



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Arguments through web-based video conferencing platform)**

**IA No. 1556/2022
in
CP (IB) No.250/Chd/Hry/2018
(Admitted)**

Under Section 60(5) of the IBC, 2016

In the matter of:

M/s. Central Bank of IndiaFinancial Creditor

Vs.

K.S.M. Spinning Mills Limited ...Corporate Debtor

And in the matter of IA No. 1556/2022:-

Employees Provident Fund Organisation
through Regional Provident Fund Commissioner
having its registered office at
Bhavishya Nidhi Bhavan, Sham Nagar,
Ludhiana (Punjab)

....Applicant

Vs.

1. Sh. Nipan Bansal
Resolution Professional
having its address at
House No. 10-B, Udham Singh Nagar,
Civil Lines, Ludhiana (Punjab)Respondent No. 1

2. M/s. K.S.M. Spinning Mills Limited
having its registered office at
Village Mandala Kalan, PO Bija,
Tehsil Khanna, Distt. Ludhiana
through Sh. Nipan Bansal, Resolution Professional
House No. 10-B, Udham Singh Nagar,
Civil Lines, Ludhiana (Punjab)Respondent No. 2

Order delivered on: 03.01.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**



Present:

For the Applicant in
IA No. 1556/2022 : Mr. Ashish Chaudhary, Advocate

For the respondents : Mr. Harsh Garg, Advocate
Mr. Pulkit Goyal, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

In the present application, the applicant-EPFO is seeking direction against the respondents to implement the orders passed by the applicant-EPFO and the amount of Rs. 35,66,200/- determined under Section 7-A, Section 14 (B), Section-7Q, as per the revised claim dated 29.07.2022, be directed to be remitted to applicant-EPFO, in view of Section 36(4)(a)(iii) of Insolvency and Bankruptcy Code, 2016 and to exclude all the sums due to any workmen or employee from provident funds, the pension funds and gratuity fund from liquidation estate assets of the corporate debtor/establishment.

2. It is further prayed that directions be issued to respondents No. 1 and 2 to realise the amount of EPF dues duly assessed and revised claim dated 29.07.2022 along with the damages and interest calculated till the date of the realization of the same. Further direction to respondent No. 1 to allow the applicant-EPFO to inspect the record of establishment/corporate debtor in the interest of poor workmen.

3. It is submitted that the applicant initially initiated the enquiry under Section 7A of EPF & MP Act 1952 against the respondent



establishment/corporate debtor for not complying with the provisions of EPF & MP Act by not depositing the EPF dues for the period 09/2017 to 11/2019. A copy of the order dated 19.08.2019 is attached as Annexure A-1 of the application. The applicant approached the resolution professional by filing EPF dues in the prescribed form B, whereby the amount of Rs. 8,27,496/- has been claimed from respondent No. 1, Resolution Professional as amount of Rs. 1,00,000/- out of the total amount of Rs. 9,27,496/- has already been deposited by the corporate debtor with the applicant-EPFO. The applicant has intimated respondent No. 1 with regard to the priority of EPF dues through letters dated 05.11.2020, 15.02.2021, and 27.07.2022.

4. It is averred that the applicant-EPFO also submitted the revised calculation of EPF dues for the period 09/2017 to 11/2019 whereby, this has been apprised to respondent No. 1 that the total revised claim of EPF dues is Rs. 35,66,200/- which includes amount assessed under Section 7-A, penal damages under Section 14 (B) and statutory interest under Section 7-Q of EPF and MP Act, 1952. A copy of the revised claim dated 29.07.2022 is attached as Annexure A-9 with the application.

5. It is submitted that respondent No. 1 vide mail dated 29.08.2022 has rejected the revised claim submitted by the applicant and mentioned that the revised claim filed by the applicant-EPFO not supported any documentary evidence.

6. Notice was issued to respondents on 18.11.2022. The respondent has filed a short note vide Diary No. 02347/01 dated 07/12/2022. In its short note, it is submitted that the applicant EPFO Department had earlier filed their claim dated 12.02.2020 for an amount of Rs. 8,27,496/- with the Resolution



Professional, which was accepted by the Resolution Professional and the same was considered by the Resolution Applicant while filing the Resolution Plan. However, the applicant department has now filed a revised claim vide letter number Comp/I/PN-31357/T-10/2015 dated 29.07.2022 for an amount of Rs. 35,66,200/- and the same was not admitted for the reasons of being filed after expiry of the 90 days period for submission of a claim as per CIRP Regulation 12(2) of the IBC 2016, and moreover the same was not supported by any documentary proof/evidence and the calculation for the enhanced claim was done by the applicant on the tentative basis.

