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

Interlocutory Application No. 669/KB/2021
IN
Company Petition (IB) No. 349/KB/2017

Under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016

IN THE MATTER OF:

Regional Provident Fund Commissioner- II Employees Provident Fund Organization Regional Office Barrackpore.

... Applicant.

Verses

1. **Kshitiz Chhawchharia, Resolution Professional of RamSarup Industries Ltd.**
2. **Ramsarup Industries Ltd.** **...Respondents**

And

Date of Pronouncement: 22.08.2025.

CORAM:
SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
CMDE. SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)

Appearance:
For the Applicant
Rajib Roy
Dhaval Savla

ORDER

Per: Per: Cmde Siddharth Mishra, Member (Technical):

1. This Court is congregated through a hybrid mode.
2. Learned Counsels for both parties were heard at length.
3. The instant application being **I.A. (IB) No. 669/KB/2021**, has been preferred **by a Regional Provident Fund Commissioner- II Employees Provident Fund Organization Regional Office Barrackpore** under section 60(5) of the Insolvency and Bankruptcy

Code, 2016, for brevity "I&B Code" against the respondent **Kshitiz Chhawchharia, Resolution Professional of RamSarup Industries Ltd. and Ramsarup Industries Ltd**. seeking the following reliefs:

a) *Direction upon the respondent no 1 to release a sum of Rs. 19,79,860.00 (Rupees Nineteen lacs seventy-nine thousand eight hundred sixty only) is due from the corporate debtor. It may be placed as claim before the Hon'ble NCLT that upon payment of dues vide this office 7A order date; 24.04.2009, the dues u/s. 14B & 7Q from the date of actual default of dues to till date of payment of the same, will be applicable and/or payable to the EPFO.*

b) *Direction upon the Respondent no 1 to immediate make payment of the outstanding dues of Rs.19,79,860.00 [Rupees Nineteen lac seventy nine thousand eight hundred sixty only) of the applicant towards the statutory dues of Employees Provident Fund and Miscellaneous and Provisions Act 1952 and Schemes there under. The matter is continuing and the Scheme of Pension and other benefits are for the welfare of the workmen including all the employees who are covered under the Employees Provident Fund and Miscellaneous Provisions Act 1952 and the Scheme there under are continuing and having a continuing limitation.*

c) *Direction upon the Respondent no 1 to consider the claims of the applicant dated 28.02.2020 and affirmed on 2.3.2020 in full and final as per the actual outstanding Rs. 19,79,860.00. In case the respondent had consider the claims in accordance to the Corporate Debtor sharing the details with Respondent no 1, then the directions be issued upon the respondents to state and provide necessary details to the applicant the actual amount that he had included in the resolution plan stating the outstanding dues of the applicant towards the statutory dues of*

Employees Provident Fund and Miscellaneous and Provisions Act 1952 and Schemes there under.

d) *Recall any order/orders that has been passed without the knowledge of the applicant in case the resolution plan that does not provide necessary details to the applicant the actual amount that he had included in the resolution plan stating the outstanding dues of the applicant towards the statutory dues of Employees Provident Fund and Miscellaneous and Provisions Act 1952 and Schemes there under.*

e) *Directions upon the respondents to consider the mechanism of 100% payment of finance in.*

f) *Ad- interim orders in terms of the prayer;*

g) *Costs*

h) *Further and/or other reliefs.*

4. *Factual Matrix:*

4.1 The present application has been filed by the Employees' Provident Fund Organisation (EPFO), a statutory body established under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "EPF Act"), seeking urgent disbursement of statutory dues owed by the Corporate Debtor during the Corporate Insolvency Resolution Process (CIRP).

4.2 The applicant submits that the EPF Act is a beneficial social welfare legislation designed to secure retirement and social security benefits for employees working in factories and other establishments. The Act provides for various benefits including Provident Fund, Superannuation Pension, Invalidation Pension, Family Pension, and Deposit-Linked Insurance. It mandates employers to contribute towards such benefits, and any default in compliance with its provisions is treated as a serious statutory breach.

