

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
((Through Physical Hearing/VC Mode (Hybrid))
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)

I.A. No.4 & 87 of 2024
U/s 60(5) of the IBC, 2016 in
C.P.(IB)No.36/BB/2022

In the matter of IA 4 of 2024

Employee's provident Fund Organisation

Assistant Provident Fund Commissioner
Regional Office (Hubli),
Bhavishya Nidhi Bhawan, New Block 10,
Hubli – 580 025

.... Applicant

Vs.

CA Shirley Mathew,

Resolution Professional of
Soubhagya Laxmi Sugars Ltd.,
#31, Wheeler Road Extension,
St. Thomas Town, Bengaluru _560084

.... Respondent/RP

In the matter of IA 87 of 2024

Deputy Commissioner of Commercial

Taxes Audit - 3, Belagavi
"Sumoulya Soudha" 5th Floor,
Club Road, Belagavi – 590001

.... Applicant

Vs.

CA Shirley Mathew,

Resolution Professional of
Soubhagya Laxmi Sugars Ltd.,
#31, Wheeler Road Extension,
St. Thomas Town, Bengaluru _560084

.... Respondent/RP

Order delivered on: 09.07.2024

CORAM:

1. Hon'ble Shri K. Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the RP	:	Shri C.K.Nandakumar (Sr.Adv.) With Ms.Maitreyi Bhat
RP	:	Ms.Shirley Mathew
For the Applicant in I.A 87/24	:	Shri Sandeep H
For the Applicant in I.A 4/24	:	Shri Saravana P

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

I.A.No. 4 of 2024

1. The instant Application is filed by Employee's provident Fund Organisation ('Applicant'), on 13.12.2023 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 *inter alia* seeking to condone the delay of 370 days i.e., from 06.07.2022 to 10.07.2023 in filing of claims of Provident Fund dues of the CD before RP as the Corporate Debtor before RP, is equally responsible for non-production of records resulting in inordinate delay in formulation of dues which was also intimated to the RP. Further, it is requested to issue appropriate direction to RP to consider the claim of EPFO under section 36(4)(a)(iii) and to release the statutory PF dues on priority towards the payment of the debts as per the provisions of section 11 of EPF & MP Act, 1952 and to pass such other Order/direction as it deemed fit and proper in the fact and circumstances of the case.
2. Brief facts of the instant Application, which are relevant to the issue in question, are as follows:
 - i. The said Petition was admitted by this Adjudicating Authority vide order dated 07.04.2022 and the erstwhile RP has made Public announcement for inviting claims in Form A, in newspapers on 23.04.2022. Accordingly, the last date for submission of claims was 06.05.2022. It is submitted that on 03.08.2022 this Tribunal appointed the respondent as the RP.
 - ii. It is submitted that the establishment defaulted in paying the contributions and other allied dues, in respect of all eligible employees resulting in evasion and also on the correct wages in respect of employees who were extended PF membership; within the prescribed time in respect of various employees.

Sl No	Period of default by the Corporate Debtor up to the initiation of CRIP	U/Sec of EPF & MP Act	Total liable to pay Applicant (Rs.)
1.	From April 2019, to March 2022	Monthly Contribution	Rs. 1,43,73,632/-
2.	From April 2019, to March 2022	U/Sec 14B (on both paid & unpaid dues)	Rs. 1,00,59,202/-
3.	From April 2019, to March 2022	U/Sec 7Q (on both paid & unpaid dues)	Rs. 48,89,107/-
Total			Rs. 2,93,21,941

(Rupees Two Crores Ninety-Three Lakhs Twenty-One Thousand Nine Hundred and Forty-One Only)

The dues after the intimation of CIRP i,e from 04/2022 to 05/2023 has been calculated separately.

