

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT-V

I.A. 962 OF 2022

IN

C.P.(IB) No. 3703/MB/2019

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

Mrs. Teena Saraswat Pandey,

378-F, 114, Scheme Part 1, Behind
Diksha Boys Hostel, Sant Nagar, Indore
452010

...Applicant

Vs

Regional Provident Fund

Commissioner,

Employee Provident Fund office,
Bhavishya Nidhi Bhavan, 7th Race
Course Road, Indore

...Respondent no. 1

In the matter of

Rani Agro Private Limited,

...Financial Creditor

Vs

S & H Gears Private Limited

**...Original Respondent/
Corporate Debtor**

Order Pronounced on: 10.07.2023

Coram:

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

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

Appearances

For the Applicant:

Mr. Maulik Chokshi

For the Resolution Professional:

Adv. Kunal Kanungo a/w Adv.
Tanushree Sogani

For the CoC:

Mr. Akshaya Purthran, Advocate i/b
S. K. Singhi and Partners LLP

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The present Application is filed by the Applicant, namely, **Mrs. Teena Saraswat Pandey**, under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**"Code"**) read with rule 11 of the National Company Law Tribunal Rules, 2016 (**"NCLT Rules"**) seeking directions to the **Regional Provident Fund Commissioner** (hereinafter referred to as **"Respondent"**) to remove the lien and release the amount which is held in its custody during the Corporate Insolvency Resolution Process.

FACTS OF THE CASE

2. The Applicant is the Insolvency Professional of M/s S & H Gears Private Limited (hereinafter referred to as **"Corporate Debtor"**).
3. Company Petition No. 3703 of 2019 was admitted vide order dated 24.01.2020 under Section 7 of the Code and the Corporate Insolvency Resolution Process was commenced against the Corporate Debtor. Mr. Navin

Khendelwal (Erstwhile IRP) was appointed as the Interim Resolution Professional.

4. The Applicant has submitted that even after the erstwhile IRP had published Form A on 18.03.2020, the Respondent issued a notice through its authorised recovery officer on 15.06.2020 in order to initiate recovery proceedings against the Corporate Debtor.
5. The Applicant has submitted that the Respondent had filed its claim vide email dated 01.12.2020 for an amount of Rs.2,98,11,102/- which the erstwhile IRP had accepted vide email dated 01.12.2020. In respect of the said claim, the Respondent had passed multiple orders calling upon the Corporate Debtor to pay the outstanding dues.
6. Referring to the Item No.7 of the minutes of the sixth Committee of Creditors **(COC)** Meeting conducted by the erstwhile IRP on 16.12.2020, the Applicant has submitted that the erstwhile IRP had specifically taken the permission of the COC to operate the current account of the Corporate Debtor which was maintained in HDFC Bank, Dewas Branch for the receipts and payments during the CIRP Period, until the new current account was opened.
7. The Applicant has submitted that the erstwhile IRP had communicated to the Respondent via email dated 16.04.2021 about the Initiation of CIRP and informed the Respondent that in order to meet the CIRP expenses, the HDFC bank Account needs to be maintained by the erstwhile IRP only and all the other signatories had to be suspended. Further, the erstwhile IRP had also requested the Respondent to instruct the HDFC Bank to remove the lien on the Corporate Debtors Account. The erstwhile IRP had also acknowledged that the Respondent's dues would be distributed as per the provisions of the Code.

8. The Applicant was appointed as the Resolution Professional by the order of this Tribunal 24.06.2021. Subsequent to her appointment, she had taken over the affairs of the Corporate Debtor. It was brought to the notice of the Resolution Professional that one HDFC Bank Account bearing Account Number 08872320000129 (hereinafter referred to as **“Bank Account”**) was frozen by the Respondent on 24.08.2018 on the ground the Corporate Debtor was a defaulter. Hence the bank account was frozen by the Respondent.
9. The Applicant has submitted that vide emails dated 21.08.2021 and 09.09.2021, she has communicated with the authorized representative of the Respondent and requested the Respondent to release the lien on the bank account in which an amount of Rs.3,81,676.32 was received from the prospective Resolution Applicants during the CIRP.
10. The Applicant has further submitted that she had sent a legal notice on 30.09.2021 to the Respondent and has mentioned about creation of a lien on the accounts of Corporate Debtor which was under moratorium from 24.01.2020. The Respondent had replied to the legal notice through a reply letter dated 13.10.2021 stating that the Corporate Debtor was under liquidation not under CIRP and had asked the Applicant to clear the dues which is totally against the law.
11. With the above averments, the Applicant has prayed to allow the present Applicant.

REPLY FILED ON BEHALF OF THE RESPONDENT

12. At the outset, the Respondent denied each and every contention raised by the Applicant in the present Application.
13. The Respondent has submitted that the dues as on 23.01.2020 (date of commencement of CIRP) was Rs.3,10,68,057/- for the period from December 2007 to January 2020 under Section 7A, 14 B and 7Q of the EPF

and MP Act, 1952 and a further amount of interest of Rs. 41,04,943/- was due under Section 7Q for the period January 2020 to April 2023.

