

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH- COURT II

IA 1307 of 2021

In

CP (IB) 2285/MB/C-II/2018

Under Section 60 (5) of the
Insolvency and Bankruptcy Code,
2016

In the Application of

**Employees State Insurance
Corporation (ESIC) Sub Regional
Office, Nagpur**

Address: Panchdeep Bhawan,
Ganeshpeth, Nagpur, Maharashtra
440018.

...Applicant

V/s

**Resolution Professional of the
Corporate Debtor**

In the matter of

Phoenix ARC Private Limited

...Financial Creditor

Versus

Deege Cotsyn Private Limited

...Corporate Debtor

Order Delivered on 26.11.2021

Coram:

Hon'ble Member (Judicial) : Mr. Ashok Kumar Borah

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances :-

For the Applicant : Mr. Jay Vora, Advocate
For the Resolution Professional : Mr. Ayush Rajani

ORDER

Per : Ashok Kumar Borah, Member (Judicial)

1. This is an Application filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016, (“**Code**”) by the Employees State Insurance Corporation (ESIC) against the Resolution Professional (RP) to condone the delay in submitting the proof of claim and also to direct the RP to admit the claim.

Facts of the case:

2. The Applicant submits that a Petition under Section 7 of the Code read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was admitted by this Tribunal vide its order dated 26.02.2019 and the Respondent herein was appointed as the Interim Resolution Professional of the Corporate Debtor Company. Thereafter pursuant to the Order, the Respondent issued a Public Notice dated 06.03.2019 thereby inviting the proof of claims of the creditors. The Respondent also stated the last date for submission of the claims as 19.03.2019.

3. The Applicant states that the Applicant was not aware that Corporate Insolvency Resolution Process against the Corporate Debtor was initiated and Moratorium was declared. The Applicant realized that the Corporate Debtor had not deposited the statutory contributions for the period of October, 2016 till April, 2018 and had also not filed online monthly details of contributions.
4. Thereafter on the same day, a notice under C-19 dated 04.10.2019 was issued for the period of January, 2018 till June, 2018 since the Corporate Debtor had filed online the monthly details of the contributions under Form 6 Register as stipulated under Regulation 32 of the ESI Regulation, 1950 but had not deposited to the credit of the Applicant. Thereafter, the Applicant issued statutory notice under D-19 dated 13.12.2019 requiring the Corporate Debtor Company and its Directors to pay damages u/s 85B of the ESI Act, 1948.
5. Thereafter the legal Department of the Applicant realized that the CIRP was initiated against the Corporate Debtor. Pursuant to this the Deputy Director of the Applicant prepared the claim in Form-B and sent it to the Respondent which was received by the Respondent on 12.01.2021.

6. Thereafter the Applicant received a letter dated 28.01.2021 from the Respondent thereby rejecting the claim as it was time barred and that the Resolution Plan had already been filed with this Tribunal.
7. The Applicant submits that as the country was under lockdown from 21.03.2020, the Applicant faced administrative difficulties and were unable to lodge the claim with the Respondent in given time frame.
8. Therefore, the Applicant submits that as the Applicant is a statutory body under the Ministry of Labour and Employment, Government of India and the dues being the Government should already have been recorded and reflected in its books of accounts for the relevant period.

FINDINGS

9. We have heard both the sides and perused all the documents submitted by them. It is very clear that the Applicant is a Statutory body under the Ministry of Labour and Employment, Government of India established under the provisions of Section 3 and 4 of the ESI Act, 1948. Its claim that is due is also undisputed by both the parties.
10. The Applicant has rightly relied on the Judgement of the Principal Bench of this Tribunal in the matter of *Col. Sanjeev Dalal (Retd.)... V/s M/s International Recreation & Amusement Ltd.* wherein the Principal Bench of the Hon'ble Tribunal directed the Resolution

Professional to accept the claims of the creditors in lieu of the fact that the Resolution Plan was still pending consideration before the Hon'ble Tribunal. Similarly, in the present ongoing case the Resolution Plan is still pending for approval before this Tribunal by the Adjudicating Authority. Therefore, in such a situation it would be injustice to the Applicant herein if we do not Order consideration of its claim. Further, since these are government dues which would always be reflected in the books of Accounts of the Corporate Debtor Company and the RP would be required, rather is duty bound to take cognizance of the dues as per the Books of Accounts maintained by the Corporate Debtor Company.

