
(2023) 06 NCLT CK 0074

In the National Company Law Tribunal

Case No : IA No.115/2022 In CP (IB) No. 1/Chd/Chd/2017

Regional Provident Fund Commissioner Chandigarh Vs Krishan Vrind Jain ?

Date of Decision : 16-06-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 32(2)(b), 36(4)(b)(iii), 53(1), 53(1)(b), 60(5), 238

Citation : (2023) 06 NCLT CK 0074

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Salil Sablok, Vikas Kathulia

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. The present application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by Regional Provident Fund Commissioner, Chandigarh (hereinafter referred to as 'Applicant') against M/s Hind Motors Ltd. for setting aside communication dated 26.05.2021 and 19.07.2021 whereby claim of the applicant was rejected by Resolution Professional. Further, directing the respondent to adjudicate and admit the claim of the applicant as submitted vide letter dated 13.04.2021

2. The brief facts of the case as stated by the applicant are that the liquidation proceedings were neither intimated by the Resolution Professional (hereinafter referred as 'RP') nor the company. In January 2021 proceedings came to the knowledge of the applicant and the applicant immediately submitted its claim before RP on 13.04.2021 (Annexure A1). RP vide letter dated 26.05.2021 rejected the claim (Annexure A2). Applicant respondent to letter vide letter dated 11.06.2021 (Annexure A3). RP vide impugned letter dated 19.07.2021 refused to accept the same citing bar of Section 238 of IBC (Annexure A4).

3. Vide order dated 22.02.2023 of this Adjudicating Authority learned counsel for the respondent stated that they do not wish to file a reply in the present application. Further, vide order dated 17.03.2023 of this Adjudicating Authority, an application under Section 60(5) of the Code has been filed by Mr. Ashish M Gupta i.e. Ex-director of CD for impleadment as an intervener. The same was allowed vide order dated 22.02.2023 and stood disposed of.

4. We have heard the learned counsels for the applicant as well as the respondent and perused the material available on record.

5. In this connection, reference is made to the judgment of Hon'ble National Company Law Appellate Tribunal, New Delhi in the matter of Jet Aircraft Maintenance Engineers Welfare Association (JAMEWA) Vs. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Ors. (2022) 861 NCLAT wherein it has been held that

"71. In view of the aforesaid discussion, we arrive at following conclusions:

(i) The workmen and employees are entitled for payment of full amount of provident fund and gratuity till the date of commencement of the insolvency which amount is to be paid by the Successful Resolution Applicant consequent to approval of the Resolution Plan in addition to the 24 months workmen dues as the workmen is entitled to under Section 53(1)(b) of the Code. It is made clear that in addition to part amount of provident fund and gratuity as proposed in Resolution Plan to workmen, Successful Resolution Applicant is obliged to make payment of balance unpaid amount of provident fund and gratuity to workmen and employees.

72. Our answer to Question II and III is as follows:

(i) The workmen and employees are entitled to receive the amount of provident fund and gratuity in full since they are not part of the liquidation estate under Section 36(4)(b)(iii).

(ii) The workmen are entitled to receive their dues from the Corporate Debtor for period of 24 months as per provision of Section 53(1)(b) at least to minimum liquidation value envisaged under Section 32(2)(b) read with Section 53(1)."

6. Thus, it is well settled that the payments towards the Employees Provident Fund Organisation stand outside the Resolution Process and the claims by the applicant Regional Provident Fund Commissioner are to be settled by the Resolution Professional/Corporate debtor. This cannot be made part of the distribution mechanism under the Resolution Plan. The respondent however is at liberty to avail all the remedies provided under the Employee Provident Fund Act, 1952 in case of any grievance regarding the amounts to be paid to the applicant. In view of the above discussion, the applicant is directed to serve a notice of the updated demand on the respondent within 15 days of this order and the payments there of be made within a reasonable period.

7. Thus, IA 115/2022 is allowed and stands disposed of accordingly.