

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.306
IA/1080(AHM)2022
in
CP(IB) 162 of 2018

Order under Section 60(5) IBC

IN THE MATTER OF:

Employees Provident Fund Organisation

.....Applicant

V/s

Shri Rajat Mukharjee RP of Shaifali Roll Limited

.....Respondent

Order delivered on: 16/04/2024

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 the order. The order is pronounced in the open court, vide separate sheet.

Sd/-

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

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT NO.2**

**IA No. 1080 of 2022
in
CP (IB)162(AHM)2018**

In the matter of:

Employees Provident Fund
Organisation
Bhavishyanidhi Bhavan
Income Tax Circle
Ashram Road
Ahmedabad-380 014

.... Applicant

Versus

Fincast Founders & Engineers
Pvt. Ltd.
Successful Resolution Applicant
of Shaifali Rolls Ltd.
Plot No.314, Phase-II
GIDC Estate, Vatva
Ahmedabad-382 445

.... Respondent

Order pronounced on 16.04.2024

Coram:

Mrs.Chitra Hankare, Member (Judicial)

Mr.Velamur G Venkata chalapathy, Member (Technical)

Appearance:

For the Applicant : Ms. Parinda Davawala, Advocate

For the Respondent/
Successful Resolution Applicant : Mr. Tirth Nayak, Advocate

JUDGMENT

1. This application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2019 (the Code) by the Employees Provident Fund Organization on 3 November 2022 against the corporate debtor M/s SMC Industries P Limited which was admitted into CIRP on 14 Sept 2018. The respondent has been substituted from the Resolution Professional of the Corporate Debtor to the Successful Resolution Applicant (allowed on admission on 12 Dec 2022 by this Tribunal) who took over the Corporate Debtor on approval of the Resolution Plan vide orders of this Tribunal on 22 June 2022.
2. Applicant has claimed Rs.3,25,716/- towards Provident Fund (PF) dues of the employees of corporate debtor against the Resolution Professional when the Corporate Debtor was under CIRP which was filed before the Resolution Professional on 17 July 2019 which was not brought the notice of stake holders before the Resolution Plan was approved by CoC.
3. Applicant stated that order under Section 14B of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act) was issued against corporate debtor for the period from March 2014 to February 2018 on

23.04.2018 under Section 8F of the Act, an order for attachment of bank account for recovering dues from the establishment was issued on 04.06.2018 to Union Bank of India and on 06.07.2018 to IDBI Bank. The recovery Section also issued letters of attachment to the banks. However, the department could not recover anything by this notice. The applicant also submitted certain letters, purported to have been addressed within the department of the applicant and a letter was issued on 26 April 2019 to the Corporate Debtor seeking recovery of an amount of Rs.3,25,716/-. Afterwards, applicant came to know that the corporate debtor was admitted into CIRP. The suspended management of the corporate debtor had knowledge about the outstanding dues still respondent (Resolution Professional) has not taken into consideration while preparing Information Memorandum. Though resolution plan was pending for adjudication, the respondent did not bring these dues to the notice of stakeholders.

4. On receipt of communication from the respondent (undated in reply to the notice dated 26.4.2019), the applicant filed its claim in Form-B. The applicant tried to follow-up with the respondents and other responsible persons but could not get reliefs. The notice prepared also states that the establishment made a part payment of Rs.1,78,537/- (out of total

dues of Rs.5,04,253/- thereby the residual amount of Rs.3,25,716/- has been filed. The applicant has also not clearly stated who was the establishment which made this payment before filing of claim (whether by the Corporate Debtor before CIRP). The claim made before the Resolution Professional was on 17 July 2019. The applicant relied upon various provisions of the IBC and submitted that Resolution Professional (RP) is expected to decide the claim after carefully reviewing the documents. The amount owed by the corporate debtor to the applicant is workmen dues and the respondent is duty bound to accept the claim of the applicant. The applicant also stated that it had issued notice to the original directors personally and was also replied. But the applicant had not enclosed any copy of the reply if any received or the notice served. There was no reply from the banks to the notice, nor from the Resolution Professional and hence, prayed before this Tribunal for allowing its claim to be paid under Sec 53 of the Corporate Debtor (from the distribution of assets) and direct the Resolution Professional/Successful Resolution Applicant to admit the claim and include them as creditors.