4.3 In the instant case, the EPFO has raised claims against the Corporate Debtor in respect of outstanding provident fund dues, interest, and penal damages, which have been duly assessed under Section 7A and Section 14B of the EPF Act.

4.4 The details of the statutory dues claimed by the EPFO are as follows:
a. Determined PF Contribution Dues (Under Section 7A):
The establishment committed default in depositing contributions for the period from April 2006 to April 2007. Pursuant to an order dated 24.04.2009 passed under Section 7A of the EPF Act, a sum of ₹3,26,130/- was determined as due.

b. Penal Damages and Interest (Under Sections 14B and 7Q of the EPF Act):

1. Interest of ₹5,53,668/- for the period March 2010 to May 2013
2. . Interest of ₹1,460/- for the periods April 2015, January 2018 to June 2018, and August 2018 to December 2018
3. Damages of ₹10,97,176/- for the period March 2010 to May 2013
4. Damages of ₹1,426/- for the same periods as mentioned above

4.5 The EPFO contends that despite repeated assessments and statutory determinations, the dues remain unpaid. The respondent–Insolvency Resolution Professional (IRP) has failed to treat the outstanding EPF dues as CIRP costs, and no interim finance has been disbursed towards these obligations, despite their statutory nature and priority under Section 36(4)(iii) of the IBC.

4.6 The applicant further submits that non-payment of such dues prejudices the future welfare of the employees and undermines the very objective of the EPF Act. Since the outstanding liabilities arise from mandatory social welfare contributions, their non-payment would cause grave injustice to the employees of the corporate debtor. The applicant has thus approached this Hon'ble Tribunal seeking urgent directions to the IRP for release of interim finance towards settlement of such dues.

4.7 It is further submitted that the EPFO is entitled to receive the entire outstanding amount along with 18% interest per annum till realization, considering the statutory mandate under the EPF Act and in consonance with the principles of justice and equity.

4.8 Accordingly, the applicant has prayed for a direction upon the Resolution Professional to treat the dues of EPFO as CIRP costs and to immediately release interim finance for full and final settlement of the same in order to safeguard the social security entitlements of the workers.

5. *Submissions of the Ld. Counsel for the Applicant:*

5.1 It is submitted that the present application is filed by the Employees' Provident Fund Organisation (EPFO), Barrackpore office, a statutory body constituted under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act), seeking directions for disbursement of statutory dues amounting to Rs. 19,79,860/- from the Insolvency Resolution Professional (IRP) appointed in the CIRP of the Corporate Debtor, M/s Ramsarup Industries Limited.

5.2 It is claimed that the Corporate Debtor committed default in depositing the employer's and employees' share of contributions under the EPF Act for the period from April 2006 to April 2007. In view thereof, an order under Section 7A of the EPF Act was passed bearing Assessment Order No. R-EX/WB/360/SRO/BKP/E&J/7A/1887 dated 24.04.2009 assessing an amount of Rs. 3,26,130/- as due and payable by the establishment.

5.3 It is contended that subsequent to the assessment, the establishment also defaulted in making payment of penal damages and interest as mandated under Sections 14B and 7Q of the EPF Act, and accordingly, vide order dated 09.01.2015, the following liabilities were determined: interest of Rs. 5,53,668/- for the period from March 2010 to May 2013; interest of Rs. 1,460/- for the periods from April 2015, January 2018 to June 2018, and August 2018 to December 2018; damages of Rs. 10,97,176/- under Section 14B for the period from March 2010 to May 2013; and damages of Rs. 1,426/- for the remaining periods.

5.4 It is further submitted that the total statutory dues amounting to Rs. 19,79,860/- remain unpaid. These liabilities are in the nature of statutory obligations arising under a welfare legislation and must be treated as *CIRP costs* under Section 36(4)(iii) of the Insolvency and Bankruptcy Code, 2016 (IBC). These dues are essential to secure the social welfare entitlements of the employees and workmen of the Corporate Debtor and are not in the nature of ordinary trade debt.

