



**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT – V**

**Company Appeal/14/2022 IN C.P. (IB) No. 3749/MB/2018**

[Under Section 42 of the Insolvency and Bankruptcy  
Code, 2016]

**Employees Provident Fund Organisation,  
Regional Office II (Recovery Officer),  
238/6, E-Ward, Tarabai Park, Kolhapur,  
Maharashtra - 416003**

**...Applicant**

*Vs*

**Sandeep D. Maheshwari,  
Liquidator of Shiv Mfg. Pipes Pvt. Ltd.  
1, Shree Ram Niwas CHS, Near Anthony Bakery,  
Kolbad, Thane - 400601, (Maharashtra)**

**... Respondent**

*In the matter of*

**Khanna Delta Steel Pvt. Ltd**

**...Operational Creditor**

*Vs*

**Shiv Mfg. Pipes Pvt. Ltd.**

**... Corporate Debtor**

**Order Dated: 19.12.2024**

**Coram:**

Ms. Reeta Kohli, Hon'ble Member (Judicial)

Ms. Madhu Sinha, Hon'ble Member (Technical)



**Appearances:**

For the Applicant: Adv. Malini Rai (PH)

For the Respondent: Adv. Aditya Mishra (PH)

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**ORDER**

***Per: Reeta Kohli, Member (Judicial)***

**I.** The above **Company Appeal No. 14 OF 2022** is filed by **Employees Provident Fund Organization, Kolhapur** (hereinafter referred as the “**Applicant**”) seeking directions against **Mr. Sandeep D. Maheshwari, Liquidator of Shiv Mfg. Pipes Pvt. Ltd.** (hereinafter referred as the “**Respondent**”) under **Section 42** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”), praying for following reliefs:

- a) that Hon’ble Adjudicating Authority be pleased to direct the Liquidator to accept the claim in respect of entire PF claim and categorize PF Interest and damages along with PF contributions under Section 36(4)(a)(iii) of IBC as out of Liquidation Estate.*
- b) The delay in filing the claim if any, before the Liquidator may be condoned.*
- c) The delay in filing the present appeal, if any, may be condoned.*
- d) Any other order as this Adjudicating Authority may think just and proper in the facts and circumstances of the case to meet the ends of justice.*

**II. Facts of the case -**

**1.** The Applicant is the Employees Provident Fund Organisation constituted under the Employees Provident Fund and Miscellaneous Provisions Act 1952, which is a legislation for providing social security to employees working in any establishment engaging 20 or more persons on any day. The Act provides for compulsory deductions of provident fund from employees and a



contribution from the employer which is deposited in the workers account in the office of the Employees Provident Fund Organization and the said contributions have to be deposited by the employer by the 15<sup>th</sup> day of next month in which the employee has worked in the establishment and the dues become payable to him, because the worker has already performed the employment up to the last day of the previous month.

2. As submitted by the Applicant, the contributions have to be deposited by the employer only after the beneficiary workmen have already worked and thus earned this amount in terms of the contract of employment and the provisions of the Act. Further, the contention of the Applicant is that if any employer makes an effort to deny employees the legitimate dues which they have rightly earned in terms of the provisions of the Act, it needs to be looked upon with suspicion. The Applicant placed reliance on the Judgment of the Hon'ble Supreme Court in the matter of "**Regional P.F. Commissioner vs. Hooghly Mills Company Limited and Others [(2012)2 SCC 489]**", wherein it was held **that** Employees P.F. & MP Act 1952 is a social welfare legislation, and the statute should be read as a whole considering its design, purpose and remedy which it seeks to achieve and same should be resolved in favour of the class of persons for whose benefit the statute is enacted.
3. As submitted by the Applicant, M/s Shiv Mfg Pipes Pvt Ltd was unable to service its debt and was ordered to be liquidated via NCLT order dated 24.11.2021 and subsequently Liquidator a was appointed. As contended, M/s Shiv Mfg Pipes Pvt Ltd defaulted in payment of Provident Fund, Pension and Insurance contributions under Section 6 of EPF & MP Act, 1952. The Corporate Debtor failed to credit employees PF contribution amount to the fund. Therefore, as alleged, at no fault of employees, they were denied their valuable right protected under the Employees' Provident Funds and Miscellaneous Provisions Act. The debt owed to the Provident Fund



Commissioner is the debt owed to the employees. Therefore, the claim filed by Commissioner represents the claim of the employees and workmen in respect of their claim for provident fund.

