IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,
KOLKATA

I.A.(IB)849/KB/2021
In
C.P (IB) No.508/KB/2017

In the matter of

An application under section 60(5) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016;

And

In the matter of

(An application under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016).

In the matter of:

Small Industries Development Bank of India .

…. Financial Creditor

Versus

Tirupati Jute Industries Limited

…. Corporate Debtor

And

In the matter of

M/s Daaksh Jute LLP, a Limited Liability Partnership Firm set up and organised under the Limited Liability Partnership Act, 2008 having its registered office at 545, G.T.Road (South), Howrah 711 101, represented by its Designated Partner, Chandan Mall, working for gain at 545, G.T.Road (South), Howrah 711101 and also residing at 55/6, Purna Das Road, Kolkata 700029.

… Applicant

Versus

1. The Regional Provident Fund Commissioner, 24, Belilious Road, 6th Floor, Howrah- 711103 (E-mail ID ro.howrah@epfindia.gov.in);
2. The Recovery Officer, Employee's Provident Fund Organisation, 24, Belilious Road, 6th Floor, Howrah- 711103 (E-mail ID ro.howrah@epfindia.gov.in);
3. Mr. Chhedi Rajbhar, Liquidator for Triuptai Jute Industries Limited (In liquidation), 40, Strand Road, 2nd Floor, Room No.49, Kolkata-700001.
4. HDFC Bank Limited, 268/9,G.T. Road, Liluah, Howrah, Pin- 711204.
5. National Federation of Jute Workers (Trirupati Jute Mill Committee), A/18F/1, Sahanagar Road, Kolkata-700026,
6. Bengal Chatkal Mazdoor Union (Unit: Trirupati Jute Industries Limited), 91,Naskarpara Road, Ghusuri, Howrah-711107.

.......Respondents

Date of hearing : 09/03/2022
Order Pronounced on : 20/04/2022

Coram:
Mr. Rohit Kapoor, Member (Judicial)
Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Joy Saha, Sr. Adv.	] For Liquidator
2. Mr.Arik Banerjee, Adv.	]
3. Mr.Arun Kumar Gupta, PCA	]

1. Mr. Ratnanko Banerjee,Sr Adv.	] For Daaksh Jute LLP IA/849/2021
2. Mr. Manju Bhuteria, Adv.	]
3. Mr. Rishav Banerjee, Adv .	]
4. Mr. Arkodeo Sinha, Adv,	]

1. Mr. Anil Kumar Gupta, Adv.	] For Regional P.F. Commissioner

1. Mr. Dhirendra Nath Sharma, Adv.	] For the Workers
2. Ms.Urmila Chakraborty, Adv.	]
3. Ms. Meenakshi Manot, Adv.	]
4. Mr. Niloy Sengupta, Adv.	

O R D E R

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.

2. This application filed by M/s Daaksh Jute LLP, the present application impugning notice dated 21st September, 2021 issued by Respondent No.1 and 2 under section 8-F of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, seeking declaration that the said notice dated 21st September, 2021 is illegal, null and void and be set aside. It is also prayed that injunction restraining Respondent Nos.1,2 and 4 from giving any effect to, take any steps, and order of mandatory injunction directing Respondent Nos. 1,2 and 4 to take appropriate steps for de-freezing the ODCC account of the applicant maintained with HDFC Bank Limited, having its Branch Office at 268/9, G.T.Road, Liluah, Howrah Pin- 711204 being Account No. 50200055570842, be passed.

3. The applicant has submitted that the applicant is running and operating the Jute Mill of the Corporate Debtor (in liquidation) since 1st August,2016 as lessee as per lease deed dated 1st August, 2016 (Annexure-A).It is submitted that the order of liquidation was passed on 13th February, 2019 by this Adjudicating Authority which was confirmed by the Hon'ble NCLAT 20th February, 2020.

4. It is further submitted that on 22nd September, 2021, the applicant came to know from Respondent No.4 /HDFC Bank, banker of the applicant, that its bank account bearing no. 50200055570842 maintained with Liluah Branch had been attached by reason of the wrongful and illegal notice issued by Respondent Nos. 1 and 2 dated 21st September, 2021 to the Branch Manager of Respondent No. 4 Bank. It is submitted that Respondent No. 1 & 2 have illegally invoked the provisions of section 8F of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, which was received

by the applicant from its banker (Annexure-C), demanding a sum of Rs.1,92,75,853/- commencing from the year 2004 till November, 2019 on account of dues claimed by the Provident Fund Authorities in respect of the Corporate Debtor.

