

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI

IA(IBC)/27(CHE)/2023 in IBA/1437/2019

*filed under Section 60(5)(b) & (c) of Insolvency & Bankruptcy Code, 2016 along  
with Rule 11 of NCLT Rules*

*In the matter of M/s. Vaasan Medical Centre Private Limited*

Assistant Provident Fund Commissioner / Recovery Officer  
EPFO Regional Office  
Employees' Provident Fund Organization  
P.B. No. 588, Sree Complex,  
No.18, Madurai Road,  
Trichy – 620 008

*... Applicant*

*-Vs-*

M/s. Vaasan Medical Center Private Limited  
Corporate Debtor Represented by its  
Resolution Professional Mr. Gopalsamy Ganesh Babu  
986, H Block,  
24<sup>th</sup> Street, Anna Nagar West,  
Chennai – 600 040

*... Respondent*

*Order pronounced on 25<sup>th</sup> August, 2023*

CORAM:

Justice RAMALINGAM SUDHAKAR, PRESIDENT  
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : P.K. Paneer Selvam, Advocate  
For Respondent : E. Om Prakash, Senior Advocate  
A. Karthikeyan, Advocate

## ORDER

(Heard through physical mode)

*Per:- SAMEER KAKAR, MEMBER (TECHNICAL)*

IA(IBC)/27(CHE)/2023 is an Application which is moved by The Regional Provident Fund Commissioner – I, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') seeking relief as follows;

- A. *To set aside the communication of the Respondent dated 21.11.2022 and the resolution made in the 11<sup>th</sup> meeting of the Committee of Creditors of the Corporate Debtor dated 07.11.2022 to reject the claim of the Applicant, consequently;*
- B. *To direct the Respondent to pay the entire claim amount of Rs.7,09,13,267/- payable by the Respondent on first priority from and out of the liquidation assets / estate of the Respondent; and*
- C. *For such further and other reliefs as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case;*

2. The present Application is filed by the Applicant to set aside the communication of the RP dated 21.11.2022. The CIRP in respect of the Corporate Debtor was initiated by this Tribunal on 01.11.2021. The CoC approved the Resolution Plan in its 8<sup>th</sup> CoC meeting dated 11.07.2022. In

---

IA(IBC)/27(CHE)/2023;  
In the matter of M/s. Vaasan Medical Centre Private Limited


Page 2 of 9

the meantime, the EPFO filed a claim before the RP on 22.06.2022 for a total sum of Rs.7,09,13,267/- and the same was rejected by the RP on 25.06.2022.

3. As against the said rejection by the RP, the EPFO filed IA(IBC)/936/CHE/2022 and IA(IBC)/937/CHE/2022 before this Tribunal seeking condonation of delay in filing the claim before the RP. This Tribunal has passed the following order on 17.10.2022;

*"IA/936(CHE)/2022 is filed seeking the following reliefs: -*

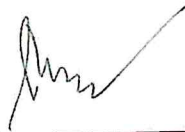
*"a. to condone the delay of 144 days from 30.01.2022 to 23.06.2022 in filing claim before the Respondent, consequently.*

*b. to set aside the order / communication of the Respondent dated 24.06.2022 rejecting the full claim amount of the Applicant of Rs.7,09,13,267/- and consequently.*

*c. to direct the Respondent to admit the full claim of the Applicant dated 22.06.2022 and to pay the entire claim amount of Rs.7,09,13,267/- payable by the Respondent on first priority from and out of the liquidation assets/estate of the Respondent.*

*d. for such further and other reliefs as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case."*

The delay of 144 days is hereby condoned for the reasons stated in the petition.



The RP is directed to collate the claim within seven (7) days from the date of receipt of this order and intimate the outcome of the same to the applicant.

Accordingly, IA/936(CHE)/2022 stands disposed of.

IA(937(CHE)/2022 has been filed with the following reliefs:-

*"a. To condone the delay of 47 days in filing application to condone the delay of 144 days in filing claim before the Respondent and for other consequential reliefs.*

*b. For such further and other reliefs as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case."*

No objection was placed by the RP. We have considered the reason of delay as explained in the IA. Delay of 47 days is hereby condoned.

