

(2018) 03 DEL CK 0386

In the Delhi High Court

Case No : Company Petition No. 147 Of 1996

Micro Devices Inc.

APPELLANT

Vs

Infocom Digital Systems (P) Ltd

RESPONDENT

Date of Decision : 09-03-2018

Acts Referred:

Employees' Provident Funds And Miscellaneous Provisions Act, 1952 — Section 7A, 11, 11(2)

Citation : (2018) 03 DEL CK 0386

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : V.Sudeer, Soumyashree Kulkarni, D.Bhattacharya, Rajesh Kumar, Santwana

Judgement

Jayant Nath, J

CA 2057/2013

1. This application is filed by Syndicate Bank for a direction to the OL to release an amount of Rs.51,18,100/- to the applicant bank instead of releasing the same to the Employees Provident Fund as is sought to be done by the OL. Though the application does not mention so learned counsel for the applicant/syndicate bank submits that the applicant is a secured creditor. The assets that were mortgaged to the bank were sold and some amount remains payable by the respondent company. Hence, the present application has been filed.

2. A perusal of the status report shows that the OL has noted that when claims were invited EPFO has claimed an amount of Rs.63,66,970/-. The OL states that based on the adjudication carried out by the statutory authority under section 7A of the EPFO Act the said amount has been allowed for Rs.51,18,100/-.

3. I have heard learned counsel for the parties. Learned counsel for the Syndicate Bank submits that there are no known or identifiable employees of the respondent company to whom EPFO has to pay any amount. He submits that this

is also apparent from the report of the OL and that by paying EPFO they will only be using it to enlarge their own corpus. He further submits that the proceedings before the Commissioner of EPFO are void.

4. Learned counsel for the OL, however, states that they have accepted the claim of EPFO based on statutory orders of the quasi judicial authorities, namely, Commissioner of Provident Fund.

5. Learned counsel for the EPFO has relied upon judgment of the Supreme Court in *Employees Provident Fund Commissioner vs. Official Liquidator of Esskay Pharmaceuticals Limited* (2011) 10 SCC 727 and *Regional Director E.S.I. Corporation vs. Kerala State Drugs and Pharmaceutical Limited & Ors*, 1995 Supp (3) SCC 148 to plead that the submissions of learned counsel for the applicant are misplaced.

6. In *Employees Provident Fund Commissioner vs. Official Liquidator of Esskay Pharmaceuticals Limited* (supra) the Supreme Court had noted as follows:-

"48. It is also important to bear in mind that even before the insertion of Section 529(1) proviso, Sections 529(3) and 529-A [Vide Act 35 of 1985, proviso to Section 529(1), sub-section (3) of Section 529 and Section 529-A were inserted and amendment of Section 530(1) was carried out.] and amendment of Section 530(1), all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund established for the welfare of the employees were payable in priority to all other debts in a winding-up proceedings [Section 530(1) (f)]. Even the wages, salary and other dues payable to the workers and employees were payable in priority to all other debts. What Parliament has done by these amendments is to define the term "workmen's dues" and to place them on a par with debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to Section 529(1). However, these amendments, though subsequent in point of time, cannot be interpreted in a manner which would result in diluting the mandate of Section 11 of the EPF Act, sub-section (2) whereof declares that the amount due from an employer shall be the first charge on the assets of the establishment and shall be paid in priority to all other debts. The words "all other debts" used in Section 11(2) would necessarily include the debts due to secured creditors like banks, financial institutions, etc. The mere ranking of the dues of workers on a par with debts due to secured creditors cannot lead to an inference that Parliament intended to create first charge in favour of the secured creditors and give priority to the debts due to secured creditors over the amount due from the employer under the EPF Act."

7. Hence, the settled legal position is that priority has been given to the amount due from the employer under EPF Act over all other debts.

8. Similarly, in *Regional Director, E.S.I. Corporation vs. Kerala State Drug and Pharmaceutical Limited & Ors.*, 1995 Supp(3) SCC 148 the Supreme Court held as follows:-

"3. There is thus no quid pro quo between the persons insured and the benefit available under the Act. As regards the finding that the workmen were unidentifiable, what is forgotten is that under the Act, once an establishment comes to be covered by the Act, the employer becomes liable to pay the contribution in respect of the employees in his employment directly or indirectly. The contribution which had become payable for the relevant period has to be paid even if the employees concerned are no longer in employment. Whether the employees are unidentifiable today or not is, therefore, irrelevant so long as the contribution was liable to be paid on their behalf, when they were in employment."

9. Hence, the submission of learned counsel for the applicant that the employees who would be the beneficiary of this amount are not identifiable is a misplaced contention.

10. In my opinion, there are no reasons to reject the report of the OL. The OL has admitted the dues payable to EPFO of Rs.51,18,100. Accordingly, I allow the claim of EPFO to the aforementioned extent.

11. Learned counsel for the OL submits that presently a fund of roughly Rs.62 lacs is available with the OL.

12. Let the OL release the admitted amount to EPFO, as per rules. In case any surplus is left thereafter the plea of the applicant bank would be considered.

13. Application stands disposed of.

CP 147/1996

List on 13.7.2018.