11. Accordingly, the delay if any in filing the claim is condoned. With the above directions and observations, prayer (a) and (b) is allowed. This Bench is not inclined to allow prayer (c) but directs the RP to verify the claim of the Applicant in terms of Section 53 of the Code. In view of the above IA 1307 of 2021 is partly allowed and disposed of.

Dated the 26th day of November, 2021

Sd/-

**SHYAM BABU GAUTAM
(MEMBER TECHNICAL)**

Sd/-

**ASHOK KUMAR BORAH
(MEMBER JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

IA No. 1800 of 2021

In

CP/IB/MB/No. 2285 of 2018

**Under Rule 11 of the National Company Law
Tribunal Rules, 2016**

**Filed by
Naval Kumar Bhoot**

...Applicant/Suspended Director

Versus

Degee Cotsyn Private Limited

In the matter of :-

Phoenix ARC Private Limited

...Financial Creditor

Versus

Degee Cotsyn Private Limited

Order Pronounced on :26.11.2021

Coram:

**Hon'ble Member (Judicial) : Mr. Ashok Kumar Borah
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam**

Appearances:

For the Applicant : Dr. S.K. Jain a/w Yahya Batatawala

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. The present Application is filed by the Applicant i.e. the suspended Director of the Corporate Debtor Company. The Applicant prays to delete the name of Mr. Santoshkumar Bhoot, Respondent No. 4 in the Interlocutory Application No. 2094 of 2020 as the Respondent No. 4 has expired on 20.05.2020.
2. The brief facts of the present Application are stated herein. The Applicant states that an Interlocutory Application (IA) No. 2094 of 2020 filed against Deegee Cotsyn Private Limited Respondent No. 1 therein, Mr. Nishant Singhal Respondent No. 2 therein, Narendra Kumar Bhoot Respondent No. 3 therein and Mr. Santosh Kumar Bhoot Respondent No. 4 therein under Section 60 (5) read with Section 74(2) of the IBC, 2016. The Applicant in the said Interlocutory Application had sought for the following reliefs :-
 - I. The Hon'ble Adjudicating Authority may be pleased to pass an Order to direct the Resolution Professional;
 - a. To conduct the Forensic audit of the transaction related with staff quarters of the Corporate Debtor to unearth the fraud committed by Respondent No. 2 in collusion with Respondent Nos. 3 and 4.
 - b. To recover Rs. 35,25,000/- due to Corporate Debtor

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II

I.A. NO. 1800/MB/C-II/2021

In

C.P. (IB) No. 2285/MB/C-II/2018

from Respondent No. 2

- c. To reject the claim of the Respondent No. 2 of Rs. 18,56,348/- towards arrears of alleged rent payable by the Corporate Debtor.
 - d. Not to handover the possession of staff quarters to the Respondent No. 2 pursuant to completion of the purported Rent Note;
- II. That the Hon'ble Adjudicating Authority may be pleased to pass appropriate Orders under Section 74(2) of the IBC, 2016 against the Respondent No. 2;
- III. That the Hon'ble Adjudicating Authority may be pleased to direct Income Tax Department and other enforcement agencies to investigate into alleged cash payment of Rs. 16,25,000/- made in cash by Mr. Nishant Singhal to Narendra Solvex Private Limited for purchase of portion of land admeasuring 1.37 hectares which sum is not appearing in the books of the said Company;
- IV. To pass such other further or other Orders as the Adjudicating Authority may deem fit and proper.
3. The Applicant states the said Respondent No. 4 Mr. Santosh Kumar Bhoot expired on 20.05.2020. (Copy of Death Certificate is annexed to the Petition). As, no proceedings can be initiated against the Respondent No. 4 as he is deceased, the name of the Respondent No. 4 to be deleted from the I A No. 2094 of 2020.

ORDER

4. Having considered, the submission of the Counsel appearing for the Applicant and on perusal of the records placed before this Tribunal, we are of the considered view that the name of Mr. Santosh Kumar Bhoot, Respondent No. 4 in IA 2094 of 2020, is to be deleted and no proceedings can be initiated or continued against him.
5. With the aforesaid observation the present **IA No. 1800 /2021 In C.P (IB) No. 2285 /MB/C-II/2018 is allowed and disposed of.**

Dated the 26th day of November , 2021

Sd/-

**SHYAM BABU GAUTAM
(MEMBER TECHNICAL)**

Sd/-

**ASHOK KUMAR BORAH
(MEMBER JUDICIAL)**