



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**COURT - 2**

ITEM No.303

IA/1465(AHM)2024 in CP(IB)/4(AHM)2022

**Orders under Section 60(5) of IBC,2016 r.w.Rule 11 of NCLT rules,2016**

**IN THE MATTER OF:**

The Regional Provident Fund Commissioner-II (Legal)

.....Applicant

V/s

CA Rajendra Jain IRP of Kimaya Industries Pvt Ltd

.....Respondent

**Order delivered on: 10/01/2025**

**Coram:**

**Mrs. Chitra Hankare, Hon'ble Member(J)**

**Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)**

**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in the open Court, vide separate sheet.

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**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

-sd-

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**



**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH (COURT-II)**

**IA No./1465(AHM)/2024  
IN  
CP (IB) No./4(AHM)/2022**

[Filed Under Section 60(5) & Rule 11 of NCLT Rules, 2016]

**IN THE MATTER BETWEEN:**

The Regional Provident Fund Commissioner-II (Legal),  
Employees Provident Fund Organization.

**...Applicant**

**Versus**

Mr. Rajendra Jain, Resolution Professional,  
Of M/s. Kimaya Industries Pvt. Limited.

**....Respondent**

**Order pronounced on 10.01.2025**

**Coram:**

**MRS. CHITRA HANKARE  
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G. VENKATA CHALAPATHY  
HON'BLE MEMBER (TECHNICAL)**



## **MEMO OF PARTIES**

The Regional Provident Fund Commissioner-  
II (Legal), Employees Provident Fund  
Organisation, (Ministry of Labour and  
Employment, Government of India)  
Regional Office, Surat,  
Having office at Bhavishya Nidhi Bhawan,  
Ghod Dod Road, Surat-395001.  
Email I.D.: ro.surat@epfindia.gov.in

**...Applicant**

### **Versus**

Mr. Rajendra Jain, Resolution Professional  
of M/s. Kimaya Industries Pvt. Limited.  
Having office at 9B- Vardan Tower, Lakhudi  
Circle, Navrangpura, Ahmedabad-380014.  
Email I.D.: cirp.kimaya@gmail.com.


**.....Respondent**

### **Appearance:**

For the Applicant : Mr. A V Nair, Adv  
For the Respondent : Mr. Sumit Parikh, Adv


## **JUDGEMENT**

1. The applicant submitted that the present application is filed under Section 60(5) of the IBC, as being aggrieved by the action of the Respondent-Resolution Professional in rejecting the claim of Provident Fund dues of the Workmen and Employees, preferred by the applicant herein on



15.07.2024 for the total sum of Rs.1,98,74,168/- towards assessed Payable contributions under Section 7A for the default period 07/2019 to 03/2022 and Tentative payable Damages under Section 14B and Tentative payable Interest under Section 7Q, for the default period 01.01.2017 to 31.03.2023.


2. It is submitted that the Corporate Debtor under CIRP -M/s. Kimaya Industries Private Limited had defaulted in timely remitting the contribution of the workmen/ employees towards the Provident Fund, under the provisions of the EPF Act and the three schemes thereunder, with the office of the applicant for the default period starting from 01/01/2017 to 31/03/2023. Since the Corporate insolvency resolution proceedings was initiated against the corporate debtor vide order dated 03/02/2023 in C.P. (I.B.) No. 04 of 2022, the Respondent herein was appointed as the Interim Resolution Professional for conducting the Corporate Insolvency Process of the CD as per the IB Code and the Regulations therein, who had intimated about the initiation of the Resolution process, vide communication dated 13/02/2023. Accordingly, the office of the applicant herein




had concluded the pending Inquiry proceedings: (i) under Section 7A for the default period 07/2019 to 03/2022 vide order dated 04/07/2024 by assessing the payable contributions to the tune of Rs.80,56,046/- and (ii) under Section 14B and 7Q for the default period 01/01/2017 to 31/03/2023 vide communication dated 15/07/2024 to the tune of Total Rs.1,18,18,122/-, before making a claim vide communication dated 15/07/2024, which has been rejected by the Respondent herein vide communication dated 22/07/2024.

3. Applicant relied upon the following judgements:

- a) Swiss Ribbons Pvt. Ltd. V/s. Union of India AIR 2019 SC 739 (Para-58).
- b) Hon'ble Kerela High Court in the case of Kerala State GST Department V/s. NCLT & Anr. reported in 2024 ibclaw.in 85 HC.
- c) S.V. Kandoakar V/s. VM Deshpande reported in 1972 | SCC 438
- d) Sundaresh Bhatt, Liquidator of ABG Shipyard V/s. CBIT 2022 ibclaw.in. 103SC:2023 1 SCC 472.