- iii. It is submitted that on 10.07.2023 the applicant informed the RP and made demand for payment of statutory dues pertinent to workmen of the establishment amounting to Rs. 3,84,08,033/-. However, now dues up to March 2022 was shown as the CIRP was admitted on 07.04.2022. Vide email dated 25.08.2023 the RP rejected the claim on the ground that claim is not filed in prescribed form against the CD within 90 days from the imitation of CIRP. That after receipt of the above email the applicant organization took a view to approach this Hon'ble Tribunal.
- iv. It is submitted that the reason for delay is that the RP has not intimated directly to the applicant regarding the initiation of CIRP. The RP informed that there was a paper publication. By the time new RP appointment was communicated vide letter dated 29.09.2022, the last date for filing claim was already over on 06.07.2022. A letter was written to RP on 27.02.2023 to facilitate the production of records.
- v. Further, after production of the authenticated records by the establishment after much delay, Area Enforcement Officer vide his report dated 09.06.2023 reported that non-employment of employees and subterfuge/camouflage of wages is noticed. Inspection was conducted for April 2019 to November 2022 and dues was deposited for about 150-180 employees whereas number of employees as per the salary records were 250-500, varying month wise. Area Enforcement Officer submitted the dues payment statement for the period April 2019 to November 2022. Dues were calculated month wise for the period.
- vi. However, from the system, subsequent compliance was noted upto May 2023. EPFO vide email dated 16.06.2023 directed the establishment to forward the salary records for the remaining period from December 2022 to the last month of operation of the company. In response the establishment forwarded the salary detail for the period from December 2022 to May 2023.
- vii. In the records submitted by the establishment for the period from Dec 2022 to May 2023 it is evident that the establishment itself has admitted through the salary records produced that they have evaded extending PF membership to its poor employees and thus have not provided the social security benefits. Once again the dues were

calculated for the remaining period. Interest u/s. 7Q and penal damage u/s 14B of the Act were generated on the paid as well as prepared manually month wise for unpaid dues at the rate prescribed for in the EPF Act and Scheme, as the unpaid dues of the evaded employees will also attract interest and penal damage for the delay when deposited.

- viii. The dues were submitted by EPFO on 10.07.2023. In response, an email was received from RP on 19.07.2023 stating that 'we are in the process of collating the information and we need approximately 3 weeks to submit our response. We therefore request you to please grant us the time.' However, on 25.08.2023, she informed that dues have already been finalized by COC on 07.06.2023, which was about 40 days before sending the mail on 19.07.2023.
- ix. It submitted that when an employee starts working in an establishment his employer generates Universal Account Number (UAN) on the portal to make him/her a PF member and to start depositing dues. M/s. Soubhagya Laxmi Sugar Ltd has not done so in respect of a vast number of employees to avoid PF dues and as per RP's Letter it appears to be using this for not admitting the dues, which are akin to letting the employer go scot free for their wrong doing.
- x. Again one letter was written to RP and another to the establishment on 15.09.2023. The RP once again reiterates her inability to consider the claim at this belated stage and rejected the claim vide letter dated 18.09.2023.
- xi. Further, the applicant relied on importance of EPF & MP Act,1952 and also relied on the Judgments of Hon'ble Apex court and the orders of Hon'ble NCLAT is as follows:
1. Bhupender Singh vs Unitech Limited, Civil Appeal No. 10856 of 2016.
 2. Maharashtra State Co-operative Bank Ltd vs Kannadsahkarisakharkarkhana (SLP)(C) No. 14772-14773 of 2010
 3. Regional Provident Fund Commissioner, Ahmedabad vs Ramchandra D Choudhary, NCLAT
 4. Sikander Singh Jamuwal, CA(AT)(Ins) No. 483 of 2019
 5. V-con Integrated Solutions Pvt.Ltd vs Acharya Techno Solutions (India) Pvt.Ltd

