

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH – I

IA 559 of 2022

In

CP (IB) 3080/MB/C-I/2018

Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016

Filed by the

Regional Provident Fund Commissioner II

...Applicant

In the matter of

Punjab National Bank

... Petitioner

Versus

Unijules life science Limited.,

... Respondent

Order Delivered on 04.08.2023

Coram:

Hon'ble Member (Judicial) : Mr. H.V. Subba Rao
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Applicant : Ms. Sangeeta Mishra, Advocate
For the Respondent : Mr. Rohit Gupta, Advocate

ORDER

Per Coram:

1. The present Application is filed by the Applicant Regional Provident Fund Commissioner II intervening in the Petition in respect of arrears pending against the Corporate Debtor.

Brief facts of the case:

2. The Applicant filed claim under Form-G dated 02.12.2021 along with supportive documents before the Resolution Professional of the Corporate Debtor for recovery of Provident Fund dues with damages as per order passed on various dates amount to Rs. 7,69,24,173/- under Section 7-A 14B and 7Q of the EPF and MP Act, 1952.
3. It is submitted that the Corporate Debtor made default in remittance of Provident fund, Family pension fund and Insurance Fund dues in accordance of the Provident Fund Act. Therefore, the Applicant issued Noticed dated 13.11.2014 and initiated proceedings under section 7A of the EPF & MP Act 1952 for the period 09/2004 to 10/2014 to the Respondent, in response to the aforesaid proceedings and summons, Respondent through his representative Mr. S.A. Ansari GM (Personal & HR) appeared on various dates. On hearing dated 20.07.2015 Mr. S.A. Ansari GM (Personal and HR) stated that he has gone through the E.O. report and confirmed about the liability and accepted the contentions. That the Applicant assessed the dues of Rs.1,53,92,439/- along with damages and interest to deposit the amount in respective account. On this Mr. S.A. Ansari requested that, the Establishment is not in position to deposit the amount immediately and further requested to collect the amount from Oriental Insurance Company Nagpur, for which claim has already been filed by the Establishment.
4. That again the Respondent made default in remittance of Provident fund, Family pension fund and Insurance Fund dues in accordance of the Provident Fund Act. That the Applicant issued Notice dated 18.02.2016 and initiated proceedings under section 7A of the EPF & MP Act 1952 for the period 07/2015 to 01/2016 (extended upto 11/2019) (Copy enclosed as **Annexure B**) to the Respondent, in

response to the aforesaid proceedings and summons, Respondent through his representative Mr. S.A. Ansari GM (Personal & HR) appeared on various dates.

5. That the Enforcement officer of the Applicant Organisation submitted the EO report dated 20.01.2020 (Copy enclosed as **Annexure D**) of the Respondent firm and provided copy to their representative. That the Respondent firm's representative has not raised any objection to the Report. That the Applicant also has knowledge of the Respondent firm's is undergoing the Corporate insolvency procedure before the NCLT and Adjudicating Authority of NCLT bench secured. They shall not be included in the liquidation estate assets or the bankrupt's estate.

Reply on behalf of the Resolution Professional:

6. It is submitted that the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor had been admitted by this Tribunal vide order dated 08.03.2019 in the present Company Petition being CP No. 3080 of 2018. Pursuant to such order Respondent was appointed as the IRP and as per the provisions of the Insolvency and Bankruptcy Code, 2016 and regulations framed thereunder, was issued Public Notice inviting claims against the Corporate Debtor from all creditors. As per the Public Notice the last date of filing claims was 22.03.2019. The Applicant herein has admittedly filed their claim on 02.12.2021. The claim filed is even after the resolution plan had been approved by the COC and Application for approval of the Resolution Plan filed with this Tribunal is pending for disposal.
7. Further, it is stated the Applicant has not filed any application seeking condonation of delay in filing the claim and has instead filed the present Interlocutory Application inter-alia seeking intervention in the

Company Petition and direction to the Resolution Professional to discharge Organizational Liabilities of the Corporate Debtor which is unverified. On this ground alone the present Interlocutory Application ought to be dismissed with costs.