Accordingly, IA(937(CHE)/2022 is hereby allowed."

4. Based upon the order passed by this Tribunal, the RP considered the claim of EPFO. The RP on 21.11.2022 intimated to the EPFO that only an amount of Rs.2,49,22,514/- will be paid towards the PF dues, payable in 24 months. Aggrieved by the said rejection, the EPFO has filed the present Application before this Tribunal.



5. Heard the submissions made by the Learned Counsel for the Applicant and the Learned Senior Counsel for the Respondent.

6. The CIRP in respect of the Corporate Debtor was initiated on 01.11.2021. In the claim Form filed by the EPF Department before the RP dated 22.06.2022, the EPFO has claimed interest until 31.05.2022. The claim form filed by the EPFO includes the interest, which has accrued after the Insolvency commencement date (ICD) i.e. from 01.11.2021 till 31.05.2022.

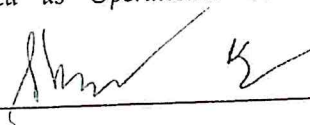
7. Under the provisions of IBC, 2016 the claimants are required to file their claim as on the ICD, which in the present matter is 01.11.2021. The claimants are required to calculate the claim including interest, if any, only upto 01.11.2021. However, in the present case, since the EPFO department has belatedly filed their claim before the RP, they have included the interest upto 31.05.2022 in their claim form which is a date post the ICD. Thus, the claim form submitted by the EPFO suffers from inherent defect and is required to be dismissed on this count itself.



8. Be that as it may, as per Form – H, the Fair value and the Liquidation value arrived at for the Corporate Debtor is Rs.2.06 Crore and Rs.1.34 Crore respectively. In the present case, the RP as per the books of the Corporate Debtor has admitted the claim of the EPFO to the tune of Rs.2,49,22,514/- (*Rupees Two Crore Forty-nine Lakhs Twenty-two thousand five hundred and fourteen only*).

9. In the matter of Jet Aircraft Maintenance Engineers Welfare Association -Vs- Ashish Chhawchharia Resolution Professional of Jet Airways (India) Ltd. & Ors. in *Company Appeal (AT) (Insolvency) No. 752 of 2021* while dealing with the dues of the EPFO in para 117 has held as follows:

117. In the appeal filed by the Regional Provident Fund Commissioner, it has been pleaded that the claim was filed by the Appellant for an amount of Rs.24,40,65,594/- towards damages under Section 14B of Employees' Provident Funds & Miscellaneous Provisions Act 1952, as per the order dated 17.10.2018. It is further mentioned that interest under Section 7Q was also levied of Rs.12,85,92,763/-, which amount was paid by the establishment. The amount which was claimed by the Appellant was fully admitted by the Resolution Professional. List of Creditors mentions the admitted amount of the Appellant. The Appellant has filed his claim in Form B, which Form B is at page 102 to 104 of the Appeal. The Appellant's claim was not in the nature of workmen dues. The claim was also with regard to damages imposed under Section 14B of the 1952 Act. The Appellant was treated as Operational Creditor by the Resolution

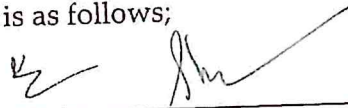


*Professional, hence, the Appellant was allocated a fixed amount of Rs.15,000/- which was allocated to all Operational Creditors except the workmen.*

*(emphasis supplied)*

10. In the case of Jet Airway (*supra*) the claim of the EPFO was fully admitted by the RP. *Per contra*, in the present case, the claim of the EPFO has not been admitted in full by the RP. The dues which are admitted by the RP are being paid in full in the present case. Hence it cannot be said that the payment proposed to the EPFO Department is contrary to the proposition laid down in Jet Airways (*supra*). Also, in the present case, the EPFO department while filing the claim before the RP, have included the interest upto 31.05.2022 in their claim form, which is a date post the ICD. Hence, there are inherent defects in the claim form filed by the EPFO and as such, the EPFO cannot claim that their entire amount of Rs.7.06 Crores has to be paid.

