

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.304
IA/516(AHM)2024
in
CP(IB) 127 of 2020

Proceedings under Section 60(5) IBC

IN THE MATTER OF:

The Regional Provident Fund Commissioner-II
Vs

.....Applicant

Vineeta Maheshwari IRP of M/s Bloom Dekor Limited

.....Respondent

Order delivered on: 03/07/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

(Hybrid Mode)

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

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SAMEER KAKAR
MEMBER (TECHNICAL)

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**IN THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

**I.A. 516/NCLT/AHM/2024
In
CP (IB) 127/NCLT/AHM/2022**

(Application Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016)

In the matter of **Regional Provident Fund Commissioner-II,
Employees Provident Fund Organisation, Regional Office,
Naroda**

**The Regional Provident Fund Commissioner-II
Employees Provident Fund Organisation,
(Ministry of Labour and Employment,
Government of India)**

Regional Office, Naroda,
Having office at Shankar Vijay Saw Mill Compound,
Near G.D. High School Bus Stop, Saijpur bogha,
Naroda Road, Ahmedabad-382345.
Email I.D.: ro.naroda@epfindia.gov.in

.....Applicant

VERSUS

**Ms. Vineeta Maheshwari, Interim / Resolution Professional
Of M/s. Bloom Dekor Limited,**

Having office at 3rd floor,
Reegus Business Center, above Mercedes Benz Show room,
New Citylight road, Bharghna - Vesu, Surat- 395007.
Email I.D.: ip.bloomdekor@gmail.com

.....Respondent

CORAM:

Mr. Shammi Khan, Hon'ble Member (Judicial)

Mr. Sameer Kakar, Hon'ble Member (Technical)

APPEARANCE:

For Applicant

: Mr. Arvinadksan Nair, Advocate

For RP

: Mr. Ravi Pahwa, Advocate

ORDER

[Per Bench]

1. This is an Interlocutory Application i.e., 516 of 2024 was filed by the Employees Provident Fund Organization seeking the following prayers:

A. *This Hon'ble Tribunal may be pleased to admit and allow the present application;*

B. *This Hon'ble Tribunal may be pleased to quash and set aside the communication dated 15/01/2024 issued by the Respondent herein, and be pleased to further direct the Respondent herein to accept/admit the claim of the applicant, claiming total Rs.53,338/- towards Statutory Damages under Section 14B and Statutory Interest under Section 7Q of the EPF Act, payable to the workmen and employees of the Corporate-debtor, as submitted by the applicant on 25/10/2023, and further also be pleased to direct the Resolution Professional to acknowledge the priority of provident fund dues*

over the assets of the corporate-debtor in the present Insolvency proceedings:

- C.** *This Hon'ble Tribunal may be pleased to direct the respondent to pay costs to the applicant as may be determined by this Hon'ble Tribunal;*
- D.** *This Hon'ble Tribunal may be pleased to pass any further order as may be deemed fit, proper and necessary in the interest of justice.*

Interim Orders Prayed for

- E.** *This Hon'ble Tribunal may be pleased to direct the respondent herein Interim/Resolution Professional to provisionally accept/admit the revised claim of the applicant claiming for the total sum of Rs.53,338/- towards Statutory Damaged under Section 14B and Statutory Interest under Section 7Q of the EPF Act, as submitted by the applicant on 25/10/2023;*
- F.** *This Hon'ble Tribunal may be pleased to pass any order as deem fit safeguarding the interest of the parties.*

2. It is stated that the Corporate Debtor M/s. Bloom Dekor Limited was admitted to CIRP vide order dated 11.10.2023 in C.P. (IB) 127 of 2020.
3. The Resolution Professional published Form-A pursuant to which claim was submitted by the Applicant herein.
4. It is stated that the Corporate Debtor defaulted in timely remitting the contribution of the workmen/ employees

towards the Provident Fund, under the provisions of the EPF Act for the period of 01/07/2015 to 30/09/2023.

