

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-V**

IA 1780/MB-V/2022

In

CP (IB) No. 2995/MB/2019

Under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 Read with
Rule 11 of the National Company Law Tribunal Rules, 2016

Employee Provident Fund Organisation

... Applicant

Versus

Gajesh Labhchand Jain
(Resolution Professional of E&G Global
Estates Limited)

... Respondent

In the matter of:

Small Industrial Development Bank of India

... Financial Creditor

Versus

E & G Global Estates Limited

... Corporate Debtor

Order Dated:11.08.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances:

For the Applicant (s) : Mr. Suresh Kumar, Advocate
For the Respondent (RP) : PCA Ayush Rajani a/w Khushboo Shah
i/b AKR Advisors

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. The above captioned I.A. 1780 of 2022 is filed by Employee Provident Fund Organisation, against the letter of the Resolution Professional dated 30.10.2021, rejecting the claim of the Applicant on the ground that the COC approved the Resolution Plan and the same is submitted before the NCLT for approval, under Section 60(5) of the Insolvency and Bankruptcy Code 2016 (“**Code**”) seeking following reliefs:

- a) To direct the Resolution Professional to accept the claim in respect of entire PF claim and categorize PF Interest and Damages along with PF contribution*
- b) The delay in filing the present appeal if any may be condoned.*
- c) 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.*

Facts of the case

2. The Applicant is a Provident Fund Organization (hereinafter referred to as “**EPFO**”) constituted under the Employees Provident Fund and Miscellaneous Provisions Act 1952. It is a legislation for providing social security to employees, working in any establishment engaging 20 or more persons on any day.
3. The Applicant submits that the Corporate Debtor i.e. M/s E & G Global estates Limited bearing PF Code number MH/55949 was unable to service

its debt and thus was admitted into CIRP vide order dated 24.06.2020 by this Tribunal.

4. The Applicant submits that the Corporate Debtor i.e. M/s E & G Global estates Limited had failed to submit its employees PF contribution amount to the PF fund. The employees were denied their rights protected under the Employees Provident Funds and Miscellaneous Provision Act. Therefore, the claim filed by the PF Commissioner represents the claim of the employees and workmen in respect of their claim for provident fund.
5. The Applicant submits that as per Insolvency Regulations, the public announcement was issued on 26.06.2020. However, the PF office did not receive any information about the CIRP Process nor any communication from the IRP regarding the CIRP Process. Therefore, the Applicant has filed its claim immediately after it came to know about the CIRP process against the Corporate Debtor.
6. Pursuant to the above, the PF office has filed its claim dated 28.10.2021 which includes Rs. 3,79,29,585/- as PF contributions of employees and Rs. 7,58,592/- as cost charges. The same was acknowledged by the Resolution Professional on 28.10.2021 itself.
7. It is further submitted that the IRP had failed to consider the book liability towards the PF amount of Rs. 3,79,29,585/- as shown in the Corporate Debtor's books of accounts which is a statutory liability, which every employer is liable to make a provision in books of accounts.
8. It is submitted that the Resolution Professional vide email dated 31.10.2021 informed the Applicant that the whole claim of Rs. 3,86,88,177/- was received. However, the Resolution Professional did not receive any proof of claim within the stipulated time as per the public announcement i.e. on or before the ninetieth day of the insolvency commencement date and the last date of submission of claims.

Reply of the Respondent

9. The Respondent has denied all statements, allegations and contentions raised by the Applicant.
10. The Respondent submits that present application is not maintainable as Section 42 of the code provides 14 days' time period upon receipt of the rejection of claim by the RP. It is submitted that the Respondent had rejected the claim of the Applicant on 31.10.2021 due to filing of claim was way beyond the stipulated time allotted in the public announcement and the present application was filed on 11.06.2022 i.e. after seven months. Therefore, the present application is not maintainable.
11. It is further submitted that the Corporate Debtor was admitted under the CIRP process on 24.06.2020 and the Respondent then Interim Resolution Professional made public announcement on 26.06.2020, calling for submission of claim from the creditors under section 15 of the Code till 08.07.2020. However, the Applicant did not submit any claim with the Respondent.
12. It is submitted that as per the amended Regulation 12(2) of the CIRP Regulations provides that a creditor who fails to submit its claim with proof within the stipulated time mentioned in the Public announcement may submit their claim with proof to the IRP or RP, on or before the ninetieth (90th) day of the insolvency commencement date. In the present case, even the period of Ninety days also expired on 20.09.2020 but the Applicant failed to submit its claim within the stipulated time period. Hence, the present application deserves to be dismissed.