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- e) Jet Aircraft Maintenance Engineers Welfare Association Vs. Ashish Chhawchharia RP of Jet Airways (India) Ltd. & Ors, reported in 2022 ibclaw.in 861 NCLAT,
- f) Maharashtra State Co-operative bank Ltd. V/s. The Assistant PF Commissioner reported in (2009) 10 SCC 123.
- g) Precision Fasteners Ltd. Through Liquidator V/s. Employees Provident Fund Organization, passed by the Hon'ble NCLT, Mumbai bench in MA 576 & 752/2018 in C.P. (IB) 1339(MB) /2017 dated 12/09/2018,
- h) Hon'ble NCLAT, New Delhi in the Case of Regional Provident Fund Commissioner V/s. Ramchadra D. Choudhary in Company Appeal (AT) (Insolvency) No. 1001 of 2019 dated 19/12/2019.
- i) Hon'ble NCLT, New Delhi in the case of Regional provident fund commissioner V/s. M/s. Serval India Pvt. Ltd. dated 08/12/2023 in IA 3118 of 2022 in CP (IB) No. 2728/ND/2019.

4. Respondent submitted that the Resolution Professional is not entitled to admit the claim after 90 days in view of the



orders of the NCLAT in the matters of Pooja Mehra vs Nilesh Sharma RP of Dream Procon Pvt Ltd [Company Appeal (AT) (Ins.) No. 1511 of 2023] and Mukul Kumar RP of KST Infrastructure Ltd vs. RPS Infrastructure Ltd.

5. Respondent further submitted that the said liability of Rs.1,98,74,168/- did not exist as on the date of commencement of the CIRP vide order dated 03.02.2023 and the same has been assessed by the applicant during the CIRP period. It is further stated that the department submitted the claim without the proper details of the employee and only a month-wise summary of the EPF and other dues shown as in the claim for the period of July, 2019 to March, 2022.
6. Respondent submitted that it is the case of the Applicant, that the Resolution Professional has not accepted the claim of the Department, however, the applicant is under some misconceived understanding of law and has wrongly preferred the present application with mala fide intent of misguiding this Tribunal by making false and frivolous allegations quo inaction of the Resolution Professional.



7. Heard both the parties and perused the documents on record.

a) The Points raised by the applicant and the respondent need to be analysed from records on two factors leading to the claim:

- i. The applicant being the EPF authority has raised certain demands which were adjudicated during the CIRP period which was after the initiation of the moratorium under Sec 14(1), when no assessment proceedings can be continued by the applicant irrespective of whether certain documents were sought from the Resolution Professional. This does not, however, as per Sec 33 (5) prohibit the applicant to continue with or even initiation of proceedings after the liquidation order is passed. When the liquidation order is passed, the moratorium ends which enables the protected assets of the CD to be free of any further consideration under liquidation estate.
- ii. The applicant has thus not carried out the assessment during liquidation period, but under




CIRP which is a violation under Sec 14(1) of the IBC 2016. Hence the applicant cannot press such a claim, which has not been considered by the RP.

b) It is observed and submitted by the respondent that the claim was filed by the applicant subsequent to the approval of the Resolution Plan by COC. Further as observed in the earlier para, the claim has lost its legal validity where the IBC laws prevail over all other laws as specified in Sec 14 and Sec 238 of the IBC 2016 and hence the Resolution Professional cannot accept any claim which has been adjudicated during the moratorium, as per the defence made by the respondent, the applicant did the assessment during the moratorium as on the date of CIRP there was no claim or liability due to the PF authorities.

8. We have gone through the citations placed by both the sides. There are two judgments which are relied upon in the matter:

a) The Honble Supreme Court in RPS Infrastructure Ltd Vs Mukul Kumar & Anr – Civil Appeal No.5590 of 2021



(11.9.2023) clarifies the position of claims assessed and preferred during the period of moratorium.

- b) The Honble NCLAT in the appeal by EPF vs Sanjay Kumar Lalit (Arising out of Order dated 19 Oct 2023 of NCLT Ahd- 1111/2023 in CP IB 387 of 2020) clearly defined the circumstances and provisions of IBC 2016 of relevance in this matter, stated clearly that no such claim can be admitted and dismissed the appeal made.

9. In view of the above, we pass the following order:

**ORDER**

IA 1465 of 2024 in CP(IB) 4 of 2022 is rejected.

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**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**

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