

NATIONAL COMPANY LAW TRIBUNAL

GUWAHATI BENCH

GUWAHATI

**I.A (IBC) No. 53/GB/2021
In
CP (IB)/03/GB/2020**

Coram: Hon'ble SHRI H. V SUBBA RAO, MEMBER (JUDICIAL)

Hon'ble SHRI PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

**ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY LAW
TRIBUNAL, GUWAHATI BENCH ON 30.09.2021.**

Name of the Company: Employees State Insurance Corporation Applicant

&

Shri Kamal Agarwal, RPRespondent

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

S.No.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MS. ANAKSHI NEOG	Advocate	Petitioner	Present in
2.	MR. KAMAL AGARWAL	RP	In person	Video Conference

ORDER

Date of Order: 30.09.2021

The Applicant is represented through respective Learned Counsel(s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.

Sd/-

**(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)
& Adjudicating Authority**

Sd/-

**(H. V SUBBA RAO)
MEMBER (JUDICIAL)
& Adjudicating Authority**

Dated this 30th day of September, 2021

ORDER

[Per se: Hon'ble Shri H.V Subba Rao, Member (J)]

1. That the present application i.e. I.A (IBC) No. 53/GB/2021 is filed by Employees' State Insurance Corporation (hereinafter referred as "ESIC"), a statutory body under the Ministry of Labour and Employment, Government of India.
2. It is submitted by the Petitioner here that a petition has been filed u/s 9 of Insolvency and Bankruptcy Code, 2016 by Shri Manish Soni against M/s Concept Eduventures Pvt. Ltd. being the Corporate Debtor (hereinafter referred as 'CD') wherein vide order dated 26.02.2020 by this Tribunal, Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') has been initiated upon the CD and Shri Kamal Agarwal has been appointed as Resolution Professional (RP) in the matter.
3. The last date for submission of claim was on 11.03.2020 as per the announcement dated 29.02.2020. However, the 90 days period as per Section 12(2) of IBC Regulations 2016 has expired on 25.05.2020 as the Insolvency proceedings was initiated upon the CD vide order of this Tribunal dated 26.02.2020.
4. The CD is registered under ESIC by the name of M/s. Concept Eduventures Pvt. Ltd. and has failed to pay the contribution for the period September, 2018 to January, 2019 for an amount of Rs.2,23,606 (Rupees Two Lakhs Twenty Three Thousand Six Hundred and Six only) along with interest @ 12% per day on the contribution amounting to Rs.73.51 per day and has already generated challans for the said period but has failed to make payment till date. Further, the current pending dues stands at Rs.10,89,161.00 (Rupees Ten lakhs Eighty Nine thousand One hundred Sixty One only) inclusive of the interest @ 12% p.a. on the arrears till date. In this regard, the Authorized Officer issued C-18 dated 23.08.2019 and subsequently recovery action was initiated vide C-19 dated 19.12.2019 to realize the statutory dues followed by ESICP-2 dated 16.01.2020 whereby the CD was given 15 days' time period to pay the dues. In spite of providing sufficient time to present views/objections and any other issues

related to the aforementioned defaulting amount/period, no reply or responses whatsoever was received from the defaulting CD. On the failure to respond on the part of the CD, the Recovery Officer, ESIC NE Region further issued ESICP-4 (Prohibitory Order) dated 18.03.2020 towards the bank of the CD viz. HDFC, Maligaon Branch, Guwahati. Further reminders were issued to the bank viz. HDFC, Maligaon Branch, Guwahati on 11.06.2020 and 12.08.2020. Copies of the Form C-18 dated 23.08.2019, Form C-19 dated 19.12.2019, Form ESICP-2 dated 16.01.2020 are annexed herewith and marked as ANNEXURE- 1, 2 & 3 respectively. Copies of the prohibitory order dated 18.03.2020 and subsequent reminders dated 11.06.2020 & 12.08.2020 are annexed herewith and marked as **ANNEXURE-4** (Series).

