

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

COURT – IV

13. **IA-10/2024, IVN.P./35/2024, IA-3125/2024
in C.P.(IB)/738(MB)/2021**

CORAM:

MS. ANU JAGMOHAN SINGH
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **26.06.2024**

NAME OF THE PARTIES: Srinidhi Comprint Private Limited
Vs
First Flight Couriers Limited

SECTION: 9, 60(5) OF INSOLVENCY AND BANKRUPTCY CODE, 2016.

ORDER

1. Mr. Chinmay Bhojane i/b Apex Law Partners, Ld. Counsel for the RP present. Mr. Indrajit Mukherjee, RP present in person. Mr. Gunjan Chaubey a/w Mr. Vinay Kate, Ld. Counsel for EPFO present (VC).
2. **IVN.P./35/2024:**
The applicant, Regional Provident Fund Commissioner II, the Employees' Provident Fund Organisation, Government of India has preferred this application under Section 60(5) of the I&B Code seeking to admit and pay the statutory dues of Rs.39,70,33,61/- a claim towards the provident funds dues. The applicant is inter alia seeking the following reliefs:-
 - a) *To allow the Intervener to intervene in the above Interlocutory Application IBC(PLAN)/10(MB) OF 2024 in C.P.(IB) 738 of 2021 and in furtherance thereof the Intervener may be permitted to make oral and written submissions;*
 - b) *That this Hon'ble Tribunal pleased to pass an order and direct the Respondent being Resolution professional to admit and pay the statutory dues of Rs.397033618/- towards provident fund dues;*

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Brief facts and circumstances are encapsulated as follows:-

- 2.1 The applicant submits that, M/s First Flight Courier Limited i.e. Respondent has defaulted in remittance of PF and allied dues within the time prescribed under the Act, hence liable for interest and damages under section 14B and 7Q of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'EPF & MP Act').
- 2.2 The Tribunal vide its order dated 03.10.2022 appointed the Resolution Professional as the Interim Resolution Professional. Thereafter, Applicant initially filed its charge/claim for the amount of Rs.21,54,40,605/- in respect of Employees Provident Fund Organization RO Thane (North), RO Chennai, RO Delhi (South), RO Lucknow and RO Ludhiana on 09.02.2023. Thereafter, Applicant again filed revised charge/claim vide email dated 14.08.2023 in respect of Employees Provident Fund Organization RO Thane (North), RO Chennai, RO Delhi (South), RO Lucknow, RO Ludhiana and RO Indore for the amount of Rs.21,91,59,430/-.

2.3 Claims of the Applicant more particularly are described below :

Regional Office	Dues u/s 7A	Dues u/s 7Q	Dues u/s 14B	Short Remittance	Aggregate Dues
Thane (North)	NIL	Rs.31,57,858	Rs.55,63,699	Rs.43,03,299	Rs.1,30,24,856
Chennai	Rs.12,50,165	Rs.12,65,284	Rs.31,45,728	NIL	Rs.56,61,177
Delhi (South)	Rs.12,76,91,136 and Rs. 3,41,26,526	Rs. 12,88,472 Rs. 5,80,920	Rs. 23,92,387 and Rs. 4,17,536	NIL	Rs. 16,64,96,977
Lucknow	Rs. 1,93,40,545 , Rs. 2,977 Rs. 3,01,48,052	Total 14B and 7Q 11,31,07,106 28,20,73,515		NIL	Rs. 14,46,72,195
Ludhiana	NIL	Rs. 42,446 and Rs.1,100 (Recovery Cost)	Rs. 28,769	Rs.5,436 (PMPRY)	Rs. 77,751
Indore	Rs. 15,68,271	Rs. 7,30,714 and Rs. 9,50,981	Rs.14,19,840 and Rs. 15,68,271	NIL	Rs. 62,38,077
Noida	Rs. 1,67,79,886	Rs. 3,26,916	Rs. 10,38,636 Rs. 1,550 (Cost)	NIL	Rs. 1,81,46,988

