



NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL
COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON
28-03-2023 (TUESDAY) AT 10.30 A.M. THROUGH VIDEO CONFERENCING:

PRESENT SHRI SANJIV JAIN, HON'BLE MEMBER (JUDICIAL)
SHRI. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPLICATION NUMBER : MA(IBC)/04/CHE/2022
PETITION NUMBER : CP/586/IB/2017
NAME OF THE PETITIONER : The Regional Provident Fund
Commissioner and Recovery Officer
NAME OF THE RESPONDENT(S) : Everon Skill Development Ltd
UNDER SECTION : Sec 60(5)(b) of IBC, 2016

ORDER

Order pronounced in the Open Court, vide separate sheet. Be uploaded on the
NCLT website.

— Sd —

SAMEER KAKAR
Member (Technical)

vs

— Sd —

SANJIV JAIN
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

MA(IBC)/4(CHE)2022 IN CP/586/IB/2017

(filed under Section 60(5)(b) & (c) of Insolvency & Bankruptcy Code, 2016)

In the matter of M/s. EVERONN SKILL DEVELOPMENT LIMITED

The Regional Provident Fund Commissioner and
Recovery Officer,
EPFO Regional Office,
No.37, Royapettah High Road,
Chennai-600 014

... Applicant

-Vs-

M/s. Everonn Skill Development Limited,
Represented by its Liquidator
Mr. C.Ramasubramaniam,
Everonn House,
'Raji' 3B1, 3rd Floor,
Gaiety Palace, No. 11,
Blackers Road,
Mount Road, Chennai-600 002

...Respondent

Order Pronounced on 28th March, 2023

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Applicant : Ms. S. Vidya, Advocate
For Respondent : Mrs. Pavithra Dayalan, Advocate*

ORDER

Per: SANJIV JAIN, MEMBER (JUDICIAL)

This application under Section 60(5)(b)&(c) of the Insolvency
& Bankruptcy Code, 2016 (in short "**IBC**") has been filed by the
Applicant/Regional Provident Fund Commissioner and



Recovery Officer against the Corporate Debtor **M/s. Everonn Skill Development Limited, Represented by the Liquidator Sri. C. Ramasubramaniam** for directing the Respondent to include the Applicant as stakeholder in the finalised list of the Creditors, include its claim of Rs.7,91,923/- (Rupees Seven Lakhs Ninety One Thousand Nine Hundred and Twenty Three only) and pay off the same on first priority from and out of the liquidation assets/estate of the Respondent.

2. It is stated that the CIRP was initiated against the Corporate Debtor and IRP was appointed by the Tribunal vide order dated 23.11.2017. The Applicant had filed the claim in Form-F on 29.01.2018 based on the public announcement which was duly acknowledged by the IRP. It is alleged that prior to the commencement of the CIRP, the Corporate Debtor had defaulted in payment of the contributions and administrative charges payable under EPF Scheme, 1952, details mentioned in para-3 of the application. No appeal was preferred by the Corporate Debtor, thus the claims became binding on the Corporate Debtor. It is stated that to ascertain the status of the claims, the Applicant had sent reminders to the IRP but did not get any response. An appointment was sought with the RP and it was informed to the Applicant with report dated 26.04.2018 that the order for liquidation which is reserved by the NCLT is expected in couple of



days. From the website of IBBI, the Applicant came to know that the Tribunal vide order dated 23.04.2018 put the Corporate Debtor into liquidation and appointed the RP as the Liquidator. It is stated that RP and the Liquidator did not consider the claim of the Applicant despite having been contacted several times which were made as early as 29.01.2018. It is stated that in response to the email dated 17.07.2019, the Liquidator had informed that the directors of the Corporate Debtor are not traceable however, there is an asset at Old Mahabalipuram Road (OMR) which is in the process of taking possession to recover the considerable amount from the sale proceedings.

3. It is stated that the Applicant filed a claim in Form-G dated 25.08.2021 for a revised amount of Rs.7,91,923/- by email as detailed in para-7. However, the Liquidator did not consider the claim and informed vide letter dated 30.08.2021 that since the claim has been submitted after due date, he is unable to process the claim. He also informed vide letter dated 20.09.2021 that after the last date of the submission of the claim, he has submitted the final list of the stakeholders to the Tribunal.

4. It is stated that the Hon'ble Supreme Court has settled that under EPF and MP Act, the recovery procedure has no limitation and only guideline is that recovery is to be done in a reasonable time.