5. That ESIC was not aware of the initiation of the CIRP proceedings initiated upon the establishment/CD till now and only vide email dated 15.08.2020 from the previous IRP, Shri Amit Pareek, the matter was brought to the notice of the Office. In reply to the aforesaid email dated 15.08.2020, the Recovery Officer, ESIC NE Region vide letter no. 43000075120001399/RRC dated 06.10.2020 apprised the IRP, Amit Pareek about the default of the statutory dues by the CD. In reply to the said letter the IRP vide email dated 16.10.2020 informed the applicant that Public announcement as required under IBC 2016 has been made in the Assam Tribune-English Newspaper and Amar Assam-Regional language newspaper on 29.02.2020 regarding the CIRP of M/s Concept Eduventures Pvt. Ltd. and the applicant was asked to proceed as per the public announcement made on 29.02.2020. Copy of the email dated 15.08.2020, letter no. 43000075120001399/RRC dated 06.10.2020 and the e-mail dated 16.10.2020 are annexed herewith and marked as ANNEXURE-5, 6 & 7 respectively.

6. That after receiving the information vide email dated 15.08.2020 regarding initiation of the CIRP proceedings, the Recovery Officer, vide letter dated 03.11.2020, informed the Asst. Director (Legal) of the Applicant about the CIRP proceedings and accordingly, he requested to seek legal opinion regarding the matter as the last date for submissions of claims has been over. Subsequently adequate opinion and steps are taken, however due to **the prevailing pandemic Covid-19, the office of the**

applicant was functioning in a staggered manner and many of the officers being affected by the virus in addition to other technical difficulties, the applicant could not submit the Claim on an immediate basis. However, the applicant forwarded its proof of claim dated 17.09.2021 in Form B along with supporting documents before the present Resolution Professional vide email dated 18.09.2021 but as the last date of submission of claim has been lapsed on 25.05.2020, the applicant is moving the application before this Tribunal seeking appropriate direction to the Resolution Professional to consider the claim of the applicant and thereby, put it before the Committee of Creditors for its considerations. Copy of the letter dated 03.11.2020 and Proof of Claim in Form B are annexed herewith and marked as **ANNEXURE- 8 & 9** respectively.

7. That it is submitted that there has been an inadvertent delay of 481 days in submitting the claim before the Resolution Professional **which is totally unintentional and not deliberate.** The delay has occurred as the applicant was not aware of CIRP proceedings and has been aware only after email dated 15.08.2020 from the Resolution Professional. Thereafter, the applicant has moved forward for doing the needful and accordingly took steps for verifying the latest outstanding dues of the CD, however, **in the meanwhile, most of the employees of the applicant were affected by Covid-19 and as such the process was in halt and in addition it caused technical difficulties for the staffs to work in a staggered manner considering the partial curfew imposed during the first half of the year 2021.** As such there has been some delay in filing the claim before the Resolution Professional.

8. That presently, as on 17.09.2021, the total amount due from the CD is calculated to be Rs.10,89,161.00 (Rupees Ten lakhs Eighty Nine Thousand and One hundred Sixty only). It has been known that no resolution plan has been approved by Committee of Creditors and the claims of the applicant arise well before the initiation of CIRP of the CD and that recovery action was already initiated on the CD. It is to be also stated that as per Section 94 of the ESI Act, contribution due to the ESIC has priority over other

debts of the employer company. As such the claims of the applicant may be directed to be considered before the COC.

9. That it is pertinent to state here that as per Section 12(2) of IBC regulations, 2016, "*a creditor who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the Insolvency commencement date*". The applicant further submits that it is a government body, its dues should already have been recorded and reflected in its books of account for the relevant period. Apparently, the respondent had to prepare list of creditors in accordance with the books of account and then invite claims of the creditors otherwise it would have led to a situation where the dues reflected in the books of accounts would be rendered meaningless. As such the Resolution Professional should have informed the applicant within the stipulated time frame and thus the belated appraisal has caused prejudice to the applicant.

