

⑧ ⑨

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

**MA/981/2019 in CP/559/IB/2017**

*(Filed under Section 60(5) of IBC, 2016 read with Section 5 of the  
Limitation Act, 1963)*

*Along with*

**MA/982/2019 in CP/559/IB/2017**

*(Filed under Section 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules,  
2016)*

*In the matter of M/s. Inasra Technologies Pvt. Ltd.*

**The Regional Provident Fund Commissioner**

Employees Provident Fund Organization  
Regional Office  
No.37, Royapettah High Road,  
Chennai – 600 014

.. .. Applicant

-Vs-

**S. Kannan**

Liquidator of  
M/s. Inasra Technologies Private Limited  
No.27, Abdul Razak Street  
Skyline Castle  
Saidapet,  
Chennai – 600 015

.. .. Respondent

Present:

For Applicant : K. Ramu, Advocate  
For Respondent : V. Manivannan, Advocate

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)  
ANIL KUMAR B, MEMBER (TECHNICAL)**

*Order Pronounced on 2<sup>nd</sup> August 2021*

## **ORDER**

**Per: ANIL KUMAR B, MEMBER (TECHNICAL)**

1. The MA/981/2019 is an Application filed by M/s. The Regional Provident Fund Commissioner, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Section 5 of the Limitation Act, 1963 seeking relief as follows;

- (a) *Condone the delay of 164 days in filing of the Applicant's claim to the Respondent;*
- (b) *For such further and other reliefs as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case;*

2. The MA/982/2019 is an Application filed by M/s. The Regional Provident Fund Commissioner, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016, seeking relief as follows;

- (a) *That this Hon'ble Tribunal be pleased to quash and set aside the Adjudication dated 06.03.2019 passed by the Liquidator / Respondent, Mr. S. Kannan in respect of the Applicant's claim;*
- (b) *This Hon'ble Tribunal be pleased to pass an order and direct the Liquidator, Mr. S. Kannan to accept the claim filed by the Applicant and direct the Respondent to pay the claimant a sum of Rs.15,31,222/- in priority to all other claims, as a just and paramount statutory charge holder;*



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

3. The Corporate Insolvency Resolution Process in respect of the Corporate Debtor viz. M/s. Inasra Technologies Pvt. Ltd. was initiated by this Tribunal on 15.09.2017. In pursuance of public announcement made, the Applicant herein, filed the claim before the Interim Resolution Professional (IRP) for a sum of Rs.38,054 on 17.01.2018 for the default period from April 2013 to September 2015. Thereafter, this Tribunal vide its order dated 16.08.2018 has ordered for Liquidation of the Corporate Debtor and appointed one Mr. Avva Jaganandhan Athindranath as the Liquidator, who has expressed his inability to take up the appointment and in his place one Mr. G. Ramasamy was appointed as the Liquidator, who also has expressed his inability to take up the assignment and finally the Applicant herein was appointed as the Liquidator of the Corporate Debtor.

4. The Learned Counsel for the Applicant submitted that the applicant was unaware of the order of liquidation pursued with the Resolution Professional for disbursement of the funds, however only



on 30.10.2018, it was informed by the RP that he has become *functus officio*. Thereafter, it was submitted that the Applicant immediately by way of an email dated 02.11.2018 requested the Respondent to pay the dues of the Applicant in priority over all other dues placing reliance upon Section 11(2) of the Employees Provident Fund and Miscellaneous Provisions Act, 1953. Further, it was submitted that the Applicant has also intimated the Respondent that the dues of the Applicant would not form part of the Liquidation Estate as per Section 36(4)(a)(iii) of IBC, 2016. Subsequently, from the verification of records, the Applicant has filed a revised / supplementary claim in Form - F with supporting documents for dues before the liquidator for a sum of Rs.14,93,168/- in all a total sum of Rs.15,31,222 on 28.02.2019. However, the Liquidator vide his letter dated 06.03.2019 rejected the claims of the Applicant stating that the same was filed belatedly i.e. on 02.11.2019. Aggrieved by the said order of rejection, the Applicant has filed the present Application before this Tribunal.

