
(2022) 12 NCLT CK 0008

In the National Company Law Tribunal

Case No : I.A No. 1044/KB/2021 In C.P (I.B) No. 1735/KB/2019

Central Board of Employees Provident Fund through Regional
Provident Fund Commissioner Regional Office Ranchi

APPELLANT

Vs

Om Besco Rail Products Ltd

RESPONDENT

Date of Decision : 06-12-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 14
Employees' Provident Fund and Miscellaneous Provisions Act, 1952 — Section 7Q,
14B, 17

Citation : (2022) 12 NCLT CK 0008

Hon'ble Judges : Rohit Kapoor, Member (J); Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Manju Bhuteria, Rahul Auddy, Aditya Gooptu, Sanjay Gupta, Urmila Chakraborty, Praveen Sharma, Satyendra Agrawal, Bijoy Bag

Final Decision : Dismissed

Judgement

Balraj Joshi, Member (Technical)

1. The Court convened through hybrid mode.
2. This is an application filed by Regional Provident Fund Commissioner – II, Employees Provident Fund Organisation, Regional Office, Jharkhand, in the matter of Om Besco Rail Products Ltd.

Submissions by the Applicant :

3. It is submitted that the Corporate debtor Om Besco Rail Products Pvt. Ltd, which is presently under CIRP, is lessee of one Jauhar Firebricks- Refractory Works Ltd bearing P.F Code No. JH/233. As per Section-17 of Employees' Provident Fund Act, 1952 the establishment Om Besco Rail Products Pvt. Ltd. is liable to pay dues of Jauhar Firebricks Refractory Works Ltd.
4. It is the case of the applicant that the existing unit of Jauhar Firebricks &

Refractory Works Pvt. Ltd. had executed a lease agreement dated 13th September, 2012 for the period of 15 years with subject to renewal in favour of the revival, expanded and diversify unit Om Besco Rail Product Pvt Ltd a company incorporated under the Companies Act 1956 as lessee in continuation of revival/expansion/diversification of the existing unit and bringing the said lessee unit under the fold of the same P.F. Code with the liabilities of the existing unit. The lease rent @ 4,50,000/- as quarterly lease rent payable for each quarter in advance by the revival, expanded and diversity unit Om Besco Rail Product Pvt Ltd upon the existing unit Jauhar Firebricks & Refractory Works Pvt. Ltd.

5. It is stated that the transfer was not through operation of law and there was voluntary transfer by Jauhar Firebricks & Refractory Works Pvt Ltd at the time of statutory dues were existing to Om Besco Rail Products Ltd.

6. It is mentioned that on 12.11.2018 Employees' Provident Fund Organization issued an order in the matter of proceedings under Section 14B of the Employees' Provident Fund and Miscellaneous Provision's Act- 1952 against Jauhar Firebricks- Refractory Works Ltd for the period from 02/1996 to 06/2006.

7. On 12.11.2018 Employees' Provident Fund Organization issued demand notice to the Jauhar Firebricks- Refractory Works Ltd for P.F compliance for the period from 02/1996 to 06/2006 calculation of interest under Section 7Q of the Employees' Provident Fund and Miscellaneous Provisions's Act- 1952.

8. The Employees' Provident Fund Commissioner, Jharkhand issued a letter to the RPFC-II/OIC, District office, Dhanbad on 18.03.2020 disclosing the dues along with copy of Establishment Ledger in respect of M/s. Jauhar Firebricks-Refractory Works Ltd (JH/233 reg). M/s. Om Besco Rail Products Pvt. Ltd is lessee of M/s. Jauhar Firebricks- Refractory Works Ltd bearing P.F Code No. JH/233. As per Section- 17 of Employees' Provident Fund Act, 1952 the establishment M/s. Om Besco Rail Products Ltd is liable to pay dues of M/s. Jauhar Firebricks- Refractory Works Ltd. For that the concerned office of the Employees' Provident Fund Organization had filed Form B on 14.08.2020 before the Interim Resolution Professional amounting Ts. 99,75,981/-

9. It is submitted that on 09.09.2020, 21.09.2020, 03.12.2020 Employees' Provident Fund Organization issued letters to the Interim Resolution Professional, for settlement of claims of Rs. 99,45,152/- in favour of P.F Commissioner Ranchi.

10. It was further submitted that on 11.09.2020 Insolvency Professional, Amit Choraria rejecting the application issued letter to the Employees' Provident Fund Organization stating Employees' Provident Fund Organization have to approach to the National Company Law Tribunal, Kolkata as in this matter, National Company Law Tribunal, Kolkata has already declared a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 and in such a situation authority concerned cannot deal with any matter in respect of the company, to pass any order.