8. Further, it is submitted that the Applicant is guilty of suppressing material facts which are relevant to present application, which are as follows:
 - a. During the pendency of the CIRP of the Corporate Debtor, the Resolution Professional have conducted the affairs of the Corporate Debtor and kept the Corporate Debtor running as a going concern. Accordingly, made payments towards all dues payable as per law to government agencies and otherwise. The dues payable to the Applicant herein was already received by the applicant in excess for the period upto July, 2021.
 - b. It is brought notice as the Resolution Professional of the Corporate Debtor have also appeared before the Regional Provident Fund Commissioner-II, Nagpur through authorized representative of the Corporate Debtor, Mr. Ansari in the matter of enquiry under Section 7A of the Employees Provident Funds & Miscellaneous Provisions Act, 1952, and have informed them time and again regarding the status of CIRP of the Corporate Debtor. Despite informing them, the Applicant herein has failed to file their claim within the stipulated time. The Applicant has recently filed an exaggerated claim of Rs.7,69,24,173/- on 12.12.2021, whereas as per the order

dated 21.02.2020 (annexed as Exhibit E to the Application), passed by the Applicant herein, it is the Applicant's own case that the amount allegedly payable on behalf of the Corporate Debtor to the Applicant was Rs. 2,20,98,874/-.

- c. In a previous matter of enquiry under Section 7A of the Employees Provident Funds & Miscellaneous Provisions Act, 1952, the Applicant had passed order dated 27.07.2015 determining the liabilities/dues to the tune of Rs.1,53,92,439/- for the period of September 2004 to October, 2014. At the relevant time the representative of the Corporate Debtor had submitted that the Corporate Debtor was not in the position to make such payments and therefore requested the Applicant to collect such dues from Oriental Insurance Company Limited, Nagpur, for which the Corporate Debtor had filed claim and amounts were payable by Oriental Insurance Company Limited. Under such garnishee arrangement, the Corporate Debtor requested the Oriental Insurance Company Limited to pay the Applicant an amount of Rs.1,53,92,439/-, as assessed in the order dated 27.07.2015. The Applicant however, malafidely, vide its letter dated 07.09.2015 directed the Oriental Insurance Company Limited to pay Rs.1,53,92,439/- towards the dues determined by them and also Rs.95,01,566/- towards the Interest and damages. Pursuant to such direction, the Oriental Insurance Company Limited paid an amount of Rs2,48,94,005/- which included Rs.1,53,92,439/- and Rs.95,01,566/-. There was no such order of interest and

damages and thus the amount of Rs.95,01,566/- was received by the Applicant in excess of the amount due and payable to the Applicant.

- d. The Corporate Debtor has also filed proceedings before the Hon'ble Bombay High Court, Nagpur Bench viz. Writ Petition No. 6646 of 2015 challenging the recovery of the amount of Rs.95,01,566/-, which was in excess of the amount assessed in order fated 27.07.2015. It is pertinent to note that vide order dated 05.09.2018, the Hon'ble Bombay High Court, Nagpur Bench was pleased to direct the Applicant herein to refund the amount of Rs.95,01,566/- with interest at the rate of 8% p.a within 15 days, failing which interest at the rate of 18% p.a shall be paid to the Corporate debtor. The order further records that no order for damages and interest was placed on record.
- e. In view of excess amount of Rs.95,01,556/- received by the Applicant as mentioned hereinabove and during the pendency of the abovementioned Writ Petition, the Corporate Debtor had not paid the EPF dues for the period from April 2016. It is further submitted that instead of adjusting the excess amount of Rs.95,01,566/- towards the EPF dues for the period from April 2016, after order dated 27.07.2017, the Applicant continued its proceedings initiated vide its notice dated 18.02.2016 and directed the Corporate Debtor to appear before the Applicant for deciding the determination of dues for the period July, 2015 to January, 2016. Further, the Applicant also failed

to make payments to the Corporate Debtor in compliance of order dated 05.04.2018. In view of such non-compliance, the Corporate Debtor was once again constrained to file Contempt Petition against the Applicant before the Hon'ble Bombay High Court, Nagpur Bench. It is further, stated that notice was issued to the Applicant pursuant to which the Hon'ble High Court was pleased to direct the Applicant to deposit an amount of Rs.1,99,77,080/- with the Hon'ble Court till the hearing for the said Contempt Proceeding. Vide order dated 05.01.2022, in the abovementioned Contempt petition, the Hon'ble Court was pleased to transfer the amount of Rs. 1,99,77,080/- to the respective accounts of the employees with the Applicant.