11. In so far as the dues arising prior to the CIRP period, eventhough the Applicant has claimed interest till 31.05.2022, we have directed the RP to crystallize the amount due to the EPF Department as on the Insolvency Commencement Date. Accordingly, RP has crystallized the amount of EPF dues as on the ICD i.e. 01.11.2021, which is as follows;



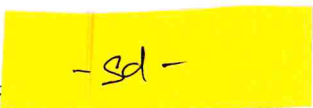
14) THE CRYSTALLISED AMOUNT OF EPF DUES AS ON INSOLVENCY COMMENCEMENT DATE (01/11/2021) – REMAINING UNPAID.				
S.No.	Assessing Period	Order Passed U/S of the EPF Act & Date of Order	Outstanding Dues (INR)	Remarks
1)	02/2016 to 06/2017	7A (24/04/2018)	1,16,07,703.00	Appeal Pending before the Hon'ble CGIT, Chennai in EPFA No.617/2018 [Conditional Order dated 06/12/2018 to deposit 40% of Total Assessed Amount of Rs.2,15,67,853/- complied with]
2)	7/2017 to 6/2018	7A (27/09/2018)	59,33,247.00	Appeal Pending before the Hon'ble CGIT, Chennai in EPFA No.677/2018 [Conditional Order dated 07/06/2019 to deposit 40% of Total Assessed Amount of Rs.1,15,76,215/- complied with]
3)	11/2014 to 05/2015	14B (30/05/2017)	27,61,989.00	Appeal Pending before the Hon'ble CGIT, Chennai in EPFA No.43/2017 [No Interim Orders Issued]
4)	06/2015 to 12/2015	14B (13/04/2018)	26,47,460.00	Appeal Pending before the Hon'ble CGIT, Chennai in EPFA No.609/2018 [No Interim Orders Issued]
5)	04/2017 to 03/2018	14B (04/07/2018)	12,51,028.00	Appeal Pending before the Hon'ble CGIT, Chennai in EPFA No.650/2018 [In WP.No.19513/2019, conditional Order dated 02/08/2019 passed by the CGIT modified to 25% of Total Assessed Amount of Rs.16,68,037/- complied with]
6)	04/2018 to 03/2019	14B (18/03/2021)	46,75,361.00	Nil
7)	04/2018 to 03/2019	7Q (18/03/2021)	22,44,957.00	Nil
Total Crystallized EPF Amount			2,98,70,717.00	

12. The RP has stated that the present crystallized EPF amount of Rs.2,98,70,717/- as on the date of commencement of CIRP will be paid to the EPF Department by adjusting the same in the amount payable to the Secured Financial Creditor. Further, it is stated that as regard the dues of the EPF during the CIRP, they will form part of the CIRP expenses and being dealt with separately.

13. Already it is stated that the Fair value and the Liquidation value arrived at for the Corporate Debtor is Rs.2.06 Crore and Rs.1.34 Crore respectively. It is to be noted here that if the Corporate Debtor is ordered for Liquidation, the EPFO Department will not be in a position to recover a sum not more than Rs.1.34 Crores and the said amount would not even be sufficient to pay the CIRP cost in full. However, in the present case, the EPF Department is proposed to be paid a sum of Rs.2,98,70,717/- (including CIRP period unpaid EPF amount of Rs.61,55,504/-) as per the Resolution plan.

14. Accordingly, we direct that after the approval of the Resolution Plan, the RP shall pay an amount of Rs.2,98,70,717/- (including CIRP period unpaid EPF amount of Rs.61,55,504/-) to the Applicant viz. EPF Department as per the payment terms stipulated in the Resolution Plan. With the above said directions, this Application stands disposed off

  
-sd-  
SAMEER KAKAR  
MEMBER (TECHNICAL)

  
Justice RAMALINGAM SUDHAKAR  
PRESIDENT

Raymond