Hon'ble Tribunal may be pleased to direct the respondent to pay the costs to applicant as may be determined by this Hon'ble Tribunal;
- d) This Hon'ble Tribunal may be pleased to pass any further orders as may be deemed fit, proper and necessary in interest of justice.



2. It is stated that the applicant has filed claim on 31.08.2023 before the Resolution Professional of the Corporate Debtor for an amount of Rs. 2,35,00,179/- which was towards the unpaid provident fund dues of Corporate Debtor Decent Laminates Private Ltd. The said claim is inclusive of contributions payable under Section 7 A, Statutory damages u/s 14B and interest u/s 7Q of the EPF Act.
3. It is stated the Resolution Professional responded through email dated 05.09.2023 and stated that the Resolution Plan w.r.t. Corporate Debtor has since been approved by the COC long ago and the same is pending on file of this Tribunal.
4. It is stated that necessary orders were passed under 7A, 14B and 7Q of EPF Act only on 11.08.2023 for the default period 04/2016 to 03/2019.
5. We have heard the Counsel for the Applicant and perused the record. it is not in dispute that the Resolution Plan w.r.t. Corporate Debtor was approved by the COC long back. It is also not disputed that the Resolution Plan was heard by the



Tribunal and was reserved for orders on 03/10/2023 and that the claim was submitted only on 23.08.2023 whereas the last date for submission of claim was long over.

6. On perusal of record, we find that there is neither any prayer seeking condonation of delay in filing claim before the RP nor any substantial explanation has been given by the Applicant which can be construed as a sufficient cause. We also see that resolution plan has already been reserved on 03.10.2023 for orders. IBC is a time bound process which has been repeatedly held by the Hon'ble NCLAT as well as Hon'ble Supreme Court in a catena of Judgements and cannot wait indefinitely for the claims of the various claimants.
7. In Civil Appeal No. 5590 of 2021 titled **RPS Infrastructure Ltd. Vs. Mukul Kumar & Anr.** on 11.09.2023 the Hon'ble Supreme Court again categorically held that :-

20. Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the appellant. In any case, their plea of not being aware of



newspaper pronouncements is not one which should be available to a commercial party.

21. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel,⁸ the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.

22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.

8. The above decision of Hon'ble Supreme Court squarely applies to the facts of the present case. The claim which was submitted by the applicant at a belated stage after the approval of the Resolution Plan was rightly rejected by the RP.
9. In view of above discussions, we do not find any merit in the application to interfere at this belated stage for consideration of the claim of the Applicant/EPFO.



10. Accordingly, the present **IA/1111(AHM)2023** is hereby dismissed with no order as to cost.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)