

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A (IB) No. 402/KB/2024

In

Company Petition (IB) No. 2078/KB/2019

Under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (I&B Code) read with Rule 11 of the NCLT Rules, 2016 and under Regulation 12 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

IN THE MATTER OF:

TRIMURTI ASSOCIATES PRIVATE LIMITED

... Financial Creditor.

Versus

BKM INDUSTRIES LIMITED

... Corporate Debtor.

And

IN THE MATTER OF:

The Assistant Provident Fund Commissioner, the Employees' Provident Fund Organization, Ministry of Labour and Employment, Government of India,

... Applicant.

Versus

- 1. BKM Industries Private (Corporate Debtor),**
- 2. Mr. Pritam Bayal, RP of the Corporate Debtor,**
- 3. Uniglobal Papers Private Limited, Successful Resolution Applicant.**

... Respondents.

Date of Pronouncement: April 30, 2024.

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

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Appearance:

For the Applicant: Mr. Avijit Tewary, Adv.

**For the erstwhile RP: Mr. Rishav Banerjee, Adv.
Mr. Rajarshi Banerjee, Adv.
Mr. Aishwaya Kr. Awasthi, Adv.
Ms. Prerna Shaha, Adv.**

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through hybrid mode.
2. We have heard the Ld. Counsels for both the parties.
3. The applicant, **Assistant Provident Fund Commissioner**, the Employees' Provident Fund Organisation, Government of India has preferred this application under section 60(5) of the I&B Code seeking to admit a claim towards the provident funds dues to the tune of Rs. 4,77,735/- and to take all necessary steps for releasing the entire claim of the applicant.
4. It is the case of the applicant that vide an email dated 25.11.2021, the applicant has submitted its claim of Rs. 4,77,735/- with supporting documents to erstwhile Resolution Professional, Sri Kanchan Dutta. The said claim was rejected by the erstwhile RP vide a letter dated 28.12.2021 which was received by the applicant on 29.12.2021 through email.
5. The Learned Counsel for the applicant would submit that the said claim is towards the EPF dues which are a statutory liability of the Corporate Debtor must be paid as CIRP costs under the Resolution

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Plan. Further, it is submitted under Section 11 of the EPF Act, PF dues have primacy over any other dues during the resolution, liquidation as well as winding up of any corporate debtor or company.

6. It would be evident that the erstwhile RP has rejected the claim of the applicant on 28.12.2021 and communicated the rejection of the claim on 29.12.2021 through email. Further, the Resolution Plan of Corporate Debtor, herein has been approved by this Adjudicating Authority on 19.09.2023. We have noted that the present application of the Assistant Provident Fund Commissioner seeking to admit its claim toward PF dues of the workmen and employees has been preferred on 12.04.2024, long after its rejection by the erstwhile RP and the approval of the Resolution Plan by this Adjudicating Authority as well.

7. It is a settled position of law that CIRP is a time bound mechanism, thus any belated claim sans any substance to justify the delay, cannot be entertained. Further, the Resolution Plan of the Corporate Debtor has been approved by this Adjudicating Authority on 19.09.2023, therefore, the claims of provided in the Resolution Plan shall stand frozen and be binding on the Corporate Debtor along with all its stakeholders, including all the government authorities. Further, that any claim which is not in the resolution plan, shall stand effaced and none will be entitled to commence or continue any proceedings in respect to that claim, which is not a part of the approved resolution plan.

8. We would rely upon the judgment rendered by the Hon'ble Apex Court in ***Ghanashyam Mishra and Sons Private Limited vs.***

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Edelweiss Asset Reconstruction Company Limited reported in
(2021) 9 SCC 657 that:

“That once a resolution plan is duly approved by the Adjudicating Authority Under Sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, **all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.**”

(Emphasis Added)

9. In terms of the above, we are of the considered opinion that the applicant, albeit a government authority, has missed the bus to seek its remedy under the I&B Code against the rejection of its claim by the erstwhile RP, that too long ago. Thus, this application is not maintainable and accordingly is **dismissed** for the long delay in filing.

10. The certified copy of this order, if applied or be supplied to the parties, subject to compliance with all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 30th Day of April, 2024.

Bose, R. K. [LRA]/ Tiwari, V. [LRA]