

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

ITEM No.301- IA/753(AHM)2023

In  
CP(IB) 46 of 2017

**Order under Section 60(5) IBC**

**IN THE MATTER OF:**

Employees Provident Fund Organisation  
Vs.

.....Applicant

Chandra Prakash Jain Liquidator of Mekaster Engineering  
Ltd.

.....Respondent

**Order delivered on: 24/07/2024**

**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 open Court vide separate sheet.

Sd/-

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

Sd/-

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

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AT AHMEDABAD BENCH (COURT- II)**

**IA No./753/AHM/2023  
IN  
CP (IB) No./46/AHM/2017**

*[Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016]*

Employees Provident Fund Organisation  
Regional Office Shimla,  
Block No-34 , 1<sup>st</sup> & 2<sup>nd</sup> Floor,  
SDA Complex, Kasumpti,  
Shimla – 171 009 (H.P.)

**...Applicant**

**Versus**

Mr. Chandra Prakash Jain,  
Liquidator of  
M/s. Mekastar Engineering Limited  
D-501, Ganesh Meridian,  
Opp. High Court, S. G. Road,  
Ahmedabad – 380 060.

**...Respondent**

**Order pronounced on 24.07.2024**

**Coram:**

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

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

**Appearance:**

For the Applicant : Ms. Parinda Davawala, Adv.  
For the Respondent : Mr. Vishal Dave, Adv. a.w Mr. Nipun  
Singhvi, Adv.

## **JUDGMENT**

1. The present application has been filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 (“IBC, 2016/the Code”) seeking following prayers:

*A. Order and direct the Respondent Liquidator to allow/accept the rest claim filed by the applicant as an Employees Provident Fund Organization; and/or*

*B. Order and direct the Respondent to include the name of the applicant in the list of creditors of the Corporate Debtor; and/or*

*C. Any other Order and or other further relief as the Hon'ble Tribunal deems fit and proper in the interest of justice.*

2. The brief backdrop of the case is that the Operational Creditor i.e. Sika Schweiz AG-Aliva Equipment had filed an insolvency application under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor i.e. Mekaster Engineering Limited. Accordingly, the said application was admitted vide Order dated 04.08.2017 and Mr. Chandra Prakash Jain was appointed as Interim Resolution Professional (IRP) vide Order dated 23.08.2017 and later on, confirmed as Resolution

Professional. Subsequently, vide Order dated 06.02.2019, the application for initiation of liquidation of the corporate debtor was allowed. Therefore, in compliance of Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016, the liquidator made a Public Announcement of the Liquidation Process on 08.10.2019 and the last date of submission of claim was 03.11.2019.

3. It is stated that that two orders under Section 7A of the Employees Provident Fund and Misc. Provisions Act, 1952 were issued against the Corporate Debtor for the period from 04/2013 to 02/2016 on 01.02.2018 and for the period from 03/2009 to 12/2012 on 30.12.2019 respectively.
4. Thereafter, on 29.01.2020, the applicant filed its claim in Form-B, before the respondent for a claim/recovery of Rs. 6,60,751/- (Rs. 1,81,087/- towards EPF dues from 03/2009 to 12/2012; Rs.4,77,964/- towards EPF dues from 04/2013 to 02/2016 & Rs. 1,700/- towards litigation cost). To this, the respondent addressed a letter dated 23.07.2020 and informed the applicant to submit Form-C. However, the said claim was later admitted by the respondent.

5. Thereafter, vide letter dated 20.10.2020, the respondent replied and informed the applicant about the stay which was operation in respect to the proceeding and partly admitted the claim of the applicant. The respondent admitted the claims as per the following bifurcation:

Particulars	Period	Amount of Claim filed	Amount Admitted	Remarks
Dues	03/2009 to 12/2012	1,81,087	1,81,087	
Dues	04/2013 to 02/2016	4,77,964	4,77,964	
Total PF Dues – A		6,59,051	6,59,051	Fully admitted
Litigation Cost - B		1,700	-	Cannot be admitted
Interest and Damages and Allied Dues – C	04/1993 to 01/2020	4,62,261	-	Cannot be admitted as the company is in Liquidation since 03.10.2019 and at very advanced stage of Liquidation Process.
Total Claim = A+B+C		11,23,012	6,59,051	

6. Heard Ld. Counsel for the Parties and perused the record.
7. At the outset, it has been observed that the present application is filed under Section 60(5) of the Code, albeit, the application should have been filed under Section 42 of the Code, since the

application is filed after being aggrieved by the decision of the liquidator. Therefore, the application is liable to be rejected on this ground also.

8. It has been observed that the claims were filed after the last date of submission of claims, pursuant to the public announcement made by the liquidator. However, the same has been admitted by the liquidator with certain variations. Even so, the applicant has challenged the decision of not admitting the part claim. Therefore, looking at the above bifurcation, the present issue under consideration is regarding the unpaid interest under Section 7Q and damages under Section 14B of the EPF Act. In this regard, it is noteworthy to mention that Regulation 12 and 14 of the IBBI (Liquidation Process) Regulations, 2016 specifically provides that the claim should be submitted or updated as on the liquidation commencement date, which in this case is 06.02.2019, the respondent has rightly allowed the EPF dues and rejected the claim for litigation cost, interest and damages. In view of this, the decision is in order and therefore, the decision of the liquidator

does not suffer with any infirmity and the bifurcation is within the bounds of the IBC, 2016.

9. The NCLT, Mumbai Bench has recently dealt with a similar issue in the matter of *Employees Provident Fund Organization V/s. Mr. Rajat Mukherjee* and held that the damages under Section 14B of EPF Act are not covered by Section 36(4)(a)(iii). The relevant Para of the said Order is reproduced herein under:-

“as the applicant has failed to establish the damages under Section 14B of the EPF Act are owned by workman or the employees as their dues under Provident Fund Act, this Adjudicating Authority comes to an inevitable and inescapable conclusion that damages under Section 14B of the EPF Act are not the “sums due to any workman or employee from the provident fund” and therefore are not covered under Section 36(4)(a)(iii) of the IBC, 2016. The question is accordingly answered in negative holding that damages under Section 14B of EPF Act are covered under Section 36(4)(a)(iii) of the IBC,2016 and are not required to be excluded from the liquidation estate”.

10. The Liquidator has fully admitted and paid Rs. 6,59,051/- towards EPF dues. The EPF authority cannot penalise and

adjudicate damages on the liquidation estate, while the liquidator has duly paid the EPF dues. Further payments will only gain the applicant advantage and unneeded and unnecessary preference over other creditors by cornering the funds available in liquidation, which is not permissible under law available for disposing off assets and disbursing proceeds by liquidator and this application is not a permissible claim under Section 36(4)(a)(iii) of the IBC, 2016.

11. Hence, we pass the following order:

**ORDER**

The application IA No./753/AHM/2023 is dismissed and stands disposed of accordingly.

**Sd/-**

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

**Sd/-**

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