5. The Respondent / Liquidator has filed counter and it was submitted by the Learned Counsel for the Liquidator that the Applicant has filed the claim before the Liquidator with an enormous delay and that the Liquidator was right in rejecting the claim of the

Applicant. Further, it was submitted that the IBC, 2016 prevails over the EPF Act, 1952 and as such it was contended that the employees are excluded only in so far as the amount due to them from the Provident Fund, Pension Fund or Gratuity Fund and hence the claim of the Applicant in so far as for penalty and damages would fall under the waterfall mechanism. Under the said circumstances, the Learned Counsel for the Respondent has sought for the dismissal of the present Application.

6. Heard the submissions made by the Learned Counsel for the parties. It is seen that the Applicant has filed its revised supplementary claim before the Liquidator on 28.02.2019 for a sum of Rs.15,31,222/- which came to be rejected by the Liquidator on the ground that the same was filed belatedly. In this context, it is reiterated that in so far as the dues of the Provident Funds are concerned, the same does not form part of the Liquidation Estate and that the Liquidator in these cases, are only put on notice, about the claim of the PF authorities. The liquidator can exercise his rights only over the assets which are forming part of the Liquidation Estate and the Liquidator has no control over the assets that are NOT forming part of the Liquidation estate. In other words, the Liquidator cannot reject the claim of the PF authorities because, the dues to the PF



authorities do not form part of the Liquidation Estate and hence does not form part of the waterfall mechanism.

7. In so far as the contention of the Learned Counsel for the Respondent that the claim for Penal damages and Interest under Section 14B and 7Q of the EPF Act, 1952 would be covered under the waterfall mechanism, the same is required to be negated since the Hon'ble NCLAT in the matter of **Regional Provident Fund Commissioner Ahmedabad -Vs- Ramachandra D.Choudhry** in *Company Appeal (AT)(Insolvency) No.1001 of 2019* while answering the question as to whether PF authorities are entitled to a claim of interest charged by the said authority during the course of CIRP of the corporate debtor, in addition to the principal amount of provident fund due which has been fully taken care of in the approved Resolution Plan, negating the contention of the successful resolution applicant that Sections 7Q and 14B of the EPF & MP Act, 1952 cannot be relied upon, as the provisions of IBC, 2016 has an overriding effect on the same in terms Section 238 of the Code, it was held that no provisions of EPF & MP Act, 1952 and IBC, 2016 are in conflict and on the other hand in terms of Section 36(4)(iii), the provident fund and gratuity funds are not the assets of the corporate debtor, there being specific provisions, the application of Section 238 of the



Code will not arise. In the circumstances, the successful resolution applicant was directed to release full provident fund and interest thereof in terms of EPF& MP Act, 1952 and the appeal of PF authorities was thereby allowed.

8. Further, also the Supreme Court in the matter of **Maharashtra State Cooperative Bank Limited -Vs- Provident Fund Commissioner;** (2009) 10 SCC 123 has held in para 66 to 69 as follows;

"66. Section 11 gives statutory priority to the amount due from the employer vis-à-vis all other debts. Clause (a) of sub-section (1) of Section 11 is applicable to cases where an employer is adjudicated insolvent or, being a company, an order of its winding up is made. In that situation, the amount due from the employer in relation to an establishment to which any Scheme or the Insurance Scheme applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable under Section 14B, accumulations required to be transferred under Section 15(2) or any other charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme. Clause (b) is applicable to cases where the amount is due from the employer in relation to exempted establishment in respect of any contribution to the provident fund or any insurance fund in so far it relates to exempted employees under the rules of provident fund or any insurance fund, any contribution payable by him towards the Pension Fund under Section 17(6), damages recoverable under Section 14B or any charges payable by him to the appropriate Government under the Act or under any of the conditions specified in Section 17. This sub-section then lays down that such amount shall be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up. Sub-section (2) lays down that any amount due from the employer whether in respect of the employees' contribution deducted from the wages of the employee

or the employer's contribution shall be deemed to be the first charge on the assets of the establishment, and shall be paid in priority to all other debts.