5.5 That the EPFO had issued a letter dated 25.08.2016 to the establishment in pursuance of the interim direction passed by the Hon'ble Employees' Provident Fund Appellate Tribunal (EPFAT), New Delhi, in ATA No. 476(15) of 2016 restraining recovery to the extent of more than 30% of the assessed dues. In reply, the establishment, vide its letter dated 12.09.2016, responded to the said communication and subsequent correspondences continued between the parties.

5.6 It is submitted that after the Corporate Debtor came under the jurisdiction of this Hon'ble Tribunal, the Sr. Manager of M/s Ramsarup Industries Ltd vide letter dated 05.02.2019 informed the EPFO that the claim had already been forwarded to Mr. Kshitiz Chhawchharia, Interim Resolution Professional (IRP) appointed in the CIRP proceedings.

5.7 It is further submitted that pursuant to the said intimation, the EPFO visited the office of the RP on 10.02.2019. The RP acknowledged receipt of the claim but stated that he would not admit the same owing to a stay in proceedings, as allegedly directed by the Hon'ble Supreme Court. However, the EPFO was not furnished with any formal communication or order in that regard.

5.8 That the Appeal No. EPF-15 of 2016 (formerly ATA No. 476(15) of 2016) was dismissed for default on 17.12.2019 by the Hon'ble Central Government Industrial Tribunal (CGIT), Kolkata. Consequently, there is no subsisting legal restraint against the enforcement or recovery of the dues determined under the EPF Act.

5.9 It is submitted that the EPFO, in compliance with the provisions of the IBC, once again submitted its claim dated 28.02.2020, affirmed on 02.03.2020, and sent the same through speed post to the IRP on 02.03.2020. The claim has been duly delivered and acknowledged.

5.10 It is contended that the EPFO is a necessary and proper party to the insolvency proceedings, being a statutory authority entrusted with safeguarding the statutory dues of the employees, including pension, provident fund, and insurance contributions. Such dues have overriding priority under Section 11 of the EPF Act and must be satisfied in priority over other claims, in light of Section 36(4) of the IBC read with Regulation 31 of the CIRP Regulations.

5.11 It is submitted that failure to disburse the outstanding dues would result in grave prejudice to the rights of employees and defeat the object of the welfare legislation. The IRP is under a statutory obligation to include these claims as part of the resolution cost and release the same either as interim finance or from available funds of the Corporate Debtor.

6. Per Contra the respondent would allege as under:

6.1 It is submitted that upon commencement of the Corporate Insolvency Resolution Process (CIRP), a public announcement was made on 11.01.2018 by the then Interim Resolution Professional (IRP), Mr. Nilesh Sharma, inviting claims from all creditors. Respondent No. 1 was appointed as the Resolution Professional (RP) by order dated 02.05.2018 passed by this Hon'ble Tribunal. In accordance with Section 15 of the Insolvency and Bankruptcy Code, 2016 ("the Code") read with Regulation 12 of the CIRP Regulations, it is settled that all claims against the Corporate Debtor must be filed within the time prescribed in the public announcement.

6.2 It Is claimed that even though there are precedents allowing delayed submission of claims, such submissions have been permitted only until the approval of the Resolution Plan by the Committee of Creditors (CoC). In the present case, the Resolution Plan has already been approved by this Hon'ble Tribunal on 04.09.2019 and is now under implementation. Hence, any fresh claim raised post-approval is clearly barred.

6.3 It is contended that any claim pertaining to dues under the Employees' Provident Fund (EPF) is in the nature of an operational debt and was required to be submitted before the Resolution Professional in the prescribed Form B under Regulation 7 of the CIRP Regulations. The Applicant admittedly did not submit the claim within the prescribed timeline and has now approached this Hon'ble Tribunal belatedly.

6.4 It is submitted that the Hon'ble NCLAT in ***Uttarakhand Power Corporation Ltd. v. M/s. ANG Industries Ltd. [Company Appeal (AT) (Insolvency) No. 298 of 2018]*** held that even if a moratorium is in place, creditors may submit their claims before the Resolution Professional. Hence, the Applicant had the opportunity to raise its claim before the RP but failed to do so within the statutory framework.