FINDINGS:-

13. We have heard the Counsel for the Parties and have gone through the record.
14. The issue that this Bench needs to be resolved is:

whether the Resolution Professional has rightly rejected the claim of the Applicant?

15. This Bench has observed that the Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor was initiated, vide an order dated 24.06.2020, under Section 7 of the Insolvency and Bankruptcy Code 2016, and Mr. Gajesh Labhchand Jain, was appointed as Interim Resolution Professional. The IRP published a public announcement as per Section 15 of the Code, inviting claims from the creditors of the Corporate Debtor on 26.06.2020 and the last date of submission of claim from the creditors of the Corporate Debtor was 08.07.2020.
16. It is argued by the Ld. Counsel appearing for the Applicant that they have not receive any information or any communication from the IRP regarding the CIRP Process. In view of the above, this Bench is of the view that in the due process of law whenever the Insolvency Professional is appointed as an RP, they need to send an intimation letter to all the creditors as well as the competent authorities for their statutory dues. They also make paper publication for inviting the claims from the stakeholders in leading newspapers. In the present case, the Respondent being an RP has also sent an intimation letter/email to the Employees Provident Fund Organization along with the Publication of notice dated 26.06.2020 in English Newspaper the Indian Express and in Marathi Newspaper Lok Satta, inviting claims from the creditors of the Corporate Debtor. Therefore, the contention of the Applicant that they were not informed about the CIRP process cannot sustain.
17. This Bench further in view of law laid down by the Hon'ble Supreme Court that of "**law does not come to the aid of those who sleep over their rights**" in the matter of **H. Dohil Constructions Co. (P) Ltd. v. Nahar Exports Ltd., [(2015) 1 SCC 680]** ("**Nahar Exports Case**") this Bench cannot come to the rescue of those who are sleeping over there rights or are not duly aware of their rights. In the present case the Applicant had

been dormant for more than a year for approx. 477 days, before filing their claims on 28.10.2021, when the COC had already approved the Resolution Plan in its 8th COC meeting held on 20.04.2021 submitted by Mrs. Asha Shivaji Sanap.

18. Beside the order for recovery of the outstanding dues amounting to Rs. 3.79 crore was passed by the EPFO (The Regional Provident Fund Commissioner-II, Nasik, Maharashtra) on 24.06.2021 whereas the Corporate Debtor was admitted to CIRP on 24.06.2020, thus the order is hit by Section 14 of the IBC.
19. A perusal of the order dated 24.06.2021 passed by the EPFO the Regional Provident Fund Commissioner reveals that it has been passed on the basis of the previous Balance Sheets filed by the Corporate Debtor upto the year 2015-2016. No name of the employees have been disclosed in the order dated 24.06.2021 and by way of this order it appears that only a penalty have been imposed. Therefore, the order dated 24.06.2021 is hit by Schedule 14 of the Code as it was passed during the CIRP period. Secondly, it does not mention the names of the employees/workmen whose due were not deposited by the Corporate Debtor.
20. In view of the above discussion this bench is of the considered view that at this belated stage when the Resolution plan has already been approved by the members of the COC in its 8th meeting dated 20.04.2021, the belated claim filed by the Applicant cannot be entertained, as such claims would defeat the very purpose of the CIRP process which is supposed to conclude in a time bound manner.
21. As a result of the aforesaid reason, the I.A. No. 1780 of 2022 is **dismissed** being devoid of any merit.

SD/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)