67. The expression "any amount due from an employer" appearing in sub-section (2) of Section 11 has to be interpreted keeping in view the object of the Act and other provisions contained therein including sub-section (1) of Section 11 and Sections 7A, 7Q, 14B and 15(2) which provide for determination of the dues payable by the employer, liability of the employer to pay interest in case the payment of the amount due is delayed and also pay damages, if there is default in making contribution to the Fund. If any amount payable by the employer becomes due and the same is not paid within the stipulated time, then the employer is required to pay interest in terms of the mandate of Section 7Q. Likewise, default on the employer's part to pay any contribution to the Fund can visit him with the consequence of levy of damages.

68. As mentioned earlier, sub-section (2) was inserted in Section 11 by Amendment Act No.40 of 1973 with a view to ensure that payment of provident fund dues of the workers are not defeated by the prior claims of the secured and/or of the unsecured creditors. While enacting sub-section (2), the legislature was conscious of the fact that in terms of existing Section 11 priority has been given to the amount due from an employer in relation to an establishment to which any scheme or fund is applicable including damages recoverable under Section 14B and accumulations required to be transferred under Section 15(2). The legislature was also aware that in case of delay the employer is statutorily responsible to pay interest in terms of Section 17. Therefore, there is no plausible reason to give a restricted meaning to the expression 'any amount due from the employer' and confine it to the amount determined under Section 7A or the contribution payable under Section 8.

69. If interest payable by the employer under Section 7Q and damages leviable under Section 14 are excluded from the ambit of expression "any amount due from an employer", every employer will conveniently refrain from paying contribution to the Fund and other dues and resist the efforts of the concerned authorities to recover the dues as arrears of land revenue by contending that the movable or immovable property of the establishment is subject to other debts. Any such interpretation would frustrate the object of introducing the deeming provision and non obstante clause in Section 11(2). Therefore, it is not

possible to agree with the learned senior counsel for the appellant-bank that the amount of interest payable under Section 7Q and damages leviable under Section 14B do not form part of the amount due from an employer for the purpose of Section 11(2) of the Act."

*(underline supplied)*

9. Thus, from the reading of the above judgment, it is made amply clear that any penal damages and interest levied by the PF Authorities under Section 14B & 7Q of the EPF & Miscellaneous Act, 1952 would form part of "any amount due" under Section 11(2) of EPF & Miscellaneous Act, 1952. Under the said circumstances, the contention of the Learned Counsel for the Respondent that the Penal damages and Interest under Section 14B and 7Q of the EPF & Miscellaneous Act 1952 levied by the Applicant, should be covered under the waterfall mechanism, goes against the well established position of law.

10. In fine, we are of the view that the PF authorities are entitled to the satisfaction of the full claim in relation to the PF dues including interest for a sum of Rs.15,31,222/- as entitled under the EPF & Miscellaneous Act, 1952. The entire amount of Rs.15,31,222/- do not form part of the Liquidation estate.



11. Before parting, it should be noted that in so far as filing of an application aggrieved against the order passed by the Liquidator would fall under Section 42 of IBC, 2016 and not under Section 60(5) of IBC, 2016 as done by the Applicant in the present case; since we have given our finding based on merits of the case and also the peculiar nature of the PF Authorities as to their claims are not forming part of the liquidation estate, the said irregularity has not been examined by this Tribunal.

12. With the above said directions, MA/981/2019 and MA/982/2019 stands **disposed of**.

-sd-  
(ANIL KUMAR B)  
MEMBER (TECHNICAL)

-sd-  
(R. SUCHARITHA)  
MEMBER (JUDICIAL)

*Raymond*