

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

IA(IBC)/676(CHE)/2021

In

IBA/579/2019

*(Filed under Rule 11 of NCLT Rules, 2016 r/w Section 38(3), 42 of the
Insolvency and Bankruptcy Code, 2016)*

In the matter of **FLORAM SHOES (INDIA) PRIVATE LIMITED**

**THE ASSISTANT PROVIDENT FUND COMMISSIONER &
RECOVERY OFFICER, EMPLOYEES PROVIDENT FUND
ORGANIZATION,
S-1, TNHB, Phase-III,
Sathuvalcheri, Vellore – 632 009.**

... Applicant

Shri.Amier Hamsa Ali Abbas Rawther,
The Liquidator of
Floram Shoes (India) Private Limited,
Bungalow C, Underwood Garden,
3A, Greenways Road,
Raja Annamalai Puram,
Chennai – 600 028.

Order Pronounced on **23rd November 2023**

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present: -

For Applicant : Mr.S.Rajesh, Advocate
For Respondent : Ms.Jayanthi K Shah, Advocate

ORDER

Per: SANJIV JAIN, MEMBER (JUDICIAL)

This Application has been filed under *Rule 11 of NCLT Rules,
2016 r/w Section 38(3), 42 of the Insolvency and Bankruptcy Code, 2016*
by the **THE ASSISTANT PROVIDENT FUND COMMISSIONER & RECOVERY
OFFICER, EMPLOYEES PROVIDENT FUND ORGANIZATION** seeking to set



aside the order dated 05.06.2021 issued by the Respondent and to direct the Respondent to admit the claim of Rs.2,42,12,170/- towards statutory dues payable by the Corporate Debtor viz. **FLORAM SHOES (INDIA) PRIVATE LIMITED** in respect of his contract employees engaged through **United Design Studio** ("United Studio") in compliance with the order dated 20.05.2021.

2. It is stated that the liquidation of the Corporate Debtor was ordered on 27.01.2021. The Respondent herein was appointed as the Liquidator. Pursuant thereto, the Liquidator caused a public announcement dated 13.02.2021 and the last date of submission of claim was fixed as 15.03.2021.

3. It is stated that the Applicant filed the claim for a total sum of Rs.2,42,12,170/- in the claim form dated 11.03.2021. The Liquidator vide communication dated 17.04.2021 partially admitted the claim to the tune of Rs.2,21,81,533/- and rejected the sum of Rs.20,30,637/- payable towards damage and interest.

4. It is stated the Authorized Signatory of the Corporate Debtor vide letter dated 18.02.2020 had accepted that United Studio had been working exclusively for the Corporate Debtor. As per Section 2A r/w Sec.2(f), Sec.6 and Sec 8A of Employees' Provident Fund & Miscellaneous Provisions Act, 1952 ('EPF & MP Act') the Corporate Debtor is deemed as the Principal Employer of United Studio and liable to clear the workmen dues under EPF & MP Act. Accordingly,



the Applicant passed an order under EPF & MP Act and the same was communicated to the Liquidator.

5. It is stated that the Liquidator vide letter dated 05.06.2021 responded that the letter dated 18.02.2020 sent by the suspended director is invalid. Further, the Liquidator added that he has not come across any contract referred to in the letter dated 18.02.2020 and there are no supporting documents in relation to that.

6. It is stated that as per Section 2A r/w Sec.2(f), Sec.6 and Sec 8A EPF & MP Act and Paragraph 30,36, and 36B of the Employees' Provident Fund Scheme, 1952 ('EPF Scheme') and Paragraph 4 of Employees' Pension Scheme, 1995 (Pension Scheme') and Paragraph 8(2) of the Employees Deposit-Linked Insurance Scheme, 1976 ('Insurance Scheme') it shall be the responsibility of the Principal Employer to pay the contributions payable himself and in respect of the employees, directly employed by him or employed thorough a contract.

7. It is stated that absence of written contract will not disprove the Principal Employer – Contractor relationship under the EPF & MP Act. It is further stated that the fact and actions of the parties amount to mutual consent and is a kind of a 'implied-in-fact' contract.

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8. It is stated that as per judgment of Hon'ble NCLAT in the case of **Regional Provident Fund Commissioner-1 Vs. Ramachandra D Choudry** in **Comp. Appeal. No.1001 of 2019** the Liquidator has to accept and clear the entire dues arising out of Provident Fund including interest and damages.

