

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH- COURT II

IA 335 of 2021

In

CP (IB) 3603/MB/C-II/2018

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

Order Delivered on 02.09.2021

In the Application of

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

Address: Panchdeep Bhawan, Survey
No. 689/690, Bibewadi, Pune,
Maharashtra 411037.

...Applicant

V/s

**Resolution Professional of the
Corporate Debtor**

In the matter of

Union Bank of India

...Financial Creditor

Versus

Phadnis Resorts and Spa India Ltd.

...Corporate Debtor

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 Respondent	: Mr. Mahesh Sureka, Resolution Professional

ORDER

Per :- Shyam Babu Gautam, Member (Technical)

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 14.03.2019 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 15.04.2019 thereby inviting the proof of claims of the creditors. The Respondent also stated the last date for submission of the claims as 25.04.2019.

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 December, 2015 till April, 2019 and had also not filed online monthly details of contributions.
4. Thereafter the Applicant had issued show cause notice C-18 (Adhoc) dated 16.12.2020 to the Corporate Debtor and its Directors to furnish the monthly details of the contributions and deposit the same to the Applicant.
5. Thereafter 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 on 29.12.2020 which was received by the Respondent on 09.01.2021.
6. The Applicant received an e-mail dated 09.01.2021 from the Respondent thereby rejecting the claim as it was time barred. At the same time the Respondent also clarified that the Applicant can apply to the Adjudicating Authority, NCLT Mumbai for giving directions to the Respondent to consider the claim. The e-mail dated 09.01.2021 is annexed to the Petition.

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.
9. The Respondent herein has filed its reply dated 09.03.2021 and made representation before us. To the contentions of the Applicant the Respondent states that :-
10. The present application has been filed by the Applicant over a delay of 20 months and no application for condonation of delay has been filed.
11. The Respondent submits that the demand notices annexed by the Applicant in the present application depicts that the Applicant themselves are unaware of the quantum of claim raised. The Demand raised are almost raised after 6 years. The Respondent states that the Corporate Debtor did not have any employees since 2016 and all the

properties belonging to the Corporate Debtor were given on long term lease.

FINDINGS

12. We have heard both 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.
13. 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 view 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.

14. Accordingly, the delay if any, in filing the claim is condoned and the Resolution Professional is directed to verify the claim of the Applicant in terms of Section 53 of the Code. With the above directions and observations, this IA 335 of 2021 is allowed and disposed of.

Dated the 2nd day of September, 2021

Sd/-

(SHYAM BABU GAUTAM)
(MEMBER TECHNICAL)

Sd/-

(ASHOK KUMAR BORAH)
(MEMBER JUDICIAL)