



IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

IA (IB) No. 68/CB/2022
IN
CP(IB) No.111/CTB/2020

In the matter of:

An application under Section 60(5) of Insolvency and Bankruptcy Code (IBC), 2016;

-In-

In the matter of:

Employees' Provident Fund Organisation, represented through its Regional P.F. Commissioner-II (Legal)-cum-Authorised Signatory Sri Dasarathi Nag, aged about 41 years, S/o- Late Sri Hadi Nag having its Regional Office at Rourkela, Bhivishyanidhi Bhawan, Panposh Road, Rourkela – 769 012.

...Applicant

-Versus-

1. **OCL Iron and Steel Limited**, a company incorporated under the provisions of the Companies Act, 1956 having its registered office AT- Lamloi, Rajgangpur, Sundargarh, Odisha- 770 017;
2. **Mr. Vijay Kumar V. Iyer**, Resolution Professional for the Corporate Debtor having Registration No. IBBI/IPA-001/IP-P00261/2017-18/10490 at Deloitte India Insolvency Professionals LLP, One International Centre, Tower 3, 32nd Floor, Senapati Bapat Marg, Elphinstone Road (West), Mumbai- 400 013.

...Respondents

In the matter of:

Indian Bank (erstwhile Allahabad Bank);

...Financial Creditor

-Versus-

OCL Iron and Steel Limited;

...Corporate Debtor

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)



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Appearances:

For Applicant : Mr. Aurovinda Mohanty, Adv.
For Respondent(s) : Mr. Sumesh Dhawan, Adv.
Ms. Vatsala Kak, Adv.
Mr. Saswat K. Acharya, Adv.
Mr. Abhijeet Agarwal, Adv.
Mr. S. Agarwal, Adv.
Mr. J. Joshi, Adv.
Ms. J. Sahoo, Adv.

Order reserved on: 14.02.2023
Order pronounced on: 20.03.2023

ORDER

Per: Satya Ranjan Prasad, Member (Technical)

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (for brevity “**IBC, 2016**”) by the Employees’ Provident Fund Organisation “**EPFO**” (hereinafter referred to as “Applicant”) represented through its Regional P.F. Commissioner-II (Legal)-cum-Authorised Signatory Sri Dasarathi Nag with the prayer to issue notice to the respondents to show cause as to why they shall not be directed to pay the outstanding dues with up-to-date interest as per the law settled by the various legal foras and directing the Respondents to promptly release the outstanding dues in situation where the Respondents fail to show cause or show insufficient cause.
2. The applicant states that the Corporate Debtor (CD) is an establishment covered under the EPFO and Miscellaneous Provisions Act, 1952 having its E.P.F Code No. OR/RKL/7889 and, therefore, bound by the ends and corners of the provisions/schemes framed under the Act.
3. The petitioner on verification of the system records espied that, from the period from 04/2017 to 06/2019 that the CD had made sporadic deposits



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with respect to different statutory accounts. The said deposits made by the CD were not only irregular but also of a meagre amount.

4. That a challan is generated by an establishment against every wage month showing detail of amounts for onward remittance to the petitioner EPFO towards EPF & Allied dues in respect of its (establishment's) employees and a copy thereof (challan) is submitted for verification of such remittance by the petitioner organisation in its system. The present petitioner on verification of the challans, as submitted by the CD for the period of 04/2017 to 06/2019 in the system of EPFO, perceived that the CD has not deposited any amount whatsoever or very less amount in comparison to the dues amount shown in the challans generated towards EPF & Allied Dues in respect to its employees for respective months. Therefore, the CD/Respondent No. 1 Company is liable to pay Penal Damages accrued due to belated remittances of EPF & Allied Dues for the period from 04/1996 to 12/2020. Furthermore, the CD/Respondent No. 1 Company is also liable to pay the accumulated short deposit against the monthly returns submitted by it up to 03/2017.
5. That upon knowledge of such inconsistencies and failure to pay the above dues, the present petitioner organisation issued a series of correspondences dated 07.09.2020, 04.10.2020, 20.01.2021, 15.03.2021, 04.08.2021 to the present CD/ Respondent No. 1 to produce relevant records before the EPFO, Rourkela for verification of factual positions with respect of complying with the mandatory provisions of the Act. The majority of correspondence as sent by the Petitioner were returned undelivered with endorsement by the postal department that "Factory Closed". However, *vide* letter dated 12.02.2021 the CD/Respondent No. 1 Company replied to the letter dated 20.01.2021 of the Petitioner organisation; requesting therein for some additional time for submission of the records.