7. It is further submitted by the respondent that regarding the payment of the dues of the EPFO, the Successful Resolution Applicant has already given an undertaking through an affidavit filed vide Special Diary No. 268 of 30.08.2022, vide which the Successful Resolution Applicant has submitted that he will pay the contribution and other sums due from the corporate debtor under the provision of the Employees Provident Funds and Misc. Act, 1952, in respect of the period up to the date of approval of the Resolution Plan by this Adjudicating Authority, without prejudice to its right to avail available remedies with respect to the treatment/levy of the dues of the aforesaid dues.

8. We have heard the learned counsel for the applicant & respondent and have perused the records carefully.

9. Before adjudicating on the matter, the relevant Sections of the EPF and MP Act, 1952 are extracted below for the sake of clarity:-

Section 7A of the EPF & MP Act, 1952

“Section 7A in The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952

1[7A. Determination of moneys due from employers.—2[



(1) *The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,—*

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the 3[Pension] Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.]”

Section 7Q of the EPF & MP Act, 1952

“7Q. Interest payable by the employer.—The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment: Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.]”

Section 8F of EPF & MP Act, 1952

“8F. Other modes of recovery.—

(1) Notwithstanding the issue of a certificate to the Recovery Officer under section 8B, the Central Provident Fund Commissioner or any other officer authorised by the Central Board may recover the amount by any one or more of the modes provided in this section.

(2) If any amount is due from any person to any employer who is in arrears, the Central Provident Fund Commissioner or any other officer authorised by the Central Board in this behalf may require such person to deduct from the said amount the arrears due from such employer under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Provident Fund Commissioner or the officer so authorised, as the case may be: Provided that nothing in this sub-section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908 (5 of 1908).

(3) (i) The Central Provident Fund Commissioner or any other officer authorised by the Central Board in this behalf may, at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the employer or, as the case may be, the establishment or any person who holds or



may subsequently hold money for or on account of the employer or as the case may be, the establishment, to pay to the Central Provident Fund Commissioner either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due from the employer in respect of arrears or the whole of the money when it is equal to or less than that amount.

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(4) The Central Provident Fund Commissioner or the officer authorised by the Central Board in this behalf may apply to the court in whose custody there is money belonging to the employer for payment to him of the entire amount of such money, or if it is more than the amount due, an amount sufficient to discharge the amount due.

(5) The Central Provident Fund Commissioner or any officer not below the rank of Assistant Provident Fund Commissioner may, if so authorised by the Central Government by general or special order, recover any arrears of amount due from an employer or, as the case may be, from the establishment by distraint and sale of his or its movable property in the manner laid down in the Third Schedule to the Income-tax Act, 1961 (43 to 1961).]

Section 14B of the EPF & MP Act, 1952

“14B. Power to recover damages.—Where an employer makes default in the payment of any contribution to the Fund⁴⁶ [, the⁴⁷ [Pension] Fund or the Insurance Fund] or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 4[or sub-section (5) of section 17] or in the payment of any charges payable under any other provision of this Act or of 5[any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, 6[the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf] may recover 7[from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:] 8[Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard:] 9[Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.]”



10. The issue at hand is whether the amount of Rs. 35,66,200/- and also the subsequent demands arising out of proceedings under the EPF and MP Act 1952 are recoverable from the corporate debtor. We have carefully gone through the copy of the summons and calculation under Section 14B & 7Q of EPF & MP Act, 1952, attached as Annexure A-8 of the application and the revised claim dated 29.07.2022 submitted to Resolution Professional for an amount of Rs. 35,66,200/-. The records indicate an enquiry under Section 14B/7Q of the EPF & MP Act, 1952 was concluded, and a demand of Rs. 35,66,200/- was issued against the establishment for dues for the period from 09/2017 to 11/2019. This amount also includes damages under Section 14B and interest under Section 7Q of the Act.