5. It is further submitted that a purported demand made by Respondent No.1 and 2,which is the subject matter of the impugned notice dated 21st September, 2021 is wrongful and illegal. It is stated that the applicant is merely operating the Jute Mill of the Corporate Debtor pursuant to agreement dated 1st August, 2016. It is stated that the applicant has been successfully running the Jute Mill of the Corporate Debtor and has been making payment on regular basis to the employees and workers of their dues which has arisen subsequent to the execution of the agreement dated 1st August, 2016 and all the employees and workers have expressed their satisfaction to the working of the Jute Mill and have been able to run their livelihood from running of the Jute Mill. It is stated that prior to the execution of the agreement dated 1st August, 2016 between the applicant and the then Management of the Corporate Debtor, the Jute Mill was closed for almost 2 years.

6. It is stated that the claim of Respondent Nos. 1 and 2, to the tune of Rs.2,68,57,856/- in respect of the Provident Fund dues which arises from the Jute Mill of the Corporate Debtor is already the subject matter of claim form filed by Respondent Nos. 1 and 2 in Form No.'C' under Regulation 17 of the IBBI (Liquidation Process) Regulation,2016, which was submitted by Respondent No.1 & 2 with the Liquidator /Respondent No.3 dated 17th August, 2020 (Annexure-D) .

7. The applicant further submits that except a sum of Rs.41,85,955/- which arises under section 7A of the said Act of 1952 relatable to the period May, 2019 to November,2019, the entire residual claim of Respondent Nos. 1 and 2 authority is for the period prior to execution of the agreement dated 1st August,2016.

8. It is submitted that no claim of the Provident Fund Authorities can be made upon to the applicant, which relates to the period prior to Daaksh Jute Mill taking over running of the Jute Mill which would be August 1, 2016. It is further submitted that from August 1,2016 upto December, 2019,the applicant has already made all payments of the Provident fund dues(both employees and employers portions) accruing on account of its operations except the sum of Rs.41,85,955/- which remains unpaid.

9. It is submitted that no attachment order could have been passed by Provident Fund Authorities for attachment ODCC Account, for availing credit facilities upon payment of interest. It is submitted that the ODCC Account is neither a savings account nor the current nor any deposit account. No funds belonging to the applicant are deposited in such account.

10. It is stated that the credit facilities which are availed by the applicant, are repaid to the Bank with interest. Therefore, the question of PF Authorities freezing the ODCC account is not sustainable.

11. It is stated that the attachment order will certainly cause the Jute Mill of the Corporate Debtor to be closed because the applicant will not be able to make payment of wages and salaries with other dues about 1200 workers and employees. It is stated that there are various other expenses for purchasing raw materials and the payments to be made to the suppliers to the Jute Mill, which require funding from the Bank.

12. The Ld. Counsel for the applicant during the course of hearing has relied upon the following decisions to suggest that the ODCC Account cannot be attached. The relevant judgments are as under:-

i. *Canara Bank Vs. Regional Provident Fund Commissioner, Hon'ble Karnataka in WP No. 37939/1995 passed by Hon'ble High Court of Karnataka Singh Bench*

ii. *K V Adam Vs. Income Tax , in WP 1006 of 1955 passed by Hon'ble High Court, Madras*

iii. *Manish Scrap Traders Vs. Principal Commissioner in Special Civil Application No. 76 of 2022 passed by Hon'ble High Court, Gujrat*

iv. *Jugal Kishore Das Vs. Union of India in W.P.22849 (W) of 2013, 2013 SCC OnLine Cal 19941 passed by Hon'ble Calcutta High Court, and*

v. *Bindal Smelting Vs. Additional Director General, Directorate General of GST Intelligence.*

13. Ld. Counsel further submitted that since the PF authorities have already submitted themselves to the jurisdiction of the NCLT by lodging their claim before the Liquidator, therefore, they are now estopped and barred from issuing any attachment order invoking the provisions of 1952 Act for the recovery of the self same claim which is already an issue before the NCLT.

14. It is further submitted by the applicant that the provisions of Section 17B of the 1952 Act will not be applicable in the facts of the present case because there is no transfer of any establishment or any Jute Mill or any asset or any property of the Corporate Debtor in favour of the applicant. The Title of the Jute Mill is till with the Corporate Debtor. The applicant is only operating and running the Jute Mill on behalf of the Corporate Debtor for a period of 9 years on the basis of lease deed and that it is not the case of any sale, gift or lease or licences granted by the Corporate Debtor in favour of the applicant.