6. Nagalingam Muthiah vs Officer of Recovery Officer in IA No. 31/2021
 7. Regional P.F Commissioner vs Ashish Chhawchharia RP for Jet Airways (India) Ltd. & Anr., CA(AT)(Ins) No. 987 of 2022.
 8. Tourism Finance Corporation of India Ltd vs. Rainbow Papers Ltd & Ors.
 9. SBI vs Moser Baer Karamchari Union, 2020 NCLAT
 10. Precision Fasteners Limited v Employees' Provident Fund Organisation
 11. State Tax Officer vs Rainbow Papers MANU/SC/1109/2022
 12. Twenty first Century Wire Roads Ltd, CP(IB)737(PB)2018
 13. Alchemist Asset Reconstruction Company Ltd v Moser Baer India (IB-378(PB)/2017)
 14. Sunil Kumar Jain & Ors vs Sundaresh Bhatt & Ors. (2022)SCC Online SC 467
3. The RP/Respondent has filed Statement of Objections vide diary no.1540 dated 07.03.2024, wherein it is stated that the applicant till 27.02.2023 had not submitted any claim to the RP. Even on 27.02.2023, the applicant merely sought some details pertaining to the period prior to CIRP date. Thereafter, the RP vide letter dated 10.03.2023 informed the applicant that the details of information/data/documents requested were only available to the CD's HR Department, as this data pertained to the period prior to commencement of CIRP . The Tribunal vide order dated 05.06.2023 extended the CIRP till 09.06.2023. The 11th CoC meeting was called and the COC members approved the Resolution Plan with majority. Following this, the RP also filed IA 398 of 2023 on 09.06.2023 seeking approval of Resolution Plan which is pending for adjudication before this Tribunal. It is contended that only on 10.07.2023 the applicant filed the claim for Rs. 3,84,08,033/- by way of a letter. It is also submitted that the applicant has failed to file their claim not only within 90 days, but there is an **alarming 370 days delay** after the last date fixed for filing of claims. The RP has done her due diligence and made sincere efforts in seeking co-operation from the ex-management. The RP further submitted that the applicant has placed reliance on State Tax Officer vs Rainbow Papers, however it is pertinent to note that in a very recent case of Paschimanchal Vidyut Vitran Nigam Ltd vs Raman Ispat Pvt Ltd., 2023 SCC Online SC 842 dated 17.07.2023, the Hon'ble Supreme

Court has confined the dicta in Rainbow Papers to the facts of the case alone. The same has been upheld by the Hon'ble Apex Court in ***RPS Infrastructure Ltd. Vs. Mukul Kumar, reported at (2023) SCC Online SC 1147***, dated 11.09.2023 in which it has been held that the claims cannot be admitted at a belated stage.

4. It has further relied on NCLT Mumbai Order in EPFO vs Gajesh Labhchand Jain (RP of E&G Global Estates Limited), 2023 SCC Online NCLT 447 dated 11.08.2023 in which the application for belated claim filed by the EPFO Authority after approval of the Resolution Plan by the COC has been dismissed, as such claims would defeat the very purpose of the CIRP process which is supposed to conclude in a time bound manner. Further, the Hon'ble Supreme Court in the matter of EPFO vs Fanendra Harakchand Munot and Anr., 2023 SCC Online SC 1606 dated 25.08.2023 has remarked that the EPFO must take steps to ensure that there is compliance with the timelines provided under the code.
5. It is submitted that in the instant case, the delay in filing the application is 370 days, which is a period of 40 days beyond the maximum time set for the completion of the entire CIRP, let alone the filing of a claim. The Hon'ble Apex Court, in the case of Committee of Creditors of Essar Steel India Limited v Sathish Kumar Gupta, (2020) 8 SCC 531, has emphasized and cautioned against the allowing of claims after the resolution plan has been accepted by the CoC.
6. We have heard the learned Counsels for the parties, perused the pleadings of the parties, extant provisions of the Code, and the Regulations made thereunder. The applicant has filed rejoinder and written submissions vide diary no: 1646 dated 13.03.2024. The sur-rejoinder was filed by the RP on 27.03.2024 and written submission was filed vide Dy. No. 3123 dated 31.05.2024 reiterating facts mentioned in the reply.
7. From perusal of the records, it is noticed that the Applicant submitted their claim on 10.07.2023, i.e., after a delay of 370 days from the extended date of 06.07.2022, being 90 days from the commencement of CIRP as contended by the RP in his objections. The last date of making claim as per the public notice in newspapers on 23.04.2022 was 06.05.2022 only. It is an admitted fact that the CoC had approved the Resolution Plan in their 11th COC Meeting held on 07.06.2023 and filed an application on 09.06.2023 for

