

IN THE NATIONAL COMPANY LAW TRIBUNAL,
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER

IA No. 331/JPR/2021
In CP No. (IB)- 86(ND)/2018

UNDER SECTION 60(5) of IBC, 2016

IN THE MATTER OF:

Oriental Bank of Commerce

...Financial Creditor/Applicant

Versus

Mount Shivalik Industries Limited

...Corporate Debtor/Respondent

AND IN THE MATTER OF:

Employees Provident Fund Organisation
Through Regional PF Commissioner II (Legal)

Having its office at:- Regional Office,
Nidhibhawan, Vidhyut Marg, Jyoti
Nagar, Jaipur - 302005

...Applicant

VERSUS

Kals Distilleries Pvt. Ltd.
(Successful Resolution Applicant for
Mount Shivalik Industries Ltd.)

Regd. Office At:-23/5, Thanikachalam
Road, T. Nagar, Chennai – 600017
(Tamil Nadu)

Also At:-140th Mile Stone, N.H. – 8, Vill.
Gunti, Tehsil – Behror, Alwar – 301701
(Rajasthan)

... Respondent

For the Applicant : Deepak Goyal, Adv.
For the Respondent : Pratibha Khandelwal, erstwhile RP
Abhishek Anand, Adv. for RP

Order Pronounced On: - 20.10.2022

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The present Application bearing *IA No. 331/JPR/2021* has been filed under Section 60(5) of the IBC, 2016 by the Employees Provident Fund Organisation through Regional PF Commissioner (‘Applicant’) praying that necessary directions may be issued to the Resolution Professional (‘Respondent’) for further consideration of a claim of Rs. 8,98,945/- (Rs. Eight Lakhs Ninety-Eight Thousand Nine Forty-Five Only) submitted by the Applicant to the RP in the light of the order dated 10.07.2019.
2. It is observed that at the time of filing of this Application, Ms. Pratibha Khandelwal was the Resolution Professional whereas during the pendency of proceedings, the Resolution Plan was approved vide order dated 13.10.2021 and thereby the Applicant was directed vide order dated 26.04.2022 to file amended memo of parties and replace the name of the RP with that of the Resolution Applicant i.e. M/s Kals Distilleries Pvt. Ltd.
3. The Hon’ble NCLT, New Delhi vide order dated 12.06.2018 commenced the Corporate Insolvency Resolution Process (‘CIRP’) under Section 7 of the IBC, 2016 against M/s Mount Shivalik Industries Limited (‘Corporate

Debtor') whereby Ms. Pratibha Khandelwal was appointed as Interim Resolution Professional ('IRP') and later confirmed as Resolution Professional ('RP').

4. In the present application, it is submitted that Form-B had been filed for the statement of claims with the RP on 19.02.2019 claiming a sum of Rs. 24,61,073/- (Rs. Twenty-Four Lakhs Sixty-One Thousand Seventy-Three Only). The aforesaid amount includes a sum of Rs. 8,98,945/- (Rs. Eight Lakhs Ninety-Eight Thousand Nine Forty-Five Only) which is due for the period 01.02.2017 to 31.03.2018 against which enquiry is under process u/s 14-B and 7-Q of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 ('EPF & MP'). In response to the same, the RP *vide* letter dated 22.06.2019 specified that out of a total claimed amount, a sum of Rs. 15,62,128/- (Rs. Fifteen Lakhs Sixty-Two Thousand One Twenty-Eight Only) is admitted as assessed.
5. Thereafter, it is pertinent to mention that the Applicant issued a letter dated 11.10.2019 to the RP whereby the orders passed by the Employees Provident Fund Organisation ('EPFO') under section 14-B and 7-Q of the EPF & MP Act, 1952 were enclosed. The said orders levy damages on the Corporate Debtor and impose a penalty of Rs. 5,85,819/- (Rs. Five Lakhs Eighty-Five Thousand Eight Hundred and Nineteen Only) under section 14-B and Rs. 3,13,126/- (Rs. Three Lakhs Thirteen Thousand One Twenty-Six Only)

under section 7Q amounting to a total of Rs. 8,98,945/- (Rs. Eight Lakhs Ninety-Eight Thousand Nine Forty-Five Only).