11. We are conscious of the decision of the Hon'ble NCLAT on the same issues in the case of ***Sikander Singh Jamuwal versus Vinay Talwar and Others, Company Appeal (AT)(Ins) No.483 of 2019; Case Citation: (2022) iblaw.in 221, NCLAT***, the relevant part of which reads as follows:

"It is very much clear vide Section 30(2)(e) that the Resolution Plan does not contravene any of the provisions of the law for the time being in force. The Resolution Professional/Adjudicating Authority is to look at the compliance of the provisions of law. In this context, we have to refer to Section 17B of the Employees Provident Funds and Miscellaneous Act, 1952 which is depicted below:

"[17B. Liability in case of transfer of establishment.--Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or [the



[Pension] Scheme or the Insurance Scheme], as the case may be, in respect of the period up to the date of such transfer: Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.]"

From the above-stated provisions of the PF Act that the Resolution Applicant is also liable to pay the contribution and other sums due from the employer under any provisions of this act as the case may be in respect of the period up to the date of such transfer.

12. Since no provisions of the above said Act is in conflict with any of the provisions of the I & B Code, the applicability of even Section 238 of the I & B Code does not arise. PF dues are not the assets of the CD as amply made clear by the provisions of Section 36(4)(a)(iii) of the I & B Code, 2016

13. In this context, the following judgments are also referred to:

i. The judgment of this Tribunal (3 Members Bench - comprising of Hon'ble Chairperson & two Members) in ***C.A. (AT)(Ins) No. 354 of 2019, decided on 19th August, 2019 Tourism Finance Corporation of India Ltd. Vs. Rainbow Papers Ltd. & Ors.*** given below:

"44. However, as no provisions of the 'Employees Provident Funds and Miscellaneous Provision Act, 1952' is in conflict with any of the provisions of the 'I & B Code' and, on the other hand, in terms of Section 36(4)(iii), the 'provident fund' and the 'gratuity fund' are not the assets of the 'Corporate Debtor', there being specific provisions, the application of Section 238 of the 'I & B Code' does not arise.

45. Therefore, we direct the 'Successful Resolution Applicant'- 2nd Respondent ('Kushal Limited') to release full provident fund and interest thereof in terms of the provisions of the 'Employees Provident Funds and Miscellaneous Provision Act, 1952' immediately, as it does not include as an asset of the 'Corporate Debtor'. The impugned order dated 27th February, 2019 approving the 'Resolution Plan' stands modified to the extent above. The appeal preferred by 'Regional Provident Fund Commissioner' is allowed with aforesaid observations and directions. No costs."

It is also noted that the Judgement of the Hon'ble NCLAT in the case of ***Tourism Finance Corporation of India Ltd. vs. Rainbow Papers Ltd.(supra)*** has been affirmed by the ***Hon'ble***



Supreme Court Civil Appeal No. 1920 of 2020 decided on 20-05-2020(2020) ibclaw.in 145 SC.

(emphasis supplied)

14. In short, it is a settled issue that when it comes to non-payment of the EPF arrears by the Corporate Debtor the issue is one of “compliance of Law”. As clarified in the extracts above, all the dues raised by the EPFO under various sections, including interests and penalties are to be paid by the new establishment under Section 17B of the Employees Provident Funds and Miscellaneous Act, 1952. In the event of any grievance on the part of the corporate debtor with regard to PF arrear demand, there is a provision in the EPF & MP Act, 1952 for appeal against the demand raised by the EPFO Authorities.

15. Furthermore, under Section 30(2)(e) of the Resolution Plan, in order to be legitimate, the resolution plan cannot contravene any of the provisions of any law in force. Thus, in the present context, it is incumbent on the RP/SRA to ensure that Section 17B of the EPF and MP Act, 1952 are complied with. As mentioned, Section 17B lays down that in case of a transfer of Establishment, the person to whom the establishment is transferred is liable to pay the contributions and other sums due from the employer under any provision of the EPF and MP Act, 1952.

16. In view of the above discussions, the respondents are directed to remit the amount of Rs. 35,66,200/- determined by the applicant-EPFO under Section 7A, 14B & 7Q as per the revised claim dated 29.07.2022 subject to the right to appeal against such demand under the relevant provisions of the EPF & MP Act, 1952. Respondent No. 1 is further directed to allow the



applicant-EPFO to inspect the record of the establishment/corporate debtor. The Resolution Professional is further directed to fully comply with the provisions of EPF and MP Act, 1952 and avail of the appellate proceedings provided in the said Act itself to redress his grievances if any.

17. In the circumstances, IA No.1556/2022 is allowed subject to the above observations and stands disposed of accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

January 03, 2023
PB/ASH