4. As stated by the Applicant, the public announcement in FORM B as per Liquidation Regulations was issued on 26.01.2022 calling for submission of claims by 21.02.22 and pursuant to this, the Applicant filed its claim dated 17.03.2022 which included Rs 14,09,387/- as PF contributions of employees under Section 7 A of the Act and Rs. 4,10,378/- as interest amount under Section 7Q of the Act and Rs. 08,37,049/- damages under Section 14B, amounting to a total claim of Rs.26,56,814/-.
5. The Applicant further submitted that the Liquidator, vide an email dated 17.03.2022, rejected the total claim of Rs.26,56,814/- of the Applicant, stating that the same could not be considered as the said claim was filed after the due date of filing the claims. Further, the Liquidator also categorized the dues into PF Contributions excluded out of Liquidation estate under Section 36(4)(a)(iii) and penal damages and Interest along with admin charges of Section 7A dues to be considered as Government Dues under Section 53 of IBC.
6. The Applicant stated that there was a delay of only 24 days in filing of claim with the liquidator as the public announcement as per Liquidation Regulations was issued on 26.01.2022, calling for submission of claims by 21.02.2022 and the PF authority filed its claim dated 17.03.2022 of Rs.26,56,814/-. As contended, the Applicant was not aware of the last date of submitting the claim and was the Applicant was under the bonafide belief that the said claim has been filed before the IRP on 25.01.2021. Therefore, in view of this, the Applicant stated that great harm and prejudice will be caused if the present appeal is not allowed as it is made in the best interest of justice.




7. Thus, in view of the above, the Applicant preferred the present Application before this Hon'ble Tribunal and prayed for a direction to the Liquidator to accept the entire claim of the Applicant and categorize PF Interest and Damages, along with PF Contributions under Section 36(4)(a)(iii) of the Code as out of Liquidation Estate. The Applicant further prayed to condone the delay in filing of the claim before the Liquidator.

### III. Findings -

8. After perusing the documents available on record, it becomes clear that the case of the Applicant is that the Applicant vide letter dated 17.03.2022 submitted its claim for an amount of Rs.26,56,814/- to the Liquidator, however, the Liquidator (Respondent), vide an email dated 17.03.2022, rejected the same. Thus, the Applicant has preferred the present Application before this Hon'ble Tribunal.
9. It is pertinent to note that the present case was list for hearing on 12.07.2024 and Ld. Counsel for the Liquidator appeared before this Hon'ble Tribunal and submitted that the delay of 24 days in the filing of the said claim is condoned. It was further submitted that the contentions of the Respondent are limited to the Interest (Section 7Q) and Damages (Section 14B) part of the said claim. This Bench, vide Order dated 12.07.2024, was pleased to hold as under-

*“APPEAL/14/2022: - The IA has been preferred by the Employees Provident Fund Organization for a direction to the Liquidator to accept the claim in respect of entire PF claim along with interests and damages, in terms of Section 36 (4) (III) of IBC out of the liquidation stage. The claim of the Applicant is to the extent of Rs. 26,56,814/-. The Ld. Counsel for the Applicant submitted that the CIRP of CD was initiated vide order dated 25.10.2019. Though Form-A was stated to have been published by the IRP on 22.11.2019 wherein the last date for submission of claim was*



*stated to be 03.12.2019. No such intimation was received by the Applicant from the IRP and thus, the Applicant failed to file any claim pursuant to the public notice. On 23.02.2021, a letter was received from IRP to file the claim before the liquidation order was passed and the liquidator invited the claims. The Liquidation commenced on 24.11.2021. The last date for submitting the claims was stated to be 21.02.2022. The case of the Appellant is that the claim was filed by them before the liquidator on 17.03.2022 and the liquidator rejected the claim of the appellant on 17.03.2022 itself. The prayer of the appellant is for condonation of delay and also for a direction to the liquidator admitting the claim of the appellant. Adv. Aditya Mishra appears on behalf of the liquidator and very fairly submits that he does not wish to oppose the delay of 24 days in filing the claims. Thus, in view of the same, the delay is condoned. He wishes to oppose the same with respect to interests and damages part. The Ld. Counsel further submitted that knowing the claim of the EPFO, the liquidator had already kept the contingency of Rs. 26,00,000/- to what the found of appellant though the liquidator shall be in position to take care of only. The principle amount claimed by the appellant and not the interests and damages part. He prayed for a short adjournment so as to make an attempting to work out the issue. In view of the request made, adjourned to **16.07.2024.**”*

- 10.** Therefore, in view of the Order dated 12.07.2024, it is clear that the Respondent has confined itself only to the issue with respect to Interest and Damages part of the said Claim. In order to deal with the issue at hand, we must appreciate the settled law with respect to the issue of Interest component and Damages component of the EPF dues. The Hon’ble NCLAT, in a recent




judgment passed on 11.09.2024, in the matter of **Truvisory Insolvency Professionals Pvt. Ltd. (IPE) Vs. Employees' Provident Fund Organisation (Company Appeal (AT) (Ins.) No. 580 of 2023)**, after considering all the relevant judgments with respect to the issue of EPF dues, has held as under-

