(2021) 04 NCLT CK 0032

In the National Company Law Tribunal

Case No : Interlocutory Appeal No. 1273/IB/2020 In IBA/1045 Of 2019, IBA/1169 Of 2019

B. Parameshwara Udpa APPELLANT

Vs

Asst. PF Commissioner And Anr. RESPONDENT

Date of Decision : 20-04-2021

Acts Referred:

Employees Provident Funds And Miscellaneous Provisions Act, 1952 — Section 8F, 8F(3)(x), 11

Insolvency And Bankruptcy Code, 2016 — Section 14, 18(F)

Citation : (2021) 04 NCLT CK 0032

Hon'ble Judges : R. Varadharajan, J;Anil Kumar B, Member (Technical)

Bench : Division Bench

Advocate : Mohammed Umar

Final Decision : Disposed Of

Judgement

1. This is an Application filed by the Applicant in the capacity of the Resolution Professional of M/s. Easun Reyrolle Limited, which is under the Corporate Insolvency Resolution Process (CIRP), pursuant to the Order passed by this Tribunal dated 05.05.2020. The Applicant in the Application has sought for the following prayers/reliefs, namely,:

a) direct the 1st Respondent to raise all the Orders of Attachment dated 04.06.2018, 20.07.2018 and 20.07.2018 w.r.t the Bank Account of the Corporate Debtor bearing Account No.30198329762 maintained with State Bank of India, Mookandapalli Branch, Hosur - 635 126.

b) direct the 2nd Respondent to raise the Order of Attachment dated 23.08.2019 w.r.t the Bank Account of the Corporate Debtor bearing Account No.30198329762 maintained with State Bank of India, Mookandapalli Branch, Hosur - 635 126.

c) permit the Applicant Resolution Professional to operate the Bank Account of the Corporate Debtor bearing Account No.30198329762 maintained with State Bank of India, Mookandapalli Branch, Hosur - 635 126 and

d) pass such further or other orders which this Hon'ble Tribunal may deem fit and proper in the circumstances of this case and thus render justice.

2. The averments in support of the above reliefs is stated by the Applicant to be that Orders of attachment had been issued by the Respondents attaching the Corporate Debtor's Bank A/c No.30198329762 maintained with State Bank of India, Mookandapalli Branch, Hosur - 635 126 under Section 8F of the Employees Provident Funds (EPF) and Miscellaneous Provisions (MP) Act, 1952 (EPF and MP Act, 1952).

3. The Orders of attachment is stated to have been issued by the Respondents are to the following effect:-

i. Order of Attachment dated 04.06.2018 bearing Ref. No. KN/RO/BOM-II/C-1/D-1/ENF/19443/124/2018-19 issued by the 1st Respondent to the Corporate Debtor, for defaulting in payment of damages to the tune of Rs.2,28,221/ (Rupees two lakhs twenty eight thousand two hundred and twenty one only) for the period 06/2017-11/2017.

ii. Order of Attachment dated 20.07.2018 bearing Ref.No.KN/ RO / BOM-II / RECOVERY-1(4) / 19443 / 145 / 2018-19 issued by the 1st Respondent to the Corporate Debtor, for defaulting in payment of damages to the tune of Rs.2,14,131/- (Rupees two lakhs fourteen thousand one hundred and thirty one only) for the period 07/2015 - 03/2017.

iii. Order of Attachment dated 20.07.2018 bearing Ref. No. KN/RO/BOM-II/C-I/D-I/PD/19443/705/2018-19 issued by the 1st Respondent to the Corporate Debtor, for defaulting in payment of damages to the tune of Rs.78,645/- (Rupees seventy eight lakhs six hundred and forty five only) for the period 04/2017 - 08/2017.

iv. Order of Attachment dated 23.08.2019 bearing Ref.No. KN/RO/BOM-II/C-I/D-I/ENF/19443/331/2019-20 issued by the 2nd Respondent to the Corporate Debtor, for defaulting in payment of PF Contributions to the tune of Rs.7,17,532/- (Rupees seven lakhs seventeen thousand five hundred and thirty two only) for the period 12/2017 - 07/2018.

4. Pursuant to the above attachment Orders, the Applicant avers that the notices have also been issued by the 1st Respondent, to the concerned Branch, Manager, State Bank of India. The details of which have also been given in the Application, which read as under:

a) Show Cause Notice Ref.No.KN/PF?BMS-II/C-I/D-I/ ENF/19443/202/2018-19 dated 13.07.2018 under Sec.8F(3)(x) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 followed by Reminder I Show Cause Notice dated 01.10.2020 for non-compliance of the Attachment Order dated 04.06.2018 w.r.t Damages for Rs.2,28,221/-.

b) Show Cause Notice bearing Ref.No.RO/BOM-2/RECOVERY-1(4)/19443/174/2018-19 dt. 30.08.2018 under Sec.8F(3)(x) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 to non-compliance of the Attachment Order dated 20.07.2018 towards Damages for Rs.2,14,131/.

c) Show Cause Notice dated 01.10.2018 under Sec.8F(3)(x) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 for non-compliance of the Attachment Order dated 20.07.2018 towards Damages for Rs.78,645/-.

