

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 667 OF 2023

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016

Regional Provident Fund Commissioner,
Goa, Employees Provident Fund
Organization, Goa

...Applicant

Vs.

1. Pridhvi Asset Reconstruction and
Securitization (PARAS) Company
Limited
2. Mr. Pravin R Namandar, Liquidator

...Respondents

In the matter of
C.P.(IB) No. 30/MB/2017
Marmagoa Steel Limited

Corporate Applicant

Order delivered on: 09.02.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

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For the EPFO : Ms. Shradha Talkar,
Advocate

For the Liquidator : Mr. Devarajan Raman,
Advocate

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This Application bearing IA No. 667 OF 2023, is filed by through Regional Provident Fund Commissioner, Goa, (Applicant), in the Corporate Insolvency Resolution Process (CIRP) of Marmagoa Steel Ltd. (Corporate Debtor) seeking
 - a. Allow the Applicant to intervene in the above Company Petition;
 - b. Allow the claim of the Applicant being an amount of Rs. 1,47,90,485/- (One Crore Forty-Seven Lakhs Ninety Thousand Four Hundred and Eighty-Five only) as per the letter dated 07.03.2022 filed by the Applicant to the Liquidator along with further interest w/s 7Q on PF contribution payable w.e.f. 01/2021 till the month of remittance @ 12%p a and the claim be considered as priority over other dues of the Financial Creditor, Pridhvi Asset Reconstruction and Securitization Company Ltd.,
 - c. Respondent No.1 i.e. the Financial Creditor, Pridhvi Asset Reconstruction and Securitization Company Ltd. be restrained from taking over the assets of the Company under liquidation being Marmagoa Steel Limited,
 - d. Direct the Respondents herein to consider the claim of the Applicant in priority as per the provision of IBC and EPF & MP Act, 1952;

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- e. Pending the hearing and final disposal of this Application the Respondents be directed to retain assets of the value of Rs. 1,47,90,485/- (One Crore Forty Seven Lakhs Ninety Thousand Four Hundred and Eighty Five only) along with further interest u/s 7Q on PF contribution payable w.e.f 01/2021 till the month of remittance @ 12% pa and not to distribute the same to enable the payment of the claim of the Applicant;
2. The Applicant passed Order u/s 7A dated 12/5/2015 of EPF & MP Act, 1952 and order u/s 14B/7Q dated 18.2.2015 passed under EPF & MP Act, 1952, Order u/s 14B of EPF & MP Act, 1952 dated 19.08.2021, Order u/s 7Q dated 19.08.2021 EPF & MP Act, 1952.
- 2.1. Vide Order dated 10.2.2021 in CP No. 30/MB/2017 commencing liquidation of M/s Marmagoa Steel Ltd. by the Hon'ble NCLT, Mumbai Bench. The Respondent Liquidator issued as Letter dated 6th March, 2021 to the Applicant informing that the said Company is under Liquidation. The Liquidator vide his Email dated 10.3.2021 from Company to Applicant EPFO intimated the Applicant to file claim. Vide Letter dated 14.4.2021 issued by Liquidator it acknowledged claim of EPFO and requested the Applicant to submit documents for verification.
- 2.2. The Liquidator vide Email dated 18.4.2021 from Liquidator to EPFO directed the Applicant to be part of Liquidators stakeholders Consultation Committee. Email dated 3.5.2021 and 5.5.2021 issued by Liquidator to Applicant EPFO.
- 2.3. The Applicant sent its Reply dated 21.5.2021 to Liquidator and filed Form C along with Annexure claiming total dues 1,71,84,544/-. The Respondent Liquidator objected to the assessment and summons and issued a Letter dated 09.07.2021 issued by Liquidator to EPFO in response to Letter dated 21.5.2021.