9. In the Counter, the Respondent/ Liquidator stated that the Applicant had filed the claim in Form-G dated 11.03.2023 without relevant documents. Therefore, the Liquidator vide letter dated 17.03.2021 requested the Applicant to submit proof of claims for substantiating the claim variations in Form-F dated 04.12.2019 filed during CIRP and Form-G filed during Liquidation of the Corporate Debtor.

10. Pursuant to that, the Liquidator vide letter dated 17.04.2021 intimated the Applicant about his decision of acceptance/rejection of the claims subject to the submission of documents therein. The same was reminded to the Applicant on 24.04.2021.

11. It is stated that in the meanwhile, the Liquidator ascertained that the claim filed by the Applicant is for the employees of other entity viz. M/s. United Design Studio which is not the Corporate Debtor.

12. It is stated that the letter dated 18.02.2020 relied by the Applicant was issued by the suspended director to M/s. United



Design Studio after the initiation of CIRP i.e. 01.08.2019 and the same cannot be treated as a valid document.

13. It is further stated that the M/s. United Design Studio is a partnership firm. It is doing the job works along with the Corporate Debtor to United India Shoe Corporation. There are no documents produced by the Applicant to show that the Corporate Debtor is a Principal employer of the M/s. United Design Studio.

14. It is stated that that there is no separate fund created by the Corporate Debtor. If any such claims are admitted, it will be distributed only from the liquidation estate.

15. Heard the submissions of both the parties, and perused the documents on record.

16. As submitted and from the records this Bench understood that Applicant alleging that the Corporate Debtor viz. Floram Shoes (India) Private Limited is the Principal Employer of M/s. United Design Studio and claiming the Provident Fund dues (including interest and damages) of M/s. United Design Studio from the Respondent/Liquidator of the Corporate Debtor.

17. In the instant case, the Applicant had submitted the claim in Form-G to the Liquidator on 11.03.2021, wherein the total dues of the Corporate Debtor and M/s. United Design Studio were mentioned as follows,



3.	Total amount of claim, including any interest as at Liquidation commencement and details of nature of claim.	TBVL16710-A:
		Contribution/
		Admin charges : <u>Rs.1,34,80,562/-</u>
		TOTAL : <u>Rs.1,34,80,562 /-</u>

	TBVL74517:
	Admin charges : Rs.94,82,007/-
	PENAL DEAMAGES: Rs.8,03,334/-
	7Q INTEREST : <u>Rs.4,46,267/-</u>
	TOTAL : <u>Rs.1,07,31,608/-</u>
	Grand Total: <u>Rs.2,42,12,170/-</u>

From letter of the Applicant dated 27.04.2021, placed Annexure-5 of the Application, it is seen that the claim amount under Ref. No.TBVL16710-A pertains to the Corporate Debtor and Claim under Ref No.TBVL74517 relates to M/s. United Design Studio.

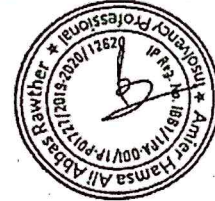
18. In response the Liquidator vide letter dated 17.04.2021, replied as under,

Details of Stakeholder's claim as per Regulation 31 (1) of IBBI (Liquidation Process) Regulations, 2016.

(Amount in Rs.)

Sl No.	Amount of claim submitted	Amount of claim admitted	Secured/Unsecured	Admitted/Rejected/Partly Rejected Proof
1.	2,42,12,170	2,21,81,533	Unsecured	20,30,637

No.R094, SBOA Unity Enclave, Mambakkam, Chennai - 600127





Reasons for the amount not admitted:

1. Claims pertaining to damages, interest etc. rejected.
2. Data related to contributions and administrative charges under proof claims to be provided.

The liquidator had, as per Regulation 23 of Liquidation Process Regulations, 2016, vide letter No. FSIPL/LIQ2021/19 dated 17.03.2021, called for the following other evidences or clarifications as necessary from a claimant for substantiating the whole or part of its claim. The final admission of the claims is therefore subject to the compliance of the said requirements mentioned in the letter, which are reiterated below for your ready reference.