15. It is stated that no claim for the period prior to 1st August,2016 can be made upon the applicant or realized from the applicant as the applicant is not responsible for the past arrears prior to 1st August, 2016.

16. The applicant has relied upon following decisions on the preposition that there is no transfer contemplated within the meaning of Section 17B of the 1952 Act;

i. *Vibhu Drinks Pvt. Ltd. Vs. Assistant Provident Fund Commissioner ,* *2017 SCC Online Bom 9174 High Court of Bombay,*

ii. *Vitthal Sahakari Sarkar Karkhana, Aurangabad & Anr. Vs. Assistant Provident Fund Commissioner, Aurangabad & Ors., 2007 SCC Online Bom 1105 High Court of Bombay,*

iii. *S. Vaheedkutty, Proprietor, M/s Mukhathala Cashew Proceeding Vs. Recovery the Asst. Provident Fund Commissioner & Ors. , 2015 SCC OnLine Ker 24093, Kerala High Court,*

iv. *Manoj K. Vs. The Employees Provident Fund Organisation & Ors., WP© No. 3566 of 2010 (U) Kerala High Court ,Single Bench,*

v. *The Employees Provident Fund Organization & Ors Vs. Manonj Kr. , 2014 SCC Online Ker 22330, Kerala High Court, Division Bench*

17. The applicant has therefore, prayed that Respondent No.4 Bank be directed to defreeze the ODCC Account of the applicant maintained with HDFC Bank, Liluah Branch, Howrah being Account No. 50200055570842 and direct R-4 to allow usual operations of the aforesaid account maintained with the Bank.

18. We have seen the reply filed by Respondent No.1 and 2 (Regional Provident Fund Commissioner -II), who have submitted that the application is not maintainable and is liable to be dismissed. It is submitted that the applicant being the lessee, shall pay all employment related statutory obligations including but not limited to Workmen Compensation, Contract Labour, Gratuity, Employees' Provident Fund, E.S.I contribution, Minimum Wages in accordance with law. It is further submitted that the applicant is jointly and severely liable to pay Provident Fund and allied dues and also under section 17 B of the said Act, 1952. In case of transfer of establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provisions of the Act.

19. It is stated that several orders have been passed by the Authorities

concerned and the details of the total outstanding dues amounting to Rs. 1,92,75,853/- has been confirmed by the Recovery Officer to the Applicant vide letter dated 27.08.2021 (Annexure-E). It is stated that the application being devoid of any merit, is not maintainable or in fact, the same is liable to be dismissed.

20. Similarly, Respondent No.3, Liquidator, in its reply affidavit has submitted that the application of Daaksh Jute LLP, which is not a Corporate Debtor under Section 60 of Insolvency and Bankruptcy Code, 2016 is not maintainable because it is not a dispute arising out of CIRP of Tirupati Jute Industries Limited. The Corporate Debtor is Tirupati Jute Industries Limited and not Daaksh Jute LLP, thereafter the application is not maintainable.

21. It is further submitted by the Liquidator that the subject matter of the application is an attachment order / Notice dated 21st September, 2021 for not depositing Provident Fund dues of Rs.1,92,75,853/- and attaching the bank account of the Daakh Jute LLP with the HDFC Bank. It is stated that there cannot be any protection from any legal proceeding initiated by EPF Authorities after the order of liquidation. Such protection is only enjoyed by a corporate debtor under section 33(5) of the IBC and as such the question of staying the attachment order against an entity which is not a corporate debtor does not arise.

22. It is stated that Daaksh Jute Mill cannot be contend that Provident Fund Authorities for recovery of their PF dues against Daaksh Jute Mill LLP will come under water-fall mechanism of Section 53 of the Code to recover their dues. It is stated that Section 53 of the IBC is only applicable in respect of the creditors of the Corporate Debtors and not an entity which is not a Corporate Debtor.

23. We have heard Ld. Counsel for the parties including Ld. Counsel for the applicant Daaksh Jute Mill LLP and the Ld. Senior Counsel for the Liquidator at length.