11. It is submitted that Demand notice was duly sent through speed post to the Insolvency Professional, Amit Choraria and Om Besco Rail Products Ltd. The said Insolvency Professional, Amit Choraia had duly communicated that a new professional has been appointed namely Mr. Sanjai Kumar Gupta. The said communication was duly forwarded to the said Mr. Sanjai Kumar Gupta.

Submission on behalf of RP

Mr. Sanjay Kumar Gupta RP for Om Besco who has replaced the previous RP namely Mr. Amit Choraria submitted that the claim preferred by the applicant in the CIRP of Om Besco Rail Products Ltd in Form B for Rs. 99.75 Lacs pertains to the outstanding dues of Jauhar Firebricks- Refractory Works Pvt. Ltd (Jauhar) under Section 17B of EPF Act.

12. From the reading of the applicable section, it appears that if the establishment in wile or part i.e. the entire company or the business or the unit or department of the company is transferred, then this Section is applicable.

13. In the instant case vide a lease deed dated 13.09.2013 Jauhar has leased 9.825 acres of land with structures thereon to Om Besco for a period of 15 years. Thus, there has been a lease of one of the assets of Jauhar. By the said lease deed there is no transfer, sale, gift, lease of Jauhar or its business or the establishment. The transaction is a simple lease of the land with structures for a specific period against rent. Rent is the consideration which Jauhar is entitled. Jauhar is left with other assets and its entire business and establismnt. No business of Jauhar has been transferred to Om Besco or Jauhar (Establishment) has not been transferred to Om Besco. There is no transfer of establishment of Jauhar to Om Besco and by mere lease of one of the lands for a particular period against rent, it does not become liable to bear the liabilities of the Jauhar in any manner.

14. Thus, the RP is of the view that OM Besco has no liability to make any payment to the EPF Authorities on account of Jauhar.

15. The aforesaid assertion has been categorically communicated by the RP to the applicant vide emails which have been disclosed in the application ibid. The Lease deed is also forming part of the Application and hence the same is not being annexed along with this Reply Affidavit.

16. It has also been further stated that the management of the Corporate Debtor even before the commencement of the CIRP had already filed an appeal against the order dated 12/11/2018 before the Employees' Fund Appellate Tribunal in March, 2020 and that appeal is pending as on date.

Analysis and Findings

17. During the hearing it has been submitted by the Ld. Counsel for the RP that the fact that the Resolution plan is still under implementation. The Resolution Plan was approved by this Adjudicating Authority on 08 March 2022 as per which

the claim of the applicant is the subject to the outcome of the appeal filed before the Employees' Provident Fund Appellate Authority.

18. It is also relevant to mention here that the said circumstance was already brought out in the information memorandum and the SRA has already undertaken to abide by the decision of the EPF Appellate Authority in the matter.

19. In the approved resolution plan, in the table of reliefs and concessions, this matter has been dealt with in Sl. No. 25 which is reproduced hereunder:

25.

25.

Claim of PF Authority & Pending Litigation filed against them by the CD

Claim of PF Authority of Rs.0.99 crores is in relation to erstwhile establishment at the location of the unit of the CD and not relating to the dues of CD and the same has not been admitted by the RP. The CD has already filed a petition before EPF appellate tribunal Dhanbad, which is still pending for final order. Directions from the NCLT, by way of approval of this Resolution Plan would result in the quashing of all legal proceedings for recovery of any amount in respect of the same or enforcement of any existing security interest against the Corporate Debtor. It is hereby clarified that the courts / forums shall consider the resolution plan as adequate proof to quash all such litigation / pending matters including the notice of PF Authority.

The Corporate Debtor under the successful Resolution Applicant shall abide by the decision of the EPF Appellate Tribunal, Dhanbad, subject to the outcome of any appeal that may be filed in the matter. This relief is explicitly refused.

20. In view of the express provisions made in the plan in this regards and also reiterated in the submissions made by the Ld. Counsel for the RP, the matter of admission of the claim and subsequent payment by the SRA is dependent upon the outcome of the appeal as directed in the order approving the Resolution Plan,.

21. In light of the above it is clear that this application has run its course and is accordingly dismissed as infructuous at this stage, with liberty to approach this Adjudicating Authority in case of difficulty in implementation of the express provisions of the approved resolution plan in this regard.