Kindly arrange to provide the individual break up (year wise either financial or calendar) in IRS of the following with substantiating supporting documents:

1. Item No. TBVLR16710-A

- a) Contribution (account wise, item wise & year wise):
- b) Admin Charges: (account wise, item wise & year wise with calculation):
- c) Penal Damage, if any : (account wise, item wise & year wise with calculation):
- d) Interest, if any : (account wise, item wise & year wise with calculation):

2. Item No. TBVLR74517

- a) Contribution (account wise, item wise & year wise):
- b) Admin Charges: (account wise, item wise & year wise with calculation):
- c) Penal Damage, if any : (account wise, item wise & year wise with calculation):
- d) Interest, if any : (account wise, item wise & year wise with calculation):



3. As mentioned in Form G, item No. 10: The documents said to be attached are not attached with the application. Kindly submit documents as stated in item No.10.
4. Kindly clarify the claim amount substantial variances in Form F submitted on 04.12.2019 when the Corporate Debtor was undergoing Corporate Insolvency Resolution Process compared to the Form G submitted now.

Kindly acknowledge the receipt of this document and your response within 7 days from the receipt of the letter.

Thanking you



The Liquidator has clearly mentioned that "*the final admission of the claims is therefore subject to the compliance of the requirements mentioned in the letter*". In addition the Liquidator mentioned that "*the documents said to be attached along with the Form-G are not attached*".

19. With respect to the query of the Liquidator regarding break-up of the claim amount, the Applicant vide letter dated the 22.04.2021 replied that the all the dues in the claim form are determined based on the order passed by the quasi-judicial authority under relevant provisions of EPF & MP Act, which has attained finality. It also enclosed the recovery order/certificate.

20. On perusing the recovery order dated 20.05.2021 passed by Assistant P.F. Commissioner, we find that the said order was passed based on the letter dated 18.02.2020 issued by the erstwhile director of the Corporate Debtor in the capacity of Authorized Signatory of the Corporate Debtor.

21. The CIRP of the Corporate Debtor was initiated on 31.07.2019 in IBA/579/2019. The above letter relied in the recovery certificate was issued by the erstwhile director of the Corporate Debtor on 18.02.2020. It is settled law that the erstwhile director Corporate Debtor is not authorized to do anything on behalf of the Corporate Debtor. IRP/RP is the only authorized person to officially communicate anything on behalf the



Corporate Debtor. Thus, the assessment arrived in the recovery certificate dated 20.05.2021 is not convincing and same could not be considered.

22. Be that as it may, now we refer to relevant provisions of IBBI (Liquidation Process) Regulation 2016.

"Regulation 20: Claims by other stakeholders.

...(2) The existence of the claim of the stakeholder may be proved on the basis of -

- (a) the records available in an information utility, if any, or*
- (b) other relevant documents which adequately establish the claim, including any or all of the following-*
 - (i) documentary evidence of notice demanding payment of unpaid amount or bank statements of the claimant showing that the claim has not been paid and an affidavit that the documentary evidence and bank statements are true, valid and genuine;*
 - (ii) documentary or electronic evidence of his shareholding; and*
 - (iii) an order of a court, tribunal or other authority that has adjudicated upon the nonpayment of a claim, if any.*

Regulation 23: Substantiation of claims.

The liquidator may call for such other evidence or clarification as he deems fit from a claimant for substantiating the whole or part of its claim."

The above provision provides that the claimant has to prove the existence of the debt with appropriate documents as enumerated in Regulation 20(b). As per Regulation 23 the Liquidator has the power to call for such proofs to substantiate the claim of the claimants. In the instant application the Applicant has not provided



any such proof other than the recovery certificate to support the claim with respect to M/s. United Design Studio. There is no proper document to show that the Corporate Debtor is liable for the dues of M/s. United Design Studio. Accordingly we conclude that the rejection of claim of in respect of M/s. United Design Studio requires no interference of this Tribunal.

23. Similarly, for the dues of the Corporate Debtor, the Applicant department has not provided sufficient documents required by the Liquidator. Since the due pertains to the employees of the Corporate Debtor, this Tribunal in the interest of justice provides one more opportunity to the Applicant to provide the documents to the Liquidator. The Liquidator is directed to consider the claim in accordance with law.

24. In aforesaid terms, this Application IA(IBC)/676(CHE)/2021 is **disposed off**.

- Sd -

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

- Sd -

SANJIV JAIN
MEMBER (JUDICIAL)

*Order pronounced under Rule 151 of NCLT Rules 2016, by **Hon'ble Technical Member Ravichandran Ramasamy** on behalf of the Bench comprising of **Sanjiv Jain, Member (Judicial)** and **Ravichandran Ramasamy, Member (Technical)**.*


Court Officer