5. It is stated that since this application has been filed beyond the period of 14 days as mandated under Section 42 of IBC, the delay may be condoned since delay is neither wilful but due to the reasons stated in para-9 of the application.

6. On getting notice of the application, the Liquidator filed his reply/report stating that he had published the public announcement in Form-B on 05.05.2018 intimating the stakeholders of the Corporate Debtor to submit their claims on or before 23.05.2018. As per Regulation 12(2)(b)(c) of IBBI, the last date for submission of claim shall be 30 days from the date of liquidation commencement date. It is stated that the Applicant submitted its claim in Form-F for Rs.7,91,923/- on 26.08.2021. Since the claim filed by the Applicant was after the prescribed time limit, he rejected the same vide email dated 20.09.2021 since claim was filed with a delay of 1191 days.

7. We have heard Ld. Counsel Ms. S. Vidya for the Applicant and Ld. Counsel Mrs. Pavithra Dayalan for the Respondent/ Liquidator as well as the Liquidator.

8. In the instant matter, CIRP was initiated on 23.11.2017. A public announcement was made by the RP inviting the claims with last date as 16.12.2017. The Applicant had filed the claims in Form-F on 29.01.2018 which were duly acknowledged by the RP. The records show that the Applicant had followed up the status of



the claims and sent reminders and also sought personal hearing. It also received the information on 26.04.2018 that order for liquidation has been reserved by the Tribunal and is expected in couple of days. The liquidation order came to the notice of the Applicant from the IBBI website on 23.04.2018. Same RP was appointed as Liquidator.

9. The Applicant vide letter dated 17.05.2018, referring Section 36(4)(a)(iii) of IBC informed the Liquidator that PF dues are not part of the liquidation estate and requested him to include its claim. After various reminders, it received an email from the Respondent on 17.07.2019 that directors and officials of the Corporate Debtor are not traceable since the initiation of CIRP. The Applicant did not get any information whether its claim were rejected/accepted.

10. As per the settled proposition of law, the Liquidator after the order of liquidation, is required to invite claims afresh from the stakeholders which in the present case were also invited by the Liquidator by giving a public announcement in Form-B on 05.05.2018 intimating the stakeholders of the Corporate Debtor to submit their claims fixing the last date of submission of claims as 23.05.2018. The Regulation 12(2)(b) of IBBI also provides that the claims shall be submitted by the stakeholders within 30 days from the date of liquidation commencement date.



11. As admitted and evident from the record, the Applicant submitted its claim afresh in Form-F for Rs.7,91,923/- before the Respondent on 26.08.2021 i.e. after a delay of 1191 days which made the Respondent not accepting the claim of the Applicant. He duly communicated the rejection to the Applicant.

12. The Applicant has filed this application beyond the period of 14 days as provided under Section 42 of IBC. Even the application has been filed under the wrong provisions. There is no prayer as to the condonation of delay though in the body of the application, the delay is sought to be condoned giving the reasons in para-9.

13. It is seen from the record that liquidation has not been completed as yet. The Applicant is an organisation which caters the welfare of the employees and has number of companies under its aegis. It helps the cause of the employees. The denial of claim may cause loss and sufferings to the employees. EPF Act is a social welfare legislation.

14. In this case, during the CIRP proceedings, the Applicant diligently submitted its claim. However, because of some uncertainties, it could not file the claims afresh during the process of liquidation after the public announcement and filed the claims after the last date of submission of claims before the date was over. The Applicant is a statutory authority. It requires administrative sanctions to file the applications which is also one of



the cause of delay in filing the claims before the liquidator. We may also note that COVID-19 spread in 2020. The Hon'ble Supreme Court in Suo Moto Writ Petition No.3 of 2020 had extended the period of limitation in view of the threat created by Covid-19 virus from 15.03.2020 till 31.03.2022.

15. Looking into the averments made in the application and that as the liquidation process has still not been completed and assets are yet to be sold, taking a lenient view in the matter, we **allow** the application condoning the delay. Accordingly, we direct the Respondent to collate the claim of the Applicant on merits and decide in accordance with law and inform the outcome of the same to the Applicant **within a period of 7 days** from the date of this order.

— Sd —

SAMEER KAKAR
MEMBER (TECHNICAL)

Suguna

— Sd —

SANJIV JAIN
MEMBER (JUDICIAL)