5. The Provident Fund Department issued notice-cum-summons No. GJ/NRD/0027376/000/Enf. 501/Damages/494 dated / dated 20/10/2023. Pursuant to the same, Mr.NitinModi, authorized representative of the Corporate Debtor appeared through virtual hearing on 23/10/2023.
6. It is submitted that the Corporate Debtor hadremitted apartial amount of damages to the tune of Rs.28,623/- against Rs.46,295/- and a partial amount of Interest to the tune of Rs.39,089/- against Rs.74,749/- for the period from 01/04/2017 to 01/12/2022. Thus, the balance amount of Rs.17,672/- towards damages and Rs.35,666/- towards the balance amount of Interest was determined vide order dated 23/10/2023.
7. It is submitted that the Applicant herein had submitted the claim of Rs.53,338/-, being Provident Fund dues of the workmen / employees, assessed under Section 14B and 7Q

of the EPF Act, before the Respondent vide communication dated 25/10/2023.

8. The Respondent vide communication dated 15/01/2024 has rejected the claim of the Applicant herein. The said communication is attached as **“Annexure-D colly.”**
9. It is stated that the Respondent has misconstrued the provision of Section 14 of the IB Code, to hold the quasi-judicial order dated 23/10/2023 as nullity, which is erroneous and illegal, in light of the Judgement of the Hon’ble Supreme Court in the case of **S.V. Kandoakar V/s. VM Deshpande reported in 1972 1 SCC 438**, which has been followed by the Hon’ble Supreme Court in **Sundaresh Bhatt, Liquidator of ABG Shipyard V/s. CBIT** reported in 2022 ibclaw.in.103SC:2023 1 SCC 472.
10. It is the case of the Applicant that Provident Fund dues, inclusive of Damages and Interest, are to be classified as Statutory dues of Workmen / Employees having priority over all other debts and all claims.

11. A reply was filed by the Respondent herein under Diary No. D-4721 dated 18.06.2024. The brief points in reply are summarised as under:

- I. The order of Moratorium under Section 14B came into force on 11.10.2023, whereas the order under the EPF Act was passed on 23.10.2023, i.e., after the date of commencement of CIRP.
- II. The proceedings under the EPF Act were quasi-judicial in nature, the same is barred under Section 14 and are without jurisdiction.

12. A rejoinder was filed by the EPFO under diary No. D-5007 dated 26.06.2024. In the rejoinder, the Applicant stated that the order dated 23/10/2023, assessing Damages under Section 14B of the EPF Act and interest under Section 7Q of the EPF Act are not in violation of the order or Moratorium. The Applicant thereafter relied upon the Judgement of the Hon'ble Supreme Court in the case of Sundaresh Bhatt, Liquidator of ABG Shipyard V/s. Central Board of Indirect Taxes and Customs report in (2023) 1 SCC 472. The relevant extract of the same are reproduced as under:

“5. The Supreme Court, in the case of S V Kandoakar U. V M Deshpande held that the

authorities can only take steps to determine the tax, interest, fines or any such penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium. The Supreme Court in Sundaresh Bhatt (supra) agreed with the said ratio laid down in V M Deshpande (supra) and held that the authority could only initiate assessment or reassessment of the duties or other levies. However, they cannot transgress such boundary and proceed to initiate recovery in violation of Sections 14 and 33(5) of the IBC. The Interim Resolution Professional or the Liquidator, as the case may be, is empowered to question the legality of the assessment order before the deputed authority.

5.1 Paragraphs 47 to 49 of the judgment in the case of Sundaresh Bhatt (supra), are extracted hereunder:

"47. Therefore, this Court in V.M. Deshpande cases held that the authorities can only take steps to determine the tax, interest, fines or any penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium. We are of the opinion that the above ratio squarely applies to the interplay between the IBC and the Customs Act in this context.