adjudication before this Tribunal. Moreover, it is noticed that from the communication dated 27.02.2023 the applicant had sought some details pertaining to the period prior to the CIRP and on 10.03.2023 the RP had intimated regarding the required documents being with HR Department. These communications show that the applicant was well aware of the CIRP proceedings, and has not filed any claim whatsoever till 10.07.2023.

8. In this regard, it is also pointed out that the RP has in the letter dated 25.08.2023 stated as under:

“that the some of the employees do not have UIN owing to absence of KYC documents and some of the employees left the Corporate Debtor. To that extent, your claim is erroneous”.

9. It is contended that the damages and interest levied by EPFO in respect of employees not having UIN was in the nature of penalty and therefore, the dues due to the Government. It is observed that the amount payable to the workmen or employees has protection under Section 36 (4) (a) (iii) of the IBC 2016, for the purpose of liquidation, but the same cannot be extended to the interest and damages covered under Sections 7Q and 14B of the Employees Provident Funds and Miscellaneous Provisions Act 1952. The Applicant herein filed a claim of Rs. 1,65,779,00/- under Section 7Q & 14B of EPF & MP Act and dues statement for Rs. 2,18,30,133/- was prepared as per the Attendance register, Wages register and EO report for the period April 2019 to May 2023 totaling to Rs. 3,84,08,033/- Out of this, an amount of Rs.1,65,779,00/- is payable to the Applicant/Department and will not be payable to the workmen or employees. Hence such interest and damages claimed by the Applicant comes under Government dues. The remaining amount of Rs. 2,18,30,133/- is on account of the order of the EPFO Department in respect of the claim, which is passed on 10.07.2023, which includes the moratorium period with effect from 07.04.2022 on Commencement of CIRP.

10. It is relevant to refer the orders passed by co-ordinate Benches, in which it was held that the belated claims made by the EPFO after the approval of Resolution Plan by the CoC, during moratorium or which includes the moratorium period is not allowable under the provision of the IBC. Here also, Area Enforcement officer has conducted the inspection for the period April 2019 to November 2022, which includes the moratorium period also. Further, the dues payable to the workmen who don't have a Unique

Identification Number; therefore, no PF deduction/dues can be worked out for them. Hence, in view of these reasons, the claim cannot be allowed at this belated stage.

- 11.** We are of the view that when the Resolution Plan has already been approved by the CoC and it is pending before the Adjudicating Authority for approval, if Resolution Professional is directed to entertain new claim, the CIRP would be jeopardized and the Resolution Process may become more difficult. Keeping in view the object of the IBC, which is resolution of Corporate Debtor in a time bound manner to maximize the value, if such belated claims of Applicants is accepted at this stage, the very purpose of IBC would be defeated. The Hon'ble Supreme Court vide judgment dated 1.09.2023 in the case M/s. RPS Infrastructure Ltd. (supra), has held as under:

“19.We believe that the appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the Corporate Debtor was undergoing CIRP. The appellant has been deficient on this aspect. The result, of course, is that the appellant to an extent has been left high and dry.

20. Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the appellant. In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.

21. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by CoC.”