5. Respondent Corporate Debtor now the Successful Resolution Applicant has filed his reply. The respondent has given a Chart of various dates which is as follows:-

Dates related to Shaifali Rolls Limited

Sr. No.	Details	Date
1	CIRP of Shaifali Rolls Limited had started	14.09.2018
2	Form G published by RP	26.12.2018
3	Info Memo to CoC	06.11.2018
4	Last date of submitting EOI	12.02.2019
5	IM; RFRP issued	27.02.2019
6	Notice from EPFO	26.04.2019
7	Reply to Notice	26.04.2019
8	Resolution Plan was approved by CoC unanimously	04.06.2019
9	IA No.353 of 2019 was filed for approval of Resolution Plan	10.06.2019
10	Form B received from EPFO	24.07.2019
11	Claim Rejected	01.08.2019
12	This Hon'ble Tribunal in IA No.353 of 2019 approved the Resolution Plan	20.11.2019

6. The respondent received claim on 24.07.2019 which was rejected on 01.08.2019 for the reasons that CIRP for the corporate debtor was already ended on 10.06.2019. The Form-G was published inviting the claims by Resolution Professional on 26.12.2018 and after approval of the Resolution Plan on 4.6.2019, this claim received by the Resolution Professional from applicant was rejected on 1.8.2019. It is further submitted that the Resolution Professional had in reply to the email received from applicant on 24 July 2019 had stated in his reply email on 1 August 2019 that the resolution plan has already been approved by COC and it has ended on 10 June 2019 and hence claim cannot be admitted. After approval of the

resolution plan, the CIRP of the corporate debtor was ended and affairs of the corporate debtor were handed over to the Successful Resolution Applicant (SRA). The respondent thus becomes *functus officio*. The RP cannot go beyond law and accept the claim filed by the applicant. The applicant should have approached the Tribunal, being aggrieved by approval of resolution plan. Hence, prayed for dismissal of the application.

7. Further respondent has quoted the judgment by Hon'ble Apex Court in Committee of Creditors of Essar Steel India Limited V Satish Kumar Gupta & other emphasizing 'fresh slate' principle has held that a Resolution Applicant cannot be suddenly faced with 'undecided' claims after the resolution plan has been approved and it has taken over the business of the Corporate Debtor. Hence, the application is not maintainable.
8. Applicant filed rejoinder to the reply filed by the applicant. The applicant reiterates that as per Sec 36(4)(a)(iii) of the IBC all sums of money due to workman or employee from PF, pension and Gratuity Fund is not required to be included in liquidation estate as these are considered to be assets owned by a third party, which are in possession of the Corporate Debtor.

9. Heard Ld. Counsel for the applicant and Ld. Counsel for the respondent also gone through the written submissions filed by the applicant and the respondent.
10. Though the applicant stated that they have issued notices to the banks for freezing the accounts of the corporate debtor still both the banks have not brought this fact to the knowledge of RP. However, no such notices are annexed to the application. Admittedly, the applicant filed claim before RP on 24.07.2019 and it was rejected on 01.08.2019. The applicant was informed about rejection of claim on 01.08.2019 itself. Though at that time, application for approval of resolution plan was pending, the applicant did not choose to file any application before the Tribunal objecting to the Resolution Plan if he had claim on the assets. The Resolution Plan was thus approved on 20.11.2019. This application was filed on 14.11.2022 i.e. after more than three years from the date of rejection of claim by the Resolution Professional and approval of resolution plan.
11. Now CoC is no longer in existence, the RP become *functus officio* while after approving the resolution plan it was fully implemented and affairs of the corporate debtor have been handed over to SRA. It is pertinent to note that the applicant has not

challenged the approval of Resolution Plan of corporate debtor passed on 20.11.2019. The application is also time barred. Hence, we pass the following order:-

ORDER

Application is rejected.

Sd/-

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

Sd/-

**CHITRA HANKARE
MEMBER (JUDICIAL)**