6. Further, the Applicant also prays for inclusion Rs. 3,68,798/- (Rs. Three Lakhs Sixty-Eight Thousand Seven Hundred Ninety-Eight Only) in the claim as the said amount is shown as outstanding in the Corporate Debtor's ledger under the heading of short remittances.
7. It has been further submitted that the RP failed to respond to the aforesaid letter till the month of January 2021. Hence, the Applicant issued another letter dated 29.01.2021 with the request to update the information regarding the unadmitted claims. In response to that, the Respondent sent an Email dated 27.02.2021 stating that Rs. 15,62,128/- (Rs. Fifteen Lakhs Sixty-Two Thousand One Hundred Twenty-Eight Only) is admitted and the outstanding amount of Rs. 8,98,945/- (Rs. Eight Lakhs Ninety-Eight Thousand Nine Forty-Five Only) has not been admitted as it is a contingent amount as per the books of the Corporate Debtor. It was also mentioned in the e-mail that the amount of Rs. 3,68,798/- (Three Lakhs Sixty-Eight Thousand Seven Hundred Ninety-Eight Only) has not been claimed in Form-B, hence cannot be admitted as claim.
8. The Applicant mentions that the RP has failed to consider the order of EPFO dated 10.07.2019 whereby the penalty has been imposed on the Corporate Debtor. Moreover, no objection had been raised by the RP for the outstanding sum of Rs. 3,68,798/- (Three Lakhs Sixty-Eight Thousand

Seven Hundred Ninety-Eight Only) even though the information regarding the same has been given to the Respondent *vide* letter dated 11.10.2019.

9. Thereafter, it is submitted that the Applicant approached the Respondent *vide* Email dated 08.03.2021 enquiring about the inclusion of the aforesaid rejected amount. However, the Respondent paid no heed to it till the month of August 2021. Subsequently, the Applicant once again e-mailed to the RP seeking the same information on 18.08.2021.
10. It is submitted by the Applicant that in response to the aforementioned mails the Respondent *vide* Email dated 23.08.2021, informed that the Application bearing *IA No. 186/JPR/2019* has been filed under Section 30(6) of the IBC, 2016 for the approval of a Resolution Plan and the same has been reserved for final orders on 02.03.2021 by this Adjudicating Authority. The Applicants herein submit that the RP failed to inform the Applicant that Resolution Plan had been moved before the Adjudicating Authority.
11. It is observed that during the pendency of this Application, the Application for Approval of Resolution Plan came to be allowed *vide* order dated 13.10.2021. The Applicant preferred an appeal before the Hon'ble NCLAT, which came to be numbered as *Company Appeal No. (AT) (Insolvency) No. 439/2022* titled as *Regional Provident Fund, Jaipur Vs. Pratibha Khandelwal (RP) & Ors.* However, the same was dismissed by the Hon'ble NCLAT for non-prosecution *vide* order dated 10.08.2022.

12. Further, the Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. (2021) 9 SCC 657* dated 13.04.2021 held as follows:

“102.1 That once a resolution plan is duly approved by the Adjudicating Authority under sub section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.”

13. In the present matter, the Resolution Plan as submitted by the Resolution Applicant has been approved by this Adjudicatory Authority vide order dated 13.10.2021. According to the provisions laid down under the Code, the order for approval of the resolution plan is binding on the Corporate Debtor and its employees, members, creditors (including the Central Government, any state Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed) guarantors and other stake-holders involved in the resolution plan. Further are per the law laid down by the Hon'ble Supreme Court, all dues including statutory dues owed to the Central Government, any State Government, or any local authority, if not part of the Resolution Plan, shall stand extinguished.

14. In view of the foregoing, the present application bearing *IA No. 331/JPR/2021* is dismissed.

DEEP
CHANDRA
JOSHI

Digitally signed by
DEEP CHANDRA
JOSHI
Date: 2022.10.20
18:06:11 +05'30'

**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

PRASANT
A KUMAR
MOHANTY

Digitally signed
by PRASANTA
KUMAR
MOHANTY
Date: 2022.10.20
18:26:27 +05'30'

**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**