- 12.** The above decision of the Hon'ble Apex Court squarely applies to the facts of the present case. Any interruption in the CIRP process at this stage by allowing the present applications might cause unnecessary delay in the CIRP process. Moreover, the applicant's contention that the RP did not intimate directly to the Applicant regarding initiation of CIRP is held to be untenable, in view of the observation of Hon'ble Apex Court in this Judgment.
- 13.** Furthermore, in the order passed by the Hon'ble NCLAT on 12.09.2022 in *Company Appeal (AT) (CH) (Ins.) No.334/2022 in the case of The Regional Provident Fund Commissioner and Recovery Officer vs. M/s. Adept Technology Private Limited* in which the Appellate Tribunal upheld the order passed by the NCLT, Division Bench-I, Chennai on 09th June 2022, in I.A

(IBC)/748/CHE/2021 in CP No.1210/IB/2018 in which an application was dismissed stating that if such extraordinary delay is condoned, it shall defeat the very purpose of the IBC enactment, which is a time bound process. Additionally, in the order passed by the co-ordinate Bench of NCLT, Ahmedabad on 19.10.2023 in I.A No.1111 (AHM) 2023 in CP (IB) No.387 of 2020 in the matter of *The Assistant Provident Fund Commissioner vs Jaykumar Pesumal Arlani, RP of Decent Laminates Pvt., Ltd.*, reliance was placed on the Hon'ble Apex Court judgement in the case of *M/s. RPS Infrastructure Ltd.* as stated supra and it was held that the claim submitted by the Applicant is at belated stage after the approval of the Resolution Plan was rightly rejected by the RP, therefore, they do not find any merits in the application to interfere at this belated stage for consideration of the claim of the Applicant/EPFO.

- 14.** In view of the above discussion, we are of the considered opinion that the instant Application bearing **IA No.4 of 2024 is not maintainable and is hereby dismissed accordingly.**

IA. 87 of 2024

1. This application was filed on 10.01.2024 by the Deputy Commissioner of Commercial Tax seeking to Set aside the impugned order dated 18.12.2023 passed by the Respondent rejecting the claim of the Applicant and to Condone the delay of 528 days (06.07.2022 to 16.12.2023) in submission of the claim dated 11.12.2023 by the Applicant before the Respondent; and to direct the Respondent to verify, admit and process the claim of the Applicant.
2. It is submitted that the applicant had called upon the company to produce its books of accounts required under the GST Acts for the FY 2019-20. Thereafter, on 19.08.2023 an intimation was issued in Form DRC – 01A asking the Company to remit tax under the GST Acts for the aforesaid FY. The Respondent replied on 23.08.2023 stating that the Company is undergoing CIRP as per the order dated 07.04.2022 and RP was appointed on 03.08.2022. Subsequently, and since the letter dated 23.08.2023 neither provided any reasons for non-filing of the returns nor were the books of accounts produced, the Applicant had no choice but to issue a Show Cause Notice under the GST Act, dated 30.10.2023.

3. Thereafter, the Applicant received a letter dated 06.11.2023 on 10.11.2023 from the Respondent, stating that since the Company is under CIRP, the adjudication proceedings under the GST Act cannot continue. The letter also stated that the Committee of Creditors ('CoC' for short) has approved the resolution plan and an application for the approval of the same is pending before this Hon'ble Tribunal. The said reply again did not provide the Applicant with any of the requisite documents for completion of the assessment proceedings.
4. The applicant completed the adjudication proceedings and passed an order dated 22.11.2023, imposing a total liability under the GST Act, amounting to Rs. 41,86,799/-. Upon completion of the assessment proceedings the applicant filed its claim on 11.12.2023. The Respondent sent a reply letter dated 18.12.2023 to the Applicant, rejecting its claim on the ground that the same was filed belatedly and the Resolution Plan, has already been approved by the CoC and at this juncture the Respondent cannot admit the claim. Thus, for that technical reason alone, the Respondent stated that she could not accept the Applicant's claim.
5. The Applicant first became aware in August 2023 that the Company is undergoing CIRP. The Applicant immediately thereafter, completed the adjudication process on 22.11.2023 and filed its statement of claim in Form B covering the dues payable by the Company. Thereby, there was a bona fide delay of 528 days (06.07.2022 to 16.12.2023) in filing the claim before the Respondent.
6. Moreover, and in any event, as soon as the Applicant learnt about the CIRP of the Company, the Applicant directed the Respondent to furnish the books of the Company for completion of the assessment proceedings. Since there was no information provided by the Respondent even after multiple follow ups, the Applicant had to conclude the assessment proceedings as per the material present on record. Thus, since the delay in submission of the claim by the Applicant is neither intentional nor with a view to protract the CIRP of the Company, the delay ought to be condoned and Respondent ought to be directed to admit the claim and to process it in accordance with law.

