

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI**

IA(IBC)/22/KOB/2023

IN

IBA/24/KOB/2020

(Under Rule 154 of NCLT Rules, 2016)

In the matter:

Namboodiri Sons Agro Foods India Private Limited;

MEMO OF PARTIES:

REGIONAL PROVIDENT FUND COMMISSIONER-II (LEGAL) Employees Provident Fund Organization, Regional Office, 36/685/A, Bhavishyanidhi Bhavan, Kaloor, Kochi-17;

... Applicant

-Versus-

1. MOHANAN T.S, Thekkinathil House, Valayanchirangara P.O, Vengola, Perumbavoor;
2. Dasmesh Warehousing Private Limited, A-103, Mangalya, Marol Maroshi Road, Marol naka, Andheri (East), Mumbai, Maharashtra- 400 059.

... Respondent

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For Applicant : Mr. Sajeevkumar K Gopal,
Advocate

For Respondent : Mr. Ahaan Mohan, Advocate

Order reserved on: 12.01.2023

Order pronounced on:25.01.2023

ORDER

1. This I.A has been filed under Section Rule 154 of NCLT Rules, 2016 by Regional Provident Fund Commissioner-II (EPFO), against the erstwhile

Resolution Professional of Namboodirisons Agro Foods India Private Ltd., the Earlier Corporate Debtor (CD) now under the successful Resolution Applicant (RA) , seeking to rectify the order dated 31.12.2021 in IA(IBC)/124/KOB/2021 in IBA/24/KOB/2020 and to include the statutory claim of the EPFO towards contribution, damage and interest as part of the resolution plan and to order for release the EPFO Claim amount.

2. Namboodisons Agro Foods India Pvt. Ltd. (hereinafter referred to as “Corporate Debtor”) was admitted under Corporate Insolvency Resolution Process (CIRP) under Section 9 of Insolvency and Bankruptcy Code, 2016 before this Tribunal. The 1st respondent herein was appointed as Resolution Professional (RP).
3. The applicant herein was not aware with respect to the CIRP initiated and the appointment of the 1st respondent as RP. The applicant submitted an interim claim in respect of the EPF dues of the Corporate Debtor dated 24.08.2022 before the 1st respondent herein. Subsequently, based on the report of the enforcement officer the amount due was revised incorporating the period up to 2019 and the total amount comes to Rs.76,85,890/-.
4. It is further submitted that the 1st respondent issued a communication dated 29.08.2022 to the applicant intimating that the CIRP was successfully concluded on 31.12.2021 as per the orders of this Tribunal and the company is in the process of taking of by a new management as envisaged in the resolution plan. It was further informed that since no claim was submitted by the EPFO in the CIRP, PF dues were not provided in the resolution plan. According to the 1st respondent, since, the CIRP process is over he has been relieved of his duties as RP and is no longer associated with the company.
5. The applicant stated that 1st respondents replied on 03.10.2022. By the said reply it was informed that no claim was received from EPF authorities and the PF dues are not part of resolution plan and no separate corpus was created for

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Provident Fund by the CD in accordance with the balance sheet of the company. Hence, Section 36(4)(a)(iii) of the I & B Code do not apply in the case and the claim which are not included in the resolution plan shall stand extinguished.

6. The applicant highly aggrieved by the stand taken by the 1st respondent in not including the PF dues as part of the resolution plan and in not paying the amount to the PF filed this application. It is further stated that the Resolution Plan without the PF dues is hit by Section 30 (2) (e) of the I & B Code. The 1st respondent acted in violation of Section 17 and 18 of the I & B Code.
7. The respondent has orally denied all averments of the EPFO and stated that as per the application under Rule 154 is not maintainable as the relief claimed is not falling under the purview of being a clerical or arithmetical or error arising from any accidental slip or omission on part of the Tribunal. It is even outside the scope of review as the Tribunal is not empowered to hear a review application as per the Companies Act, 2013. The learned counsel for the Respondent stated that this Tribunal has dismissed a similar application filed by the same applicant in IA(IBC)/296/KOB/2022 in IBA/44/KOB/2019.
8. Heard submissions and perused the records. This application is filed under rule 154 of the NCLT Rules, 2016 which states as follows

“154. Rectification of Order -

(1) Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal on its own motion or on application of any party by way of rectification.

(2) An application under sub-Rule (1) may be made in Form No. NCLT 9 within two years from the date of the final order for rectification of the final order not being an interlocutory order.”

Hence, as per the relevant rule only an arithmetical error or omission can be rectified under such an application. Inclusion of certain claim in the Resolution

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Plan after approval of Adjudicating Authority does not fall under the purview of this Rule 154 NCLT. In that regard, this petition coming under scope of a statutory review or an appeal is beyond the jurisdiction of this Tribunal. Even to go by the merits of case as detailed above, the claim of EPFO though very well an operational debt, is coming up after the approval of resolution plan, and presently the CD is non-existent and only the RA exists. As per settled position of law, it can never be the responsibility of the RA to meet belated liabilities of the CD which is prima facie untenable.

9. Hence, in the matter, taking cue from our earlier order passed in IA(IBC)/296/KOB/2022 in IBA/44/KOB/2019, we are of the view that the claim of the EPFO in this application cannot be entertained under Rule 154 of the NCLT Rules, 2016, and hence is liable to be dismissed.
10. The application **IA(IBC)/22/KOB/2023**, therefore, is **Dismissed**
11. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.
12. Let the certified copy of the order be issued upon compliance with requisite formalities.
13. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.01.25 12:37:32 +05'30'

Satya Ranjan Prasad
Member (Technical)

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MOHAN RAJ
Date: 2023.01.25 12:59:59
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MOHAN RAJ

P. Mohan Raj
Member (Judicial)

Signed on this 25th day of January, 2023.

Supriya. P_S.