6.5 It is further submitted that the approved Resolution Plan clearly stipulates that all amounts infused by the Resolution Applicant shall be utilized for full and final settlement of claims of all stakeholders. The Resolution Plan provides that upon payment as contemplated therein, all other claims, rights, obligations, or entitlements shall stand extinguished, discharged, or deemed to be satisfied.

6.6 It is contended that **Clause 15.6.i** of the Resolution Plan specifically provides that a certified copy of the approved Resolution Plan shall constitute conclusive evidence of settlement and discharge of all claims, including statutory liabilities. **Clause 4.ii** further clarifies that all claims by any governmental or regulatory authority, whether admitted or not, crystallized or contingent, shall stand permanently extinguished upon approval of the Plan.

6.7 It is submitted that Section 31(1) of the Code makes it clear that once a Resolution Plan is approved by the Adjudicating Authority, it becomes binding on all stakeholders, including statutory authorities such as the

Central or State Governments or any local authorities. This position has been consistently upheld by various courts.

6.8 In this regard, reliance is placed on the judgment of the Hon'ble ***Rajasthan High Court in Ultra Tech Nathdwara Cement Ltd. v. Union of India [D.B. Civil Writ Petition No. 9480/2019],*** wherein it was held that statutory claims not forming part of the approved resolution plan shall stand extinguished and cannot be enforced after the approval of the plan.

6.9 It is further submitted that the Hon'ble Supreme Court in ***Essar Steel India Ltd. v. Satish Kumar Gupta & Ors. [2019 SCC OnLine SC 1478]*** held that a successful resolution applicant cannot be saddled with past liabilities indefinitely. All claims must be submitted to and decided by the Resolution Professional within the CIRP, and once the resolution plan is approved, the applicant starts with a clean slate.

6.10 Further reliance is placed on the judgment of the Hon'ble Supreme Court in ***Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss ARC [Civil Appeal No. 8129 of 2019]***, where the Court held that upon approval of the resolution plan under Section 31, all claims not forming part of the plan shall stand extinguished, including statutory dues.

6.11 It is specifically submitted that in ***Regional Provident Commissioner, EPFO v. Vandana Garg (RP) [Company Appeal (AT) (Insolvency) No. 50 of 2021]***, the Hon'ble NCLAT held that Provident Fund dues not admitted by the Resolution Professional and not forming part of the resolution plan shall stand extinguished after its approval.

6.12 It is, therefore, contended that the EPFO's claim, not being part of the admitted claims or included in the Resolution Plan, cannot now be raised or enforced. The Resolution Applicant has a vested right to commence operations with a clean slate, free from legacy liabilities. Entertaining the Applicant's claim at this belated stage would derail the implementation of the resolution plan and defeat the objective of the Code.

6.13 It is further submitted that the Resolution Plan has already been partially implemented, and allowing the present claim would not only prejudice the successful Resolution Applicant but also disturb the equitable treatment given to all stakeholders under the CIRP.

6.14 That the present application is infructuous, misconceived, and not maintainable in view of the binding nature of the Resolution Plan under Section 31 of the Code and the settled legal position regarding extinguishment of non-admitted claims.

7. We have heard the Learned Counsels for parties and perused records and noted the rival contentions.

8. Analysis and Findings

8.1 The present Interlocutory Application has been filed under Section 60(5) of the IBC by EPFO, Regional Office, Barrackpore, seeking directions to the Resolution Professional of Ramsarup Industries Limited for payment of statutory dues amounting to Rs. 19,79,860/-, which include assessed provident fund contributions, penal damages, and interest determined under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "EPF Act").

8.2 At the outset, we acknowledge that the EPF Act is a beneficial legislation enacted to secure the retirement and welfare benefits of employees. Contributions under the Act, both from employer and employee, are statutory in nature and must ordinarily be given priority under applicable legal frameworks. The claim in the present case arises out of an order dated 24.04.2009 passed under Section 7A of the EPF Act, followed by imposition of penal damages and interest under Sections 14B and 7Q vide order dated 09.01.2015.