*“45. In view of position explained above, we hold that:*

*(i) the claims of all the eight EPFO's are to be treated on par and the entire amount of claim under Section 7A, 7Q and 14B of the EPF Act has to be paid to respective PF authority from the funds available in the attached bank accounts of CD. In case the amount available is not sufficient the same shall be met from disposal of other assets of the CD. Balance left after meeting the claims of the EPFO Authorities shall form part of the liquidation estate.”*

11. Further, the Hon'ble NCLAT in the matter of **Mr. Anuj Bajpai v. Employee Provident Fund Organisation and Ors. Comp. App. (AT) (Ins) No. 1141 of 2023** has placed reliance on the judgment of the Hon'ble Apex Court in the matter of ***Sunil Kumar Jain v. Sundaresh Bhatt [(2022) 7 SCC 540]*** and has held as under-

*“54. We also note that the Hon'ble Supreme Court of India in **Sunil Kumar Jain v. Sundaresh Bhatt [(2022) 7 SCC 540]** held that the dues of the gratuity and pension shall be governed by Section 36(4) of the Code. It is reiterated that Section 36(4)(ii) of the Code specifically excludes “all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund”, from the ambit of liquidation estate assets. Therefore, Section 53(1) of the Code cannot be made applicable to such dues, which are to be*




*treated outside the liquidation estate assets under the Code. Section 36(4) of the Code has clearly gives protection to workmen's dues under provident fund, gratuity fund and pension fund which are not to be treated as liquidation estate assets and the liquidator cannot claim over such dues."*

12. The Hon'ble NCLAT in the aforementioned case of **Mr. Anuj Bajpai v. Employee Provident Fund Organisation (Supra)** has also placed reliance on the judgment of the Hon'ble Supreme Court in the matter of **Maharashtra State Cooperative Bank Vs. Assistant Provident Fund Commissioner & Ors. [(2009) 10 SCC 123]** and held as under-

*"50. In this regard, we would like to refer to the judgement of the Hon'ble Supreme Court of India in case Maharashtra State Cooperative Bank (Supra) which gives clear ratio as laid down by the Hon'ble Supreme Court of India in Para 67 to 69. These paras reads as under :-*


*"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 7-A, 7-Q, 14-B 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 7-Q. 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 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 14-B 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 7Q. 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 7-A or the contribution payable under Section 8.***

69. *If interest payable by the employer under Section 7-Q and damages leviable under Section 14 (sic Section 14-B) 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 authorities concerned 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 7-Q and damages leviable under Section 14-B do not form part of the amount due from an employer for the purpose of Section 11(2) of the Act.*”

**13.** Keeping in view the above-stated unambiguous observations of the Hon’ble Supreme Court and of the Hon’ble NCLAT holding as under-

- Section 7A, 7Q, and 14B of the EPF Act has to be paid from the funds available.
- These fall outside the ambit of the Liquidation estate of the Corporate Debtor.
- Interest and damages also have to be paid as keeping these out would frustrate the *non obstante clause as in Section 11(2) of the EPF Act.*

**14.** At this stage, keeping in view the proposition laid down with respect to EPFO dues, it is pertinent to examine the claim submitted by the Applicant vide letter dated 17.03.2022 to the Liquidator. It is noted that there are three components of claims i.e., Dues of Provident Fund of Rs 14,09,387/- under Section 7A; Rs. 04,10,378/- as interest component under Section 7Q; and Rs. 08,37,049/- as damages under Section 14B of the EPF Act. Thus, amounting to a total sum of Rs.26,56,814/-, as being claimed by the Applicant.

**15.** Therefore, upon considering the facts and circumstance of the case and also in light of the aforementioned judgments, we are of the opinion that the Hon’ble Supreme Court in no uncertain terms has already in the case of **Anuj Bajpai (Supra)** held that the interest payable by the employer under Section 7Q and the damages levied under Section 14B of the EPF Act will also be covered as dues from the employer and thus, the same does not form part of



the Liquidation Estate and will fall outside the waterfall mechanism as stipulated under Section 53 of the Code. Thus, this Bench directs the Liquidator to admit the claim of the Applicant in totality.

**16.** In view of the above, the present Application is **allowed** and **disposed off**.

**Sd/-**

**MADHU SINHA**

**Member (Technical)**

/Jhanvi/

**Sd/-**

**REETA KOHLI**

**Member (Judicial)**