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6. Thus, there is a substantial amount accrued against the outstanding statutory dues that has to be paid by the CD/Respondent No. 1 Company. However, unfortunately the respondents have remained mute regarding the release of the dues.
7. Applicant states that the necessity for approaching this Adjudicating Authority has arisen in view of the fact that despite correspondences, the petitioner's demands still stand unattended. Therefore, this application is *bona fide* and made for the ends of justice. Unless, orders are passed as prayed for herein, the present petitioner will suffer irreparable loss, injury and prejudice besides defeating of the very intent and purpose of the legislator and above all the constitutional force behind such legislation.
8. In light of the above said facts and circumstances, petitioner prays that Adjudicating Authority be pleased to allow the present application in view of the legal force of the first charge of EPF & allied dues as upheld by various legal foras on merit.
9. The Respondent has filed his reply dated 04.04.2022 and states *inter alia* that the Applicant *vide* the captioned Application has sought for (i) issuance of Show Cause Notice to the Respondents as to why they shall not be directed to pay the outstanding dues with interest; and (ii) directions to the Respondent No. 2 for releasing the alleged dues for an INR 4,05,41,896/- (Rupees Four Crore Five Lakhs Forty-One Thousand Eight Hundred and Ninety-Six Only) while the CIRP is under progress.
10. Respondent submits that the Reliefs sought by the Applicant *qua* the Respondent are not maintainable and the same are out of the purview of the powers granted to the Resolution Professional/Respondent No. 2 under the provisions of the Code.



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11. That the demand for payment of alleged dues of the Applicant pertaining to the period prior to the Insolvency Commencement date of the Corporate Debtor could not be honored as the Corporate Debtor was undergoing CIRP and a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016, is in operation.
12. That even otherwise, during the pendency of the captioned Application before this Adjudicating Authority, the Hon'ble National Company Law Appellate Tribunal settled the law on the EPFO dues vide Judgement dated 11.03.2022 in the matter of *Sikander Singh Jamwal Vs Vinay Talwar & Anr.* – Company Appeal (AT)(Ins) No. 483/2019 and directed the resolution applicant therein to release full provident fund dues in terms of the provisions of the Employees Provident Funds and Miscellaneous Provident Fund Act, 1952.
13. That the Resolution Plan of the successful resolution applicant has been approved by the CoC and the Application under Section 30 and 31 for approval of the Resolution Plan being IA No. 275/2022 is pending before this Adjudicating Authority.
14. That the dues of the Applicant shall be dealt with in accordance with the settled law under the Resolution Plan of the Successful resolution Applicant which has provisions for payment of demand raised by the Applicant herein, subject to the approval of the resolution plan by this Adjudicating Authority.
15. Respondent submits that in view of the facts and circumstances and also in the light of the detailed preliminary objections and submissions, the present application is devoid of any merit and also not legally sustainable in the eyes of law and such is liable to be dismissed at the very outset.



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16. We have heard the arguments of both the sides and have perused the documents filed by the both petitioner and respondent. We have noted that the dues of the Applicant are to be dealt with in accordance with the settled law under the Resolution Plan of the Successful resolution Applicant which has provisions for payment of demand raised by the Applicant herein. The plan is under consideration of this Adjudicating Authority. The applicant has already submitted its claim. The same is admitted by the second respondent i.e., Resolution Professional. Now, the applicant filed this application for instant payment; even though claim is admitted disbursement of amount can be made by the second respondent only after the approval of Resolution Plan. The application filed by second respondent for approval of Resolution Plan is approved today in IA(IB) No. 275/CB/2022, hereafter only the second respondent can disburse the amount. This application is filed in premature stage. Therefore, no separate Orders are required in so far as the above prayers of the Applicant are concerned.
17. In result, IA(IB) No. 68/CB/2022 shall stand **DISMISSED**. No order to cost.
18. Registry is hereby directed to communicate this Order to the petitioner and also to the respondent. Let the certified copy of the Order be issued upon compliance with the requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.03.20 15:09:22 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.03.20 17:06:22 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this, the 20th day of March, 2023

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