7. Further, the applicant has placed their reliance in the Hon'ble Supreme Court, in *Sundaresh Bhatt, Liquidator of Abg Shipyard V. Central Board of Indirect Taxes and Customs (CIVIL APPEAL No. 7667 of 2021)*.
8. The respondent filed its reply vide diary no: 1539 dated 17.03.2024, which are similar to the objections filed in I.A. No. 4 of 2024. It has filed written submission vide Dy. No. 3123 dated 31.05.2024 reiterating facts mentioned in the reply, by contending that for the first time on 11.12.2023, i.e., five months after the approval of the resolution plan by the COC, the applicant submitted its claim of Rs. 41,86,799/- in Form B. The letter in Form B was received by the RP on 16.12.2023. The RP, vide letter dated 18.12.2023, immediately informed the respondent that the claim is beyond the expiry of CIRP period and the resolution plan is already approved by the CoC. The RP, in congruence with the law, duly informed the applicant of its being bound by the Code and that it would not be in a position to admit claim, filed belatedly after an inordinate **delay of 528 days** from the last date.
9. The RP has relied on the Hon'ble Apex Court Judgment of (i) RPS Infrastructure Ltd. v. Mukul Kumar, 2023 SCC OnLine SC 1147, dated 11.09.2023, (ii) *Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta*, (2020) 8 SCC 531, dated 15.11.2019 and (iii) the NCLT Order in the matter of *Department of State Tax v. E. Panache Aluminum Extrusions (P) Ltd.*, 2023 SCC OnLine NCLT 1453 dated 21.12.2023.
10. We have considered the respective submission, and the material available on record. It is pertinent to refer to the Judgment of Hon'ble NCLAT in the matter of Assistant Commissioner of Income Tax v. RP of Diamond Power Infrastructure Ltd. and Ors. Company Appeal (AT) (Insolvency) No. 977 of 2022 decided on 21.05.2024 in which it was observed as under:

“there is no dispute with the facts that the claims made by the Appellant in pursuance to the assessment proceedings were finalised after the approval of the resolution plan by the CoC and the Adjudicating Authority. Allowing the claim at this belated stage would unleash the hydra-headed monster of undecided claims on the SRA and would have the effect of setting the clock back causing further delay in the CIRP of the Corporate Debtor, which does not commend us.”
11. In view of the foregoing discussions and the cited judgments it is clear that the delay in filing the Claim on 11.12.2023, i.e., after almost 6 months after

the approval of resolution plan by the COC cannot be considered and therefore the claim has rightly been rejected by the RP. This Tribunal in the order passed today in I.A. No. 04 of 2024 has held that the claims filed at a belated stage after the approval of resolution by the COC cannot be allowed. Considering the reasons discussed in that order, and the discussion made above, this I.A. 87 of 2024 is also not maintainable.

12. Accordingly, I.A. No. 87 of 2024 is dismissed.

**-Sd/-
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

**-Sd/-
(K. BISWAL)
MEMBER (JUDICIAL)**



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