14. The Respondent has further submitted that the Code only provides for moratorium against commercial claims whereas EPF dues are social dues for the welfare of the workers and such statutory dues need to be assessed and recovered in the interest of the workmen so that their financial interests can be secured.
15. The Respondent has further placed its reliance upon Section 529 of Companies Act 1956 and has submitted that the official liquidator is entitled to represent the workmen and enforce such charge. This section specifically empowers the official liquidator to represent the workmen and to enforce pari passu charge in favour of workmen in realization. Therefore, the official liquidator is duty bound to represent workmen even though no claim has been filed with respect to the provident fund dues. This is an obligation to be performed by official liquidator to satisfy the claim of provident fund dues prior to dealing with other debts, being the statutory amount to be paid to the workmen.
16. It has been submitted that under the provision of IBC 2016 and EPF & MP Act, 1952 the Provident Fund dues are one of the most important dues to be considered by the liquidator and has undoubtedly privilege and preference over the other payments due from the corporate debtor.
17. The Respondent has further submitted that the dues of workmen have to be given priority under Section of 53 of the IB Code and EPF & MP Act. It has further submitted that the EPFO Authority submitted a claim before the IRP/Liquidator but the same has not been allowed by the IRP/Liquidator.
18. It has further been submitted that the Resolution Professional, while rejecting the claims of the Respondent, has failed to secure the rights of

labourers and also to honour the statutory provisions of EPF Act. The Respondent has further submitted that it is well settled and established law that there is no inconsistency between Section 238 and other provision of IBC and section 11(2) and other provisions of EPF & MP Act.

19. With reference to other contentions and allegation made in the application, the Respondent has denied the same and has prayed for the dismissal of the Application.

FINDINGS

20. We have heard the Ld. Counsels appeared for the parties and perused the record.

21. The present Application has been filed by the Applicant against the lien created by the Respondent i.e Regional Provident Fund Commissioner on account of the Corporate Debtor during the pendency of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

22. It is an undisputed fact that the HDFC Bank Account bearing Account Number 08872320000129 (hereinafter referred to as **"Bank Account"**) was frozen by the Respondent on 24.08.2018. However, the CIRP was commenced against the Corporate Debtor vide order dated 24.01.2020.

23. The issue which needs to be resolved is –

Whether an Attachment on Corporate Debtor's bank account that was imposed before the initiation of CIRP, can continue during Moratorium under Section 14 of IBC?

24. Section 14(1)(a) of the Insolvency and Bankruptcy Code, 2016 is reproduced as under:

Section 14: Moratorium.

**14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare*

moratorium for prohibiting all of the following, namely:—

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

25. From the above, 14(1)(a), it is clear that continuation of pending suits or proceedings against the 'Corporate Debtor' including Execution of any Judgment, decree or order in any 'Court of Law', 'Tribunal', 'Arbitration Panel' or other 'Authority' will temporarily cease to operate during 'Moratorium'. The purpose of the Section 14 is to ensure that no depletion of 'Assets' of the 'Corporate Debtor' takes place during the 'Corporate Insolvency Resolution Process' and the 'Corporate Debtor' is allowed to continue as a going concern in order to maximise the value for all the 'Stakeholders'. Accordingly, this Bench is of the considered view that Section 14(1)(a) imposes complete embargo on any proceeding against the Corporate Debtor by any Authority till the completion of CIRP. Moratorium covers attachment of Bank accounts by any Authority including 'EPFO' and it is required to be lifted to grant Corporate Debtor a fair chance of revival and to ensure that Resolution Plans are received. It may also be inferred from the circumstances and intent of legislation that in the present cases, the lien created prior to the initiation of the 'Corporate Insolvency Resolution Process' cannot sustain as it will hinder the entire resolution process.

26. The Bench is aware about the provision of Section 36(4) of I & B Code 2016 which provides as under:

“36(4). The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation-

(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;”

27. From the above referred Section, it is evident that the that amount deducted for ‘Provident Fund’, purely belongs to an ‘Employees’ and is not to be treated as an ‘Asset’ of the ‘Corporate Debtor’ and cannot be touched by an ‘Interim Resolution Professional’/‘Resolution Professional’/ ‘Liquidator’ as the case may be. However, it is important to note that such ‘Provident Fund’, has to be an ‘Establishment Fund’, kept separately by the company and only then this proviso will be applicable. If even wrongly and in violation of the laws of the land, the company fails to establish such ‘Provident Fund’, in that event ‘Interim Resolution Professional/Resolution Professional/Liquidator’ is not expected to provide for same, except under Section 53 of the I & B Code, 2016.

28. It is pertinent to note that in the present case, the Resolution Professional in the 6th CoC meeting dated 14.12.2020 had sought permission to operate the Current Account which is being maintained with HDFC Bank, Dewas Branch for receipt and payment for the CIRP period and the same was approved by the members of the CoC. However, the said bank account had been frozen by the Respondent on 24.08.2018. Therefore, the Bench is of the considered view that since the Corporate Debtor had not opened a separate Bank Account for the ‘Provident Fund’, the aforesaid account has to be treated as per Section 53 of the I & B Code, 2016. It would be pertinent to mention here that so far as the EPF claims are concerned, the Resolution Professional had admitted the said claims to the tune of Rs. 1,26,12,838/- , based on the records available with the Corporate Debtor and the admitted amount of EPF is proposed to be paid in the Resolution Plan approved by the CoC in its 21st meeting held on 13.12.2021 and 14.12.2021. Therefore,

the continuation of the lien on the bank account would not serve any purpose.

29. Therefore, the Bench is of the considered view that the 'Resolution Professional' is in its right in seeking lifting of the lien created by the Respondent on Bank Account of the Corporate Debtor.

30. Accordingly, this Interlocutory Application No. 962 of 2022 is **"Allowed"** with an order that the lien created by the Respondent on the HDFC Bank Account bearing Account Number 08872320000129 is hereby quashed/ set aside and the Resolution Professional shall be at liberty to deal with the same in accordance with the IB Code 2016. A copy of this order shall be forwarded to the Bank concerned for necessary compliance.

Sd/-
Anuradha Sanjay Bhatia
Member (Technical)

Sd/-
Kuldip Kumar Kareer
Member (Judicial)