- f. The Corporate Debtor had started facing financial difficulties since 2015. The Corporate Debtor had not paid the EPF dues in view of the monies already deposited in the Bombay High Court in the abovementioned Contempt Proceedings. The Applicant states that the abovementioned amount of Rs.1,99,77,080/- covers the EPF dues payable by the Corporate Debtor upto July 2021.
- g. During the pendency of CIRP, the Applicant continued the proceedings under Section 7A of the EPF Act against the Corporate Debtor and also during pendency of the Contempt proceedings mentioned hereinabove. As stated hereinabove, the Applicant instead of adjusting the excess amount of Rs.95,01,566/- and/or alternatively paying

back such amounts to the Corporate Debtor. The Applicant has now filed an exaggerated claim of Rs.7,69,24,173/- by wrongfully including interest and penalties. That despite being aware that the Corporate Debtor is undergoing CIRP and moratorium under Section 14 of IBC, 2016 is enforced. The Applicant has failed to file its claim within the stipulated time or even seek condonation of delay in filing their claim i.e. much after the approval of Resolution Plan. The Applicant being a Government Agency is trying to surpass all the provisions of the IBC, 2016 in a highhanded manner.

9. The Respondent submitted that the Applicant had filed its Claim dated 02.12.2021, way beyond the stipulated time. The Public Announcement was made by Resolution Professional on 11.03.2019 for inviting claims against the Corporate Debtor was 22.03.2019. Further it is stated that even as per Regulation 12(2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Person) Regulations, 2016; a creditor may submit the claim with proof to the Interim Resolution Professional or Resolution Professional, as the case may be, on or before the ninetieth (90) days of the insolvency commencement date i.e. up to 03.06.2019. The Applicant herein has failed to file the claim even during that period despite being aware of the CIRP of the Corporate Debtor. The claim filed by Applicant had been received by the Resolution Professional only on 03.12.2021, which stood rejected solely on account of belated filing of claim.
10. It is further brought to the notice that the Applicant has suppressed the relevant facts with regard to the proceedings. Pursuant to Notice dated 13.11.2014, the Applicant had received an excess amount of Rs.95,01,566/-, which the Applicant failed to account for or pay the

Corporate Debtor until Writ Petition and Contempt Proceedings as mentioned hereinabove. It is denied that any payments were payable to the Applicant as per their noticed dated 18.02.2016. As already mentioned hereinabove, the Applicant had received an excess amount of Rs.95,01,566/- which the Applicant ought to have adjusted for further dues payable by the Corporate Debtor.

11. It is stated that the Resolution Professional had been attending the hearing conducted by the Applicant through Authorized Representative of the Corporate Debtor and has also informed the Applicant regarding the CIRP status of the Corporate Debtor. In view of the excess amounts received by the Applicant and in pendency of the proceedings in the Hon'ble Bombay High Court, the Corporate Debtor expected the adjustment of amounts. In any case, the amount of Rs.1,99,77,080/- deposited by the Applicant with the Hon'ble High Court would have covered EPF dues upto July 2021.

Findings:

12. We have heard the Ld. Counsels and perused the records.
13. It is admitted position that the claim was filed on 02.12.2021 which is filed at a much belated stage. Therefore, it is outside the purview and powers of the Resolution Professional to even consider the said claim filed at a belated stage i.e. even after the 90th days of CIRP as per regulation 12(2) Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The stand taken by Resolution Professional pertaining to claims is in consonance with law. At this belated stage when the resolution plan is approved by the CoC and the same is pending before this Adjudicating Authority for approval.

14. In back-drop of complete facts and circumstances, it appears that when excess amount was ordered by Hon'ble High Court of Bombay, Nagpur Bench to be re-funded back to the Corporate Debtor. The amount of Rs.1,99,77,080/- deposited by the Applicant with the Hon'ble High Court would have covered EPF dues upto July 2021. The Applicant at this stage cannot raise demand of penalty and interest and file claim for such exaggerated amount. In that view of the matter we are of the considered view that such kind of belated claims shall not be allowed at this juncture. Therefore, prayer sought is rejected.
15. With the aforesaid observation **IA 559 of 2022 in CP No. 3080 of 2018** is disposed of as rejected.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)
04.08.2023
SAM

Sd/-

H.V. SUBBA RAO
Member (Judicial)