5. The above attachment Orders issued by the Respondent under the EPF and MP Act, 1952 and notices subsequently following the attachment Orders to the Bank concerned where the Corporate Debtor is holding its accounts presently operate by the Resolution Professional it is submitted that it is contrary to the provisions of IBC, 2016 and that as per Section 14 of the said Act, (IBC, 2016) moratorium has been declared by this Tribunal consequent to the initiation of CIRP on 05.05.2020 which prohibits 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. In support of the plea as raised by the Applicant, the Applicant seeks to rely on the decision of the Hon'ble NCLAT in relation to attachment of bank accounts and as to how the same is required to be treated as an asset of the Corporate Debtor despite attachment. In this connection, it is also brought to the notice of this Tribunal, of the response as issued by the State Bank of India vide its Order dated 07.08.2020 bringing to the notice of EPFO Authorities being the Respondents that under Section 18 (F) of IBC, 2016 that the Resolution Professional has ownership over all the assets of the Corporate Debtor till the conclusion of CIRP. In the circumstances, it has been communicated that the SBI is bound to allow operation/withdrawals, if done by the RP in the account, for which, Attachment Order is served. Despite the above, the 2nd Respondent has chosen to issue a Demand letter dated 23.09.2020 for a sum of Rs.9,60,729/- for the period of default from 12/2017- 07/2018, 09-2017-11/2017, Dec 2107, 04/2-17-08/2017, by an Email communication dated 30.09.2020.

6. It is further averred by the Applicant in the Application that monies are required to be paid in relation to the salaries of the workmen of the Corporate Debtor during the COVID lockdown. In the circumstances, the RP is in requirement of funds to conduct the CIRP. The claims of the Respondents, it is averred, have also been taken note of by the Applicant for an appropriate process subject to the compliance of applicable procedures and in the circumstances, the Applicant seeks this Tribunal to raise the Orders of attachment dated 04.06.2018, 20.07.2018 and 20.07.2018 issued by the 1st Respondent and the Orders of Attachment dated 23.08.2019 issued by the 2nd Respondent under the provisions of EPF & MP Act, 1952, to the bank concerned, belonging to the Corporate Debtor.

7. The fundamental issue which is required to be considered by this Tribunal in relation to this Application is as to whether the attachment as raised by the EPFO Authorities, namely, the Respondents under the concerned provisions of EPF and MP Act, 1952 is prima facie barred under Section 14 of the IBC, 2016. However, in this connection, it is required to be noted that following the judgments rendered by Hon'ble NCLAT in the matter of Regional Provident Fund Commissioner, Ahmedabad vs. Ramachandra D. Choudhry in Company Appeal (AT) (Insolvency) No.1001 of 2019 as well as the decision of Hon'ble NCLAT rendered in Regional Provident Fund Commissioner (EPFO), Regional Office Chennai vs. T.V. Balasubramanian, Resolution Professional Sholingur Textiles Limited in Company Appeal (AT) (Insolvency) No.1521 of 2019 it has been held by this Bench of this Tribunal in the matter of Nagalingam Muthiah, Resolution Professional of M/s. SAS Autocom Engineers India Pvt Ltd., vs. Office of the Recovery Officer, Employees Provident Fund Organization, Salem in MA/868/2019 in CP/567(IB)/CB/2018 that attachments made prior to the initiation of CIRP in relation to dues pending of damages and interest in addition to PF dues are all required to be answered by the Corporate Debtor, now presently under the CIRP process represented by Resolution Professional/Applicant and that under Section 11 of the EPF & MP Act, 1952, the PF dues which includes interest and damages enjoy as a statutory first charge over the assets of the Establishment which had defaulted and the same gets a priority in payment. We do not want to repeat the rationale leading this Tribunal to come to such a conclusion for sake of brevity.

8. In the circumstances, we do not find any merit in the Application in view of the detailed reasoning given in the Nagalingam Muthiah, Resolution Professional's case cited supra. In relation to the bar of raising attachment as sought for by the Applicant, even though the Applicant has sought to rely on a communication, which has been sent by the Assistant PF Commissioner, Regional Office Sagar, MP it is required to be noted that vide communication dated 20.10.2020 having reference No. EPFP/RO/Sagar/Compliance/MP/20262/2657 as reflected in Page No.73 of the typed set points out in the concluding portion of the said communication wherein the said Authority named has expressly stated that a sum of Rs.10,00,000/- is required to be held by bankers till the establishment dues towards PF payable by the Establishment are assessed.

9. In the circumstances we direct the Resolution Professional to make adequate provisions in relation to the amount stated in the Order of attachments to be due towards damages as well as in relation to PF dues and subject to making adequate provisions and demonstrating the same before the Respondents and to their satisfaction if the Applicant is able to prove that adequate provision has been made by the Resolution Professional than the Respondents can raise the Orders of attachment in relation to the bank accounts so that the CIRP Process can be proceeded with by the Resolution Professional and payments due to the workmen as averred in the Application can be duly made by the Resolution Professional.

With the above directions, this Application stands disposed off.

