



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**IA.2152/2022**

**IN**

**CP. No. 1443/MB-IV/2020**

Under Section 60(5) of the Companies Act, 2013

In the matter of:

**Satish Kumar Gupta**

Resolution Professional/Applicant

V/s

**Employees' Provident Fund Organization & Ors.**

... Respondents

In the matter of:

**Vikash Parasaprapurria**

...Operational Creditor

V/s

**Bombay Rayon Fashions Limited**

...Corporate Debtor

**Order delivered on: 17.03.2023**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) :

Ms. Tine Abraham a/w Ms. Kanika  
Sharma, Adv. for the  
Applicant/Resolution Professional  
present.

For the Respondent(s) :

None present.



**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This is an Application No. 2152/2022 is filed on 04/08/2022 by Ms. Shantanu T Ray, the Interim Resolution Professional of M/s Bombay Rayon Fashions Limited (“Corporate Debtor”) u/s 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (“Code”) seeking necessary directions for detachment of bank account of the Corporate Debtor. Thereafter, Mr. Satish Kumar Gupta was appointed as Resolution Professional and he has filed an additional affidavit in the capacity of Applicant to include some other bank accounts also and has accordingly modified the reliefs as follows:

*“(b) Pass an order directing the Respondents to de-attach the account of the Corporate Debtor being Account No. 30233989460 maintained with the State bank of india, Industrial Finance Branch and Account being No. 020010200043421 maintained with Axis Bank, Khar West Branch, as well as Account No. 0000033299733293 in State bank of India at IFB, Natraj, 194, Sir MV Road, Andheri (E), Mumbai 400 069, Account No.31228100994, State Bank of india at IFB, Natraj, 194, Sir Mv Road, Andheri (E), Mumbai 400 069, Account No. 00000030012689855 in State Bank of India at Nhava Sheva port project, City of Mumbai-400707, Account No. 00000011196755490 in State Bank of India at Devanahalli, Aircargo Complex, Bangalore-560300, Account No. 32396213283 in State Bank of India at Apparel park, Doddaballapur, Bangalore, Account No. 00000030011574492 in State Bank of India at IFB, Natraj, 194, Sir M.V. Road, Andheri (E), Mumbai 400 069, Account No. 020010200020022 in Axis Bank, at Laxmi Ind Estate, Off. Veera Road, Lokhandwala, Andheri West Mumbai 400058, Account No. 020010200028440 in Axis bank at*



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*Laxmi Ind Estate, Off. Veera Desai Road, Lokhandwala, Andheri West Mumbai 400058, Account No. 606010200003216 in Axis bank at Industrial Estate, ward no. 9, Building No 120, Plot No. 78, Kolhapur Road, Ichalkaranji-416115, Account No. 910020046794479 in Axis Bank at B-6 Lajpat nagar II, New Delhi – 110024, Account No. 911020033908576 in Axis bank at #3573/1, 4<sup>th</sup> Ward, D cross main Road, Rajipur, Doddaballapur – 561203, Account no. 911020039595057 in Axis bank at Kamal Palace, Yashwant Niwas Road Branch, Near South Tukoganj, Indore M.P. 452003, Account No. 020010200035635 in Axis bank at Laxmi Ind Estate, Off, Veera Desai Road, Lokhandwala, Andheri West Mumbai 400058, Account No. 909020031141437 in Axis Bank at #3575/1, 4<sup>th</sup> Ward, D cross Main Road, Rojipur, Doddaballapur-561203;*

*(c) Pass an order permitting the applicant to operate the attached accounts mentioned in prayer clause (b) hereinabove and also permit the applicant to utilize the funds lying in the said account as CIRP Cost”.*

2. The applicant has enclosed letter dated 06.06.2022, an attachment order issued by EPFO, and letter dated 13.07.2022, a response of EPFO to the applicant’s letter dated 01.07.2022. In these letters, EPFO has stated that it had issued attachment orders on 06.06.2022 itself, while the order initiating CIRP against the Corporate Debtor was passed on 07.06.2022. Accordingly, its attachment order is prior to commencement of moratorium u/s 14 of the Code. It is relied upon decision of Hon’ble NCLAT in the case of Regional P.F. Commissioner Vs T.V. Balasubramanian (RP) (Sholingur Textiles Ltd) & anr (2020) ibclaw. In 127 NCLAT, wherein the Hon’ble NCLAT allowed the appeal of the PF department noting that attachment of the property of



the Corporate Debtor was made much before the initiation of CIRP, but it was only recorded in the registered during CIRP. During the course of proceeding the EPFO has not filed any reply, even their office is impleaded as Respondent No. 1 & R-2 in the Application.

3. The Applicant has relied on a decision of Hon'ble NCLAT Chennai in the case of *Mr. B. Parameshwar Udpa Vs. Assistant PF Commissioner and Anr. {Company Appeal (AT) (CH) (Ins) No. 231 of 2021}* wherein the Hon'ble NCLAT had allowed the appeal against the Adjudicating Authority's direction to the Resolution professional to make provisions for PF funds without receiving claims by the concerned authority.
4. We also notice that subsequent to the decision of Hon'ble NCLAT Chennai in the case of *Mr. B. Parameshwar Udpa (Supra)*, the Hon'ble Apex Court has upheld the decision of Hon'ble NCLAT in the case of *Jet Aircraft Maintenance Engineer's Welfare Association (202) ibclaw.in 861*, vide its decision reported at *{(2023) ibclaw.in 12 SC}* wherein it was held that PF and ESI funds are not part of Corporate Debtor's estate and do not belong to the Corporate Debtor. Further, this decision has been followed by the Hon'ble NCLAT Chennai in the case of *Ms. C.G. Vijay laxmi Vs. Sri Kumar Rajan, RP Hindustan News print Limited, (2023) ibclaw.in 123 NCLAT*, wherein the Hon'ble NCLAT further held that *the question whether the fund maintained by the Corporate Debtor or not pales into insignificance.*
5. Following the decision in the case of *Jet Aircraft Maintenance Engineer's Welfare Association (Supra)*, we hold that PF dues do not form part of Corporate Debtor's Assets and accordingly need to be excluded therefrom. We do not have any details of amounts lying in the attached bank accounts of the Corporate Debtor as well as the break-up of EPFO demand. In view of this, we direct the Resolution Professional to set aside money equivalent to PF contributions (both employee and employer) of the employee's, whose list is



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shared by the EPFO, from the balances lying in the attached bank account and give an undertaking to EPFO to remit such dues immediately upon receipt of Employee wise details of PF dues in default from its office. Upon submission of such undertaking by the Resolution Professional, the EPFO department shall issue necessary orders lifting the attachment over Applicant's bank account stated in the prayer quoted as above. Immediately upon vacation of the attachment and receipt of Employee wise details of PF dues, the Resolution Professional shall remit this money to the EPFO department for credit to the account of concerned employees. As regards claim of dues other than dues arising on account of Employer & Employee Contribution towards Provident Fund, the EPFO may file the claim before the Resolution Professional who shall admit claim of such amount after verification under the category of statutory dues.

6. With the above directions, IA-2152/2022 is partly **allowed**.

**Sd/-**

**Prabhat Kumar**  
**Member (Technical)**  
17.03.2023

**Sd/-**

**Kishore Vemulapalli**  
**Member (Judicial)**