10. That the applicant further submits that the Resolution Professional is under legal obligation to comply with statutory liabilities and the refusal of the applicant's claim on technical ground is causing injustice to the applicant as it shall be very easy for defaulters to evade the statutory liabilities/claim on the ground of delay. Further, it is duty and legal obligation on the part of the company and the Resolution Professional to include all statutory liabilities in the Resolution Plan placing it before this Tribunal.

11. That in the premises aforesaid it is necessary to direct the respondent to consider the claim of the applicant already submitted on 17.09.2021 being statutory Government dues. The ESI Act, 1948 is a social security legislation intended to provide full medical health care to cover workmen and their family members as well as financial assistance in the form of various cash benefits to the covered workmen in the event of sickness, injury etc. and the funds required for the administration of this scheme are generated by way of contributions payable by the employers. As such it is prayed for

directing the Resolution Professional to consider and admit the claim submitted by the applicant in Form B.

12. That the applicant herein would like to rely on an order dated 06.01.2021 passed by the NCLT, *Mumbai Bench in I.A No. 3238/2019 in C.P (IB) No. 197/2018 in the matter of IDBI Bank Ltd. (Financial Creditor) vs. Unimark Remedies Limited. (Corporate Debtor)* in a similar situation whereby it was directed to the Resolution Professional to consider the claim of the applicant and put it before the COC for its considerations. Hence, the applicant being similarly situated prays for consideration of its prayer otherwise it causes great prejudice to the applicant. Copy of the aforesaid order dated 06.01.2021 of the NCLT, Mumbai Bench is annexed herewith and marked as **ANNEXURE-10**.

13. That there is urgency in the matter and this is a fit case for passing ex-parte ad-interim orders. It is contemplated that the Resolution Professional is in the process of shortly convening a meeting of the COC to take a final decision to approve Resolution Plan without considering the claim of the applicant.

14. That unless orders as prayed for herein are passed, not only the applicant would suffer irreparable loss, injury and prejudice, but the CIRP of the CD will be adversely impacted for the reasons stated above.

15. The applicants in this present application has prayed for the below mentioned reliefs:-

- a. Condone the unintentional delay of 481 days in submitting the claim of the applicant and be pleased to grant leave to the applicant to submit its claim before the Resolution Professional;
- b. Direct the Resolution Professional to consider the claim of the applicant and put it before the Committee of Creditors for its considerations;

- c. Pass an order of injunction restraining the Resolution Professional from convening any further meeting of Committee of Creditors for the purpose of obtaining final approval of any Resolution Plan or placing before the Committee of Creditors any agenda for approval of Resolution Plan without being considered the claim of the applicant;
- d. Ad-interim orders in terms of prayer above
- e. Such further orders or directions be passed as this Hon'ble Tribunal may deem fit and proper.

ORDER

16. Heard the counsel of the Petitioner and the RP in person.

17. The counsel of the Petitioner submits that the Petitioner is a Statutory Body. It could not file its claim in time because of prevailing Pandemic Covid 19. Shutdown/ lockdown, curfew at Guwahati In addition to that many of the officers of the Applicant were affected by the virus. She has prayed for passing the direction to the RP to accept the claim of the Applicant and file the same before the CoC for its considerations before approval of Resolution Plan, if any.

18. On the other hand, the RP submits that the Applicant is a Statutory Body and the CIRP is going on. Hon'ble Bench may permit him to accept the claim and put it before CoC for their consideration.

19. We are of the considered view that the reasons i.e. Covid situations at Guwahati prevailed, Officials suffered from the Covid Pandemic Virus mentioned by the Applicant are convincing and acceptable. Moreover the CIRP is under process. Hence, the RP is hereby permitted to accept the claim of the Applicant and submit the same before the CoC The CoC has to deal the claim amount of the Petitioner as per the provisions of IBC, 2016.

20. Hence the **I.A (IBC) No. 53 of 2021** in C.P **(IB) No.03/GB/2020** is disposed of with the above observation & directions.

Sd/-

(Prasanta Kumar Mohanty)
Member (Technical)
&
Adjudicating Authority

//30.09.2021//

Sd/-

(H.V Subba Rao)
Member (Judicial)
&
Adjudicating Authority