24. After a lot of discussion on the demand and the liability of the Daaksh Jute Mill LLP and that of the Corporate Debtor, finally the Ld. Counsel for the applicant submitted that from the date Daaksh Jute Mill LLP came into possession, pursuant to lease in its favour, the amount of the employer and employee's contribution has already been paid. Since the total amount being claimed by the PF authorities Rs. 1,92,75,853/- includes the dues from 2004 onwards, the amount from 2004 till the date of the CIRP have already been claimed by the PF Authorities, who have submitted their claim with the liquidator. The Ld. Counsel for the Daaksh Jute Mill LLP, however, submitted that even though all the amounts relating to the employer and employees working with the Daaksh Jute Mill LLP have already been deposited with the authorities but even if there is anything pending in that regard that shall be deposited by Daaksh Jute Mill LLP and no liability will fall on the Corporate Debtor or for that matter on the liquidator.

25. After this order was reserved and we were in the process of preparing the orders, on 06.04.2022 , Ld. Counsel for the Respondent Workers in IA (IB) 849/KB/2021 placed before us, an order passed by the Hon'ble High Court of Calcutta in ***WPA 3555 of 2022 in IA CAN 1 of 2022 filed by HDFC Bank Limited & anr. Vs. Regional Provident Fund Commissioner-II, Howrah & Ors***. The Hon'ble High Court has passed the following orders:-

> *" Heard learned counsels appearing on behalf of the parties.*
> *In the present application the added respondents no.8 and 9 have prayed for clarification of the order passed by this Court on March 11, 2022 in the present writ petition whereby the notices issued by the Provident Fund Authority on December 29, 2021 and February 15,2022 were stayed pending disposal of the writ petition.*
>
> *It is submitted by the learned counsel appearing on behalf of the petitioner as well as respondents no. 6,8 and 9 that despite notices dated December 29, 2021 and February 15,2022 being stayed by this Court the 6th respondent is unable to operate the Overdraft Cash Credit Account maintained in its Liluah Branch as no such liberty was provided by this Court in the order. Referring to a letter issued by the petitioner bank to the 6th respondent on March 17, 2022 learned counsel submit no order for*

defreezing of the Cash Credit Account could be granted in absence of any order to that effect by this Court.

Learned counsel appearing on behalf of the Provident Fund Authority vehemently opposes the application and makes his submission on the merits of the writ petition. He submits that the respondent no.6 should be directed to clear the Provident Fund dues of the workmen.

Upon consideration of the submission made on behalf of the parties, this Court is inclined to hold that clarification of the order passed by the this Court on March 11,2022 is necessary.

In view of the fact that the notices dated December 29, 2021 and February 15,2022 have been stayed till disposal of the writ petition, the 6th respondent is allowed to operate the Overdraft Cash Credit Account maintained by it in the Liluah Branch forthwith.

With the above clarification this application being CAN 2 of 2022 is disposed of .

Since no affidavit is invited, the allegations contained in the application are deemed not to be admitted.

Re: WPA No. 3555 of 2022

Inadvertent error has crept into the order dated March 30, 2022.

The date in the order dated 30.03.2022 be read as " 30.03.2022" instead and place of "30.03.2021".

Let such correction be made in the order dated March 30, 2022.

The Department is directed to make the correction accordingly.

Affidavit in opposition, affirmed by the Provident Fund Authorities, filed in Court today is taken on record.

Notice dated March 14, 2022 filed by the petitioner is taken on record.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities".

26. It may be further noted that one of the prayers sought by the applicant in one IA(IB) 849/KB/2021 is that the HDFC Bank be directed to defreeze the Account No. 50200055570842 of Daaksh Jute Mill LLP. Similar direction has been sought in the matter of ***IA CAN 1 of 2022, in WPA 3555 of 2022*** pending before the Hon'ble High Court of Calcutta and the Hon'ble Court has granted the said relief to the petitioner HDFC Bank Ltd. and others, permitting the operation of the Overdraft Cash Credit Account, by staying the

operation of notices dated 29th December, 2021, February 15, 2022 issued by the Regional Provident Fund Authorities.

27. We, therefore, pass the following orders:-

i. Since the amount claimed by PF Authorities, a major portion whereof is stated to have already been paid by Daaksh Jute Mill LLP, and the remaining amount has already been claimed by the PF Authorities by submitting their claim before the Liquidator, there is hardly anything left to be argued in this matter. In these circumstances, the prayer of the applicant in the IA 849/2022 is allowed in terms of the prayer made in the application.

28. With the aforesaid directions, this IA (IB) 849/KB/2021 stands disposed of.

29. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on, this 20th of April, 2022

Pj