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- 2.4. The Liquidator issued a Letter dated 06.09.2021 and 20.09.2021 to EPFO thereby objecting to the claims of the EPFO and failed to submit records as requested. EPFO issued a letter dated 10.12.2021 informing revised Annexure II A & Annexure II B probable Damages & Interest statement. EPFO further issued a letter dated 07.03.2022 informing consideration and acceptance of objection raised by the Liquidator and the revised Claim C amount to be Rs. 1,47,90,485/-.
- 2.5. Email dated 02.12.2021 from Liquidator to EPFO informing Assest Reconstruction company PARAS having substantial share and Email dated 10.12.2021 informing Financial Creditor Pridhvi Assest Reconstruction Company filing Misc. Application.
- 2.6. That no communication thereon was received by the Employees Provident Fund Organization from the Respondent/Liquidator/Resolution Professional either rejecting or admitting the aforementioned claim as submitted. However, in the meanwhile the Respondent No.1 the Financial Creditor has filed an IA for taking over the secured assets of the Company.
- 2.7. This Applicant is challenging the same. The Application taken out by the Financial Creditor if allowed would prejudice the rights of the Applicant EPFO and hence, the Applicant is filing this Application of taking over of assets by the Secured Creditor.
3. The Respondent No.1 filed affidavit in reply dated October, 2023 stating that vide order dated 15 February 2023 passed by this Hon'ble tribunal, Mr. E.S.S. Srimachandra Murthy was appointed as the liquidator of the Corporate Debtor after taking note of the resignation of the erstwhile liquidator Mr. Pravin R. Navandar who has been impleaded as Respondent No. 2 in the present Application. As such, no relief can be effectively granted by this Tribunal in the present Application unless the

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newly appointed liquidator is impleaded as party to the present proceedings.

3.1. It is submitted that if the present Application is allowed by this Tribunal in respect of the Applicant's claim in entirety, great prejudice would be caused to the Respondent No. I because by means of the present Application the Applicant is illegally claiming priority treatment in respect of:

- (a) debts which are stale and time barred,
- (b) interest and damages levied under section 70 and 148 of EPF Act respectively which are liable to dealt with as per section 53 of IBC.
- (c) interest and damages levied under section 7Q and 14B of EPF Act respectively which the Applicant is not otherwise entitled to levy on account of imposition of moratorium during CIRP of the Corporate Debtor, and
- (d) payment of principal provident fund dues which are otherwise payable by the erstwhile resolution applicant (e. Chandor Engineering and Trading Company Private Limited).

3.2. As such, the Applicant is entitled to priority only in respect of such principal provident fund dues owed by the Corporate Debtor which are neither barred by limitation nor are related to the period during which the control of the operation and management of the Corporate Debtor rested with the Resolution Applicant. Further, it is submitted that the Provident Fund dues of the Corporate Debtor ought to have been paid by the Resolution Applicant as part of the resolution plan or during the period from 03rd July 2018 till 10 feb 2021.

3.3. It is further submitted that the present case is unique because the Corporate Debtor is now undergoing liquidation on account of the erstwhile resolution applicant's (i.e. Chandor Engineering and

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Trading Company Private Limited) failure to implement the resolution plan that was approved by this Tribunal. Therefore, it would not be equitable for the creditors of the Corporate Debtor to be saddled with the claims of the Applicant which should have otherwise been borne by the erstwhile resolution applicant named above.

3.4. The Applicant has prayed for directing the Respondent No. 2/Liquidator of the Corporate Debtor to consider the Applicant's claim of Rs. 1,47,90,485/- along with the interest applicable under section 7Q of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act) in priority over the dues owed by the Corporate Debtor to the Respondent No. 1 and other creditors of the Corporate Debtor.

3.5. The Applicant had raised its claim by filing form C with the Respondent No. 2 on 21 May 2021. The Applicant claimed a sum of Rs. 1,71,84,544/- wherein the Applicant has classified the various amounts claimed by it into the following categories:

(a) Dues u/s 7A of EPF Act relating to the period December 2012 to July 2013;

(b) Damages and Probable dues under section 14B of EPF Act relating to the periods December 2012 to July 2013 and June 2013 to December 2020;

(c) Interest and Probable dues under section 7Q relating to the periods December 2012 to July 2013 and June 2013 to December 2020; and

(d) Short remittances

3.6. It is submitted that the Applicant has wrongly claimed dues relating to the years 2012, 2013 in its claim form C which are only stale debts at this stage as they are barred by the law of limitation. As such, the

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Applicant should not be permitted to claim amounts that are found to be barred by law of limitation.