8.3 It is not in dispute that the Corporate Debtor, Ramsarup Industries Ltd., was admitted into CIRP by this Tribunal under Section 7 of the IBC, and that a public announcement under Regulation 6 of the CIRP Regulations was made on 11.01.2018, calling upon all creditors, including statutory authorities, to file their claims with the Interim Resolution Professional. The Resolution Plan was ultimately approved by this Adjudicating Authority on 04.09.2019 and is currently under implementation.

8.4 The EPFO's case rests on the proposition that provident fund dues are not dischargeable liabilities in the same manner as other operational debts and that such dues, even if not submitted within the claim period, should be treated as CIRP costs under Section 36(4)(iii) of the IBC read with Regulation 31. Further, EPFO contends that its claim was submitted through proper postal channels on 02.03.2020, prior to learning of the plan approval, and hence, the dues ought to be admitted and paid in full.

8.5 On the other hand, the Resolution Professional has argued that the claim was not filed within the time permitted by the public announcement or during the pendency of the resolution process. It is submitted that the Resolution Plan approved by this Adjudicating Authority is binding on all stakeholders under Section 31(1) of the Code, including statutory authorities, and that any claim not admitted in the Resolution Plan stands extinguished.

8.6 At this stage, it is crucial to note that under the amended Section 31(1) of the IBC (post 2019 amendment), once a resolution plan is approved by the Adjudicating Authority, it shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or local authority, guarantors and other stakeholders. The legislative intent behind such binding nature is to provide finality to the resolution process and enable the successful resolution applicant to take over the corporate debtor with a clean slate.

8.7 **Section 31 of the Code provides for approval of Resolution Plan**. Section 31(1) provides as follows:

> *"31(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order Company Appeal (AT) (Insolvency) Nos. 752, 643, 792, 801 915 of 2021, 361, 771 & 987 of 2022, 42 approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan. Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that*

the resolution plan has provisions for its effective implementation."

35. The satisfaction referred to in Sub-section (1) of Section 31 of the Adjudicating Authority is objective satisfaction based on materials on record. The crucial words in Sub-section

(1) are: "the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in subsection (2) of section 30"

[Emphasis supplied]

8.8 It would be opt to quote the Judgment of ***Supreme Court in Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited,*** the relevant para's of which are extracted herein below: "on the date of approval of the 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."

"95. (i) ***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 the 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;
(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;
(iii) ***consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.".***

8.9 In the present case, the EPFO has not provided conclusive proof that its claim was submitted in the prescribed manner within the time permitted under the CIRP Regulations. Mere postal delivery of the claim in March 2020, after the approval of the Resolution Plan in September 2019, is clearly beyond the statutory window and goes against the scheme of finality envisaged under Section 31 of the Code.

8.10 While the importance of statutory dues under the EPF Act cannot be understated, this Adjudicating Authority is bound by the IBC and the pronouncements of the Hon'ble Supreme Court and NCLAT. Once a resolution plan is approved, all pre-existing liabilities not forming part of the plan are deemed extinguished. The EPFO's claim, not having been admitted by the Resolution Professional and not forming part of the Resolution Plan, cannot be revived or enforced at this stage.

8.11 Furthermore, reopening settled claims after the approval and partial implementation of the resolution plan would cause undue prejudice to the resolution applicant and other stakeholders and would undermine the commercial wisdom of the Committee of Creditors (CoC), which is the cornerstone of the IBC process.

8.12 In view of the above discussion, we find no merit in the application. The claim of the EPFO, though arising from a beneficial legislation, not having been admitted during the CIRP and not forming part of the approved Resolution Plan, stands extinguished under Section 31(1) of the Code.

8.13 The Interlocutory Application No. 669/KB/20201 is hereby ***dismissed*** as being not maintainable.

8.14 The registry is directed to send e-mail copies of the order forthwith to the board and all the parties and their learned counsel for information and for taking necessary steps.

8.15 Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

Cmde Siddharth Mishra
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on 22nd Day of August 2025.

Tiwari, V. (LRA)