Pune I	Rs. 2,775	Rs. 29,76,989	Rs.54,16,079 and Rs. 1,51,55,322 (14B and 7Q)	NIL	Rs. 2,35,51,165
Jaipur	Rs.21,19,030 and Rs. 21,65,262	Rs. 3,28,279 , Rs. 58,333 , Rs. 1,43,552 , Rs. 25,49,322	Rs.6,72,578, Rs.1,21,526, Rs. 2,92,949, Rs.42,54,595, Rs. 550 (Cost)	Rs. 4,06,995	Rs. 1,31,10,971
Kochi	Rs. 18,89,190	Rs. 16,70,462	Rs. 24,93,809	NIL	Rs. 60,53,461
Total Dues					Rs.39,70,33,61

2.4 The Respondent vide its email dated 14.08.2023 furnished the status of the claim filed by Applicant, wherein he rejected the claim filed by Applicant in respect of Regional Office Thane North without any reason and also did not admit charge, which was submitted vide email dated 14.08.2023. It is contended that only claims wherein the amount has been rejected, under reasons for rejection, it is mentioned that, "*Time barred as claim period is more than 3 years prior to CIRP commencement*".

2.5 The applicant states that only Rs. 49,76,949/- has been admitted by the Resolution Professional against amount claimed for Rs. 21,91,59,430/- by EPF office through 6 claims. As per the Resolution Plan approved by the CoC of the Corporate Debtor, the Successful Resolution Applicant has proposed to make payment of Rs. 1,45,23,552/- as described in "Chapter 4" Financial Proposal of the Resolution Plan. The amount of the proposed payment to the EPFO falls short of the full PF claim admitted by the Resolution Professional.

2.5.1 The issue before us is whether after approval of the Resolution Plan by the CoC, the claim of the EPFO Department can be considered by the Adjudicating Authority. At this juncture, it is relevant to refer the Judgment passed by the Hon'ble NCLAT in ***Regional Provident Fund Commissioner Vs. Ms. Mamta Binani, RP and Ors. – NCLAT New Delhi*** held that:

"Claim filed against dues under Sections 7A, 7Q and 14B of Employees' Provident Funds & Miscellaneous Provisions Act 1952 are part of Provident Fund Dues and entire claim require consideration and payments in the Resolution Plan".

2.5.2 Further, the Hon'ble NCLAT in the matter of ***Jet Aircraft Maintenance Engineers Welfare Association v. Ashish Chhawchharia RP of Jet Airways (India) Ltd. and Ors. Company Appeal (AT) (Insolvency) Nos. 752, 643, 792, 801 915 of 2021, 361, 771 & 987 of 2022*** has opined that:

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“71. In view of the aforesaid discussion, we arrive at following conclusions: (i) The workmen and employees are entitled for payment of full amount of provident fund and gratuity till the date of commencement of the insolvency which amount is to be paid by the Successful Resolution Applicant consequent to approval of the Resolution Plan in addition to the 24 months workmen dues as the workmen is entitled to under Section 53(1)(b) of the Code. It is made clear that in addition to part amount of provident fund and gratuity as proposed in Resolution Plan to workmen, Successful Resolution Applicant is obliged to make payment of balance unpaid amount of provident fund and gratuity to workmen and employees.

80. As observed above, in admitted claim of workmen provident fund, gratuity and leave encashment was included, and payment proposed in plan partly satisfy above dues also. The workmen are entitled to full payment of provident fund and gratuity, hence, the balance of above dues are to be paid by the Successful Resolution Applicant, to satisfy statutory obligations. Non-payment of full provident fund and gratuity shall lead to violation of Section 30(2)(e), hence, to save the plan the above payments have to be made.”

2.5.3 Based on the aforesaid proposition settled by the Hon’ble NCLAT relating to EPFO dues herein above, this bench is of the view that the Appellants claim requires consideration.

2.6 Accordingly, this *I.A. No 35/2024* is *disposed of* in terms of order above.

3. **IA-10/2024:**

3.1 This IA is filed by the Resolution Professional for approval of Resolution Plan. On perusal of the plan we find that the plan does not provide for the entire claim of EPFO. Therefore, the plan is remanded back to the COC for reconsideration of the EPFO claim in accordance with law.

3.2 With these remarks the *IA No 10/2024* is *disposed of*.

4. **IA-3125/2024:** List this matter on **27.06.2024**.

Sd/-

ANU JAGMOHAN SINGH
Member (Technical)

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)