- 3.7. The Respondent relied upon *B.K. Educational Services Private Limited vs. Parag Gupta and Associates, Civil Appeal No. 23988 of 2017, the Hon'ble Supreme Court*, in its judgment dated 11 October 2018, quoted the following observations made by the Insolvency Law Committee in its Report of March 2018:

11. In view of the aforesaid judgment passed by the Hon'ble Supreme Court after relying upon the findings given by the Insolvency Law Committee in its Report of March 2018, it is submitted that Applicant should not be permitted to claim amounts that are found to be barred by law of limitation. The Applicant ought to have taken, the necessary measures in accordance the law of limitation to recover its dues within the limitation period. with the law However, since the Applicant failed to do the needful to recover the said dues, the Applicant cannot now be allowed to revive its dead and stale claims which it has attempted to do by including such time barred claims while filing its form C with the Respondent No. 2 2 on 21 May 2021. As such, the Respondent No. 2/Liquidator or is legally barred from admitting any such claims of the Applicant which are otherwise barred by the law of limitation. Therefore, the Applicant is not entitled to get any relief from this Hon'ble tribunal in respect of its time barred claims by means of the Application filed by it.

- 3.8. It is a matter of record that the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor commenced on 20 March 2017 vide an order of the said date passed by this Hon'ble tribunal. During the CIRP of the Corporate Debtor, this Hon'ble tribunal approved the resolution plan submitted by Chander Engineering

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and Trading Company Private Limited (Resolution Applicant) vide its order dated 02 July 2018. Subsequently, this Hon'ble tribunal passed order dated 10 February 2021 directing the commencement of liquidation of the Corporate Debtor after taking note of the Resolution Applicant's failure to implement the resolution plan submitted by it.

- 3.9. Upon approval of the resolution plan submitted by the Resolution Applicant by this Tribunal on 02 July 2018, the operations and management of the Corporate Debtor vested and remained under the control of the Resolution Applicant from 03 July 2018 till 10 February 2021 i.e. the date on which the liquidation of the Corporate Debtor was directed by this Hon'ble tribunal. As such, the Resolution Applicant is responsible for paying all kinds of dues related to the workmen and employees of the Corporate Debtor for the said period. Therefore, the Applicant is not entitled to raise any claim in respect of the dues relating to the period from 03 July 2018 till 10 February 2021 by filing form C with the Liquidator and the said dues cannot be recovered from the proceeds arising out of liquidation of assets of the Corporate Debtor.
- 3.10. If the Applicant is allowed to recover its dues relating to the period commencing from 03 July 2018 and extending till 10 February 2021 from the liquidation of the Corporate Debtor's assets, then the same would amount to penalizing the Corporate Debtor as well as the Respondent No. 1/Financial Creditor for the defaults of the Resolution Applicant which is unjustified and impermissible under the provisions of IBC.
4. Heard the learned Counsel for both sides and perused the materials available on record.

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5. It is trite law that PF contributions of the employer and employee which are payable to the employee by the PF department do not form part of liquidation estate and has to be paid to the PF department for onward remission to the concerned employees in priority of all other debt. Accordingly, the Respondent Liquidator is directed to determine the amount of contribution to the Provident Fund included in the said demand of the Applicant and treat it outside the liquidation estate. The remaining claim of the applicant in so far as it pertains to claim of interest and damages or any other contribution not payable to the employees of the Corporate Debtor by such fund shall be regarded as operational debt due to the statutory authorities and considered accordingly in terms of Section 53 of the Code. In case the Applicant has not so far filed the claim with the Respondent liquidator in respect of said demand, the Applicant may file the same within 15 days from the date of communication of this order and liquidator shall verify the same as per law.

5.1. As regards Respondent liquidator's prayer that the dues attributable to implementation period should be paid by the SRA who failed to implement the plan that led to the liquidation of the Corporate Debtor, we note that there is no such provision in the Code for making such order. However, in case the liquidator has forfeited any amount deposited by the SRA with the Committee of Creditors, the amounts so attributable to the implementation period shall be appropriated for such forfeited amount.

5.2. As regard prayer of the Applicant to direct Respondent No.1 i.e. the Financial Creditor, Pridhvi Asset Reconstruction and Securitization Company Ltd. to refrain from taking over the assets of the Company under liquidation being Marmagoa Steel Limited, we do not find any merit in the prayer of the Applicant as the Applicant's claim are to

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be settled in accordance with the provisions contained in Section 53
r/w Section 36 of the Code.

6. In view of the aforesaid directions, this I.A. 667/2023 is party allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)