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

IA/1027/CHE/2021 in IA/1228/IB/2020
in Application IBA/42/2020 Filed under
Sec.42 of the Insolvency & Bankruptcy
Code, 2016

THE ASSISTANT PROVIDENT FUND COMMISSIONER (RECOVERY)
Employees PF Organization
Regional Office, 37, Royapettah High Road,
Chennai- 600 014.

... Appellant

-Vs-

CA.S.Prabhu
Liquidator- Abra Motors Private Limited
SPP& Co. Chartered Accountants,
No.27/9, Nivedh Vikas , Pankaja Mill Road,
Puliyakulam, Coimbatore- 641 045,
Tamil Nadu.

...Respondent

Present:

For Applicant : Mr. Vishwanathan, Advocate
For Respondent : Ms. Akshitha, Advocate

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

Order Pronounced on 21st March 2022

ORDER

Per: R SUCHARITHA, MEMBER (JUDICIAL)

This Appeal has been filed by the Appellant "Assistant Provident Fund Commissioner" under Section 42 of the Insolvency and Bankruptcy Code, 2016 (hereafter IBC, 2016) challenging the

order passed by the Respondent Liquidator seeking following reliefs:-

- a) " To direct the Respondent to admit the claim form of the Appellant for an total amount of Rs.26, 16, 268/- (Rupees Twenty Six Lakhs Sixteen Thousand Two Hundred and Sixty Eight Only) and amend the list of stakeholders.
- b) To pass any such orders as it deems fit in the above circumstances of the case and thus render justice."

2. In IBA/42/2020, the Corporate Debtor (Abra Motors Private Limited) was admitted to CIRP (Corporate Insolvency Resolution Process) by this Tribunal order dated 08.05.2020. Subsequently in IA/1228/IB/2020, the Liquidation of the Corporate Debtor was ordered on 16.04.2021.

3. The facts relevant to decide this Appeal on merits are enumerated hereunder:-

- (i) The claim was filed by the Appellant in Form B dated 12.04.2021 through registered post for admission of claim worth Rs. 26,16,268 (Rupees Twenty Six lakhs Sixteen Thousand Two Hundred and Sixty Eight) to the Interim Resolution Professional.
- (ii) The Appellant received a letter on 26.04.2021 from the Respondent to submit a claim in the format prescribed by law.

- (iii) Fresh claim was submitted by the Appellant in Form-C dated 28.04.2021 in accordance to the IBBI (Liquidation Process) Regulations, 2016 for a claim amount of Rs. 26,16,268/- (Twenty Six lakhs Sixteen Thousand Two Hundred and Sixty Eight) along with proceedings UO.No.TN/RO/CHN(South)/53938/2020 dated 16.10.2020.
- (iv) The Respondent acknowledged the claim vide email dated 22.06.2021 and further sought additional documents to substantiate the claim as no assessment order or recovery order was attached with the claim submitted.
- (v) In response to the remainder mails dated 26.06.2021 and 07.07.2021 sent by the liquidator, to substantiate the claims submitted in Form-C dated 28.04.2021, the Appellant had sent a letter dated 16.07.2021 clarifying the short remittance against the dues in year 2012-13.
- (vi) The Respondent vide letter dated 16.07.2021 had communicated to the Appellant that, owing to no Assessment or Recovery order, the claim is rejected "in full for time being".
- (vii) In response to the abovementioned, the Appellant vide letter dated 27.07.2021, 02.09.2021 had sent a letter to the Respondent substantiate the claim. For which the Respondent had replied vide letters dated 05.08.2021 and 11.09.2021, requesting the

Appellant to submit the Assessment Order and computation with regard to the claim Form C dated 28.04.2021.

4. The Ld. Counsel for the Appellant submitted that, the Respondent had failed to take notice of the existence of debt which can be culled out from the proof submitted along with the Claim form and the subsequent clarification letters sent by the Appellant. Further, it was submitted that, the Respondent Liquidator has the onus to determine the quantum of the amount claimed by the claimant in accordance to Section 41 of the Insolvency and Bankruptcy Code, 2016. It is further averred in para 14 of the Application that the Respondent shall make the best to estimate the claim based on the information available.

5. The Respondent/ liquidator had filed his counter/Reply statement in this matter. The Ld. Counsel for the Respondent submitted that, the Appellant under Section 42, IBC, 2016 ought to have filed the Appeal within 14 days from the receipt of such rejection of the claim. In this matter, the Respondent Liquidator vide letter dated 16.07.2021 had rejected the claim of the Appellant due to insufficient documents/ Assessment order to substantiate the claim. Further, it was submitted that in para 3(a) of the counter stated filed by the Respondent that this Appeal had been filed after 30 days from the receipt of the claim rejection letter.

6. Thereafter, the Ld. Counsel for the Respondent submitted that, the Appellant in the communications had highlighted the PF dues pertinent to the year 2008-09. However, the Corporate Debtors Account book does not reflect any PF dues, thus the PF department has to prove their claim known to law. Thus, on subsequent communication with the Appellant in the letter dated 11.09.2021, the Respondent had directed the Appellant herein to submit the necessary documents to substantiate the claim.

7. Heard the submissions made by both the parties. This Appeal has been filed by the Appellant, challenging the order passed by the liquidator of the Corporate Debtor herein Viz., Abra Motors Private Limited in the letter dated 16/07/2021, rejecting the claim of the Appellant in full.

8. This present Appeal has been filed by the Appellant as IA/1027/CHE/2021 under Section 42 of IBC, 2016 dated 26.10.2021 challenging the rejection of claim amount of Rs. 26,16,268/- (Twenty Six lakhs Sixteen Thousand Two Hundred and Sixty Eight) by the Respondent. Apropos the said Section is extracted hereunder:-

"42. Appeal against the decision of liquidator.

A creditor may appeal to the Adjudicating Authority against the decision of the liquidator rejecting the claims within fourteen days of the receipt of such decision."

9. Further, the Respondent herein in the Counter statement field had submitted that the Book of Accounts of the Corporate Debtor does not reflect the said dues pertinent to the year of 2008-09. As material particulars are not furnished and in the absence of the Assessment order he was left with no choice but to reject the claim in full for the time being as reflected in the letter/proceedings dated 16.07.2021.

10. Perused the documents placed on record. The Appellant ought to have filed this Appeal on receipt of the order of rejection, on or before 14 days from such date. It is averred in para 10 of the typeset filed along with the Appeal that, the Appellant herein received the rejection letter of the Respondent on 23.07.2021. However, the delay in filing the Appeal is supported by the Judgment of the Hon'ble Supreme Court in the matter of **In Re: Cognizance for Extension of Limitation, Suo Motu Writ (Civil) No. 3 of 2020.**

11. The Learned Liquidator has filed a detailed counter. The claim amount of the Applicant is short remittance. The documents filed along with the Application at Page No. 57, by letter dated 16.07.2021, the Applicant has given a tabular column, claiming short remittance from 2008 – 2009 to 2018 – 2019. However, the



Applicant has not filed any order passed by the EPF Authority under the EPF Act like issuance of notice or order passed by the PF authorities. Further, no supporting documents have been enclosed in this regard. Hence, we conclude that the Liquidator was right in rejecting the claim of the Appellant.

12. Accordingly, IA/1027/CHE/2021 stands **dismissed**.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

Vinita Varshini