48. From the above discussion, we hold that the respondent could only initiate assessment or reassessment of the duties and other levies. They cannot transgress such boundary and proceed to initiate recovery in violation of Sections 14 or 33(5) of the IBC. The interim resolution professional, resolution professional or the liquidator, as the

case may be, has an obligation to ensure that assessment is legal and he has been provided with sufficient power to question any assessment, if he finds the same to be excessive.

49. * * *

5.2 The twin questions framed by the Court have been answered in paragraph 57 of the aforesaid judgment. Paragraphs 56 and 57 are reproduced hereunder:

"56. For the sake of clarity following questions, may be answered as under:

(a) Whether the provisions of the IBC would prevail over the Customs Act, and if so, to what extent?

56.1 The IBC would prevail over the Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.

(b) Whether the respondent could claim title over the goods and issue notice to sell the goods in terms of the Customs Act when the liquidation process has been initiated?

56.2. Answered in negative.

57. On the basis of the above discussions, following are our

57.1 Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/ determine the quantum of customs duty and other levies. The respondent

authority does not have the power to initiate recovery of dues by means of sale/ confiscation, as provided under the Customs Act.

57.2. After such assessment, the respondent authority has to submit its claims (concerning customs dues/ operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority.

57.3 In any case, the IRP/RP/ liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC."

5.3 Thus, after declaring the moratorium, there is an embargo on enforcing the demand, but there is no embargo under Section 14, read with Section 33(5) of the IBC, for determining the quantum of tax and other levies, if any, against the Corporate Debtor.

6. This Court finds the impugned order passed by the National Company Law Tribunal, Kochi Bench, as preposterous and untenable. The Company Law Tribunal has no power and authority under the IBC to declare an assessment order as void ab initio and non est in law. Such an order only reflects the competence of the persons who are manning such an important Tribunal. The Order shows the lack of basic understanding of the law. Instead of considering the application by the 2nd respondent for permission to file an appeal against the assessment order, the National Company Law Tribunal, Kochi Bench, has assumed the jurisdiction of the Constitutional Court to declare the assessment order as void ab initio."

13. The Respondent has thereafter relied upon the order of Hon'ble Supreme Court in the case of **Swiss Ribbons Pvt. Ltd. V/s. Union of India reported in AIR 2019 SC 739,** and **Jet Aircraft Maintenance Engineers Welfare Association V/s. AshishChhawchharia reported in (2022) ibclaw.in 861 NCLAT.**The Applicant thereafter pleads that the present application may be allowed.
14. We have heard the various Counsels and also perused the records as are produced before us.
15. It is seen that the Insolvency Commencement Date (ICD) in the matter is 11.10.2023, and the determination 14B and 7Q is vide order dated 23.10.2023. In this matter we rely upon the judgment in the matter of **Jet Aircraft Maintenance Engineers Welfare Association V/s. AshishChhawchharia reported in (2022) ibclaw.in 861 NCLAT.**More particularly page No. 141 paragraph Nos. (a) and (c) which are reproduced below:

(a) Successful Resolution Applicant is directed to make payment of unpaid provident fund to the

workmen till date of insolvency commencement, after deducting the amount already paid towards provident fund in the Resolution Plan to the workmen.

(c) The employees are also entitled for the payment of their full provident fund, unpaid up to the date of insolvency commencement date. It is made clear that full payment of provident fund would be of that unpaid part of provident fund, which has not been deposited by the Corporate Debtor in the EPFO.

16. As the Insolvency Commencement Date is prior to the date of the order of EPFO relying upon the decision of the Hon'ble Supreme Court given above. We have no difficulty to hold that the action of the Resolution Professional to the reject the Applicant of the herein was correct in law.

17. In light of the above discussion, the present application i.e.,

I.A. No. 516 of 2024 is hereby dismissed.

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SAMEER KAKAR
MEMBER (TECHNICAL)

VP

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SHAMMI KHAN
MEMBER (JUDICIAL)