



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

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(March 26, 2024)

Regional Provident Fund Commissioner, EPFO Regional Office, Jamshedpur Vs. Ms. Mamta Binani, RP & Ors.
Company Appeal (AT) (Insolvency) No. 245 of 2022
NCLAT Judgement dated March 13, 2024

Facts of the Case: -

The present appeal is filed by M/s Regional Provident Fund Commissioner, EPFO Regional Office, Jamshedpur (hereinafter referred as “Appellant”) against the Resolution Professional (RP) & Ors. (hereinafter referred as “Respondents”) after being aggrieved by the order dated 11.05.21 passed by Adjudicating Authority/ NCLT.

The case is related to the CIRP initiated against “R.D. Rubber Reclaim Limited” on 25.10.19 following a public announcement made on 02.11.19. The Appellant submitted claims amounting ₹1,02,84,785 under Section 7A, ₹75,62,576 under Section 7Q, and ₹1,05,63,927 under Section 14B of the Employees’ Provident Funds & Miscellaneous Provisions Act 1952 (hereinafter referred as “Act of 1952”) on 28.08.20. These claims were entirely admitted by the Respondent 1 as communicated on the same day. Subsequently, a Resolution Plan presented by the Resolution Applicant (hereinafter referred as “Respondent No: 3”) was approved by the CoC with a unanimous vote share on 06.11.20. Respondent No 1 then sought approval of NCLT on the Resolution Plan, which was granted on 11.05.21. However, the approved Resolution Plan proposed payment of the amount claimed only under Section 7A, totaling ₹1,02,84,785. Discontent with the approved Resolution Plan due to omission of proposed payments for the amounts claimed under sections 7Q and 14B, this appeal was filed.

The Appellant submitted that while relying on the judgment delivered by Appellate Tribunal in *Jet Aircraft Maintenance Engineers Welfare Association vs. Ashish Chhawchharia* (2021) said that the dues under Section 7Q and Section 14B of 1952 Act are also PF dues and are entitled to be paid. It was further submitted that the claim was entitled to be paid first and there can be no denial of the amount.

The Respondent No: 3 submitted that the Resolution Plan has already been implemented and all employees and workmen were retained. It was also submitted that the Appeal came nine months after the order, when the Resolution Plan was executed. Furthermore, it was submitted that demanding full payment at this stage may lead to closure of the company. The Successful Resolution Applicant (SRA) submitted that all dues under Section 7A of the Provident Fund were settled and it should be granted exemption from paying damages under Section 14B.



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NCLAT Observations: -

The Appellate Tribunal observes that the Appellant's entire claim necessitates consideration and payment in the Resolution Plan. It also cites the judgment delivered in *Maharashtra State Cooperative Bank Limited vs. Assistant Provident Fund Commissioner and Ors. (2022)*, noting that all amounts claimed under sections 7A, 7Q, and 14B of the 1952 Act were part of the Provident Fund.

Furthermore, the Appellate Tribunal relies on the judgments in *Jet Aircraft Maintenance Engineers Welfare Association vs. Ashish Chhawchharia (2021)* and *Mrs. C.G. Vijyalakshmi vs. Shri Kumar Ranjan, Resolution Professional and Ors.* The Appellate Tribunal directs Respondent No.3 to make a payment of ₹75,62,576/- within two months to the Appellant for the admitted claim under Section 7Q of the 1952 Act. Concerning the admitted amount of ₹1,05,63,927/- under Section 14B, NCLAT granted liberty to Respondent No.3 to apply to the Central Board for a waiver of 100% damages. Respondent No.3 is instructed to file this application within 30 days, and the Central Board is urged to expedite its decision on the waiver within three months of receiving the application.

Order/Judgement: The Appellate Tribunal has affirmed the impugned order dated 11.05.2021 passed by the AA subject to the issued directions. Parties shall bear their own costs.

Case Review: Appeal is disposed.