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Crystallised Liabilities and the IBC Moratorium: NCLT Bengaluru Bars EPFO Claims for Section 7Q Interest and Section 14B Damages Accrued During Insolvency

AUTHOR Abdullah Qureshi, Rahul Sundaram

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The interplay between social welfare statutes and insolvency legislation continues to generate significant judicial discourse in India. A noteworthy contribution to this evolving jurisprudence is the decision of the National Company Law Tribunal, Bengaluru Bench, in Regional Provident Fund Commissioner – II v. Antal Infotech Pvt. Ltd. and Anr., I.A. No. 253 of 2024 in C.P. (IB) No. 198/BB/2020, decided on 11 June 2026 by a Bench comprising Shri Sunil Kumar Aggarwal, Judicial Member, and Shri Radhakrishna Sreepada, Technical Member. The Tribunal dismissed the application filed by the Employees' Provident Fund Organisation, thereby emphasising that the statutory sanctuary under Section 36(4)(a)(iii) of the Insolvency and Bankruptcy Code , 2016 is available exclusively to liabilities that have crystallised prior to the insolvency commencement date, and that the strict timelines under the Code brook no dilution.

The Corporate Debtor, Antal Infotech Pvt. Ltd., was a covered establishment under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. It had defaulted in remitting statutory provident fund contributions, which triggered proceedings under Section 7A of the EPF Act and the determination of penal damages under Section 14B and interest under Section 7Q. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process on 23 September 2020, and subsequently ordered into liquidation on 13 August 2021. A public announcement inviting claims was issued in December 2020. Upon learning of the liquidation, the Regional Provident Fund Commissioner – II lodged a claim before the Liquidator in March 2021, seeking admission of statutory dues including damages and interest, and requesting reservation of funds for future determinations.

By order dated 8 November 2021, the EPF authority determined the principal provident fund dues amounting to ?62,32,118 for the period April 2019 to August 2021. The Liquidator initially rejected the RPFC's claim in December 2021 on technical grounds of delay and improper format. The RPFC challenged this rejection in I.A. No. 30 of 2022, which the Tribunal allowed on 15 September 2023, condoning the delay and directing the Liquidator to reconsider the claim. Pursuant thereto, the Liquidator by communication dated 17 October 2023 admitted the principal claim to the extent of ?4,05,495 and rejected the remaining amount of ?38,85,792 on the ground that the rejected component pertained to interest and damages computed for the period covering the moratorium and post-liquidation phase, and was therefore inadmissible under the IBC. The RPFC made representations dated 15 November 2023 and 17 November 2023 seeking reconsideration, but the Liquidator reaffirmed the rejection by communication dated 12 December 2023. An additional amount of ?40,628 towards penal damages and interest on a specific due was also left unadjudicated. Aggrieved, the RPFC filed the present application on 8 January 2024 under Section 42 read with Section 60(5) of the IBC.

The RPFC contended that the rejected amounts represented statutory dues arising from pre-CIRP provident fund defaults, and that contributions, interest, and damages under Sections 7A, 7Q, and 14B formed an inseparable statutory liability. It was argued that the delay in filing and determination was attributable to the COVID-19 pandemic and the quasi-judicial procedural requirements under the EPF Act, and that such delay had already been condoned by the Tribunal in the earlier proceedings. The Applicant placed reliance on the Supreme Court judgments in Maharashtra State Co-operative Bank Ltd. v. EPFO and Sunil Kumar Jain v. Sundaresh Bhatt, alongside NCLAT decisions in RPFC-II v. Harshavardhan Cotton and Synthetic Mills and Anuj Bajpai v. EPFO, to assert that the expression "all sums due" from provident fund included not merely principal contributions but also interest and damages, all of which were excluded from the liquidation estate under Section 36(4)(a)(iii). It was further submitted that the Corporate Debtor could not take advantage of its own wrong, citing Inderjit Singh Grewal v. State of Punjab, and that the communication dated 12 December 2023 constituted the effective rejection for limitation purposes.

The Liquidator, conversely, raised a preliminary objection of limitation. It was submitted that the rejection dated 17 October 2023 triggered the fourteen-day limitation under Section 42 of the IBC, and that the application filed on 8 January 2024 was hopelessly barred, particularly since Section 42 contains no provision for condonation of delay. On merits, the Liquidator argued that interest under Section 7Q and damages under Section 14B were distinct from provident fund contributions payable to employees. While actual contributions were protected as workmen dues under Section 36(4)(a)(iii), the statutory interest and damages were payable to the EPFO authority and therefore partook the character of government dues subject to the waterfall mechanism under Section 53. Reliance was placed on coordinate Bench decisions including Shri Addanki Haresh v. Recovery Officer, EPFO and RPFC v. Excel Glass Ltd. The Liquidator further contended that the rejected amount of ?38,85,792 specifically represented interest and damages computed for the CIRP and post-liquidation period from 12 December 2020 to 12 October 2021, and that the levy of such additional liabilities during the moratorium was impermissible under Sections 14 and 33(5) of the IBC.

The Tribunal framed three principal issues. The first concerned the maintainability of the application in light of the statutory limitation prescribed under Section 42. The second addressed the substantive question of whether interest and damages under

the EPF Act were entitled to the same protection as principal provident fund contributions. The third examined whether the impugned liability had crystallised as on the insolvency commencement date.

On limitation, the Tribunal held that the scheme of the IBC places critical emphasis on certainty and strict adherence to timelines. Section 42 does not provide for condonation of delay, and the Supreme Court has consistently emphasized that timelines under the Code are intrinsic to the insolvency framework, referencing EPFO v. Fanendra Harkchand Munot. The Tribunal observed that the Liquidator's communication dated 17 October 2023 constituted a substantive decision admitting the claim partially and rejecting the remainder. The subsequent communications dated November and December 2023 merely sought reconsideration of the earlier decision and did not result in any fresh adjudication. The communication dated 12 December 2023 merely reiterated the earlier rejection and could not be construed as giving rise to a fresh cause of action. Consequently, the application was held to be barred by limitation and not maintainable.

Notwithstanding the limitation bar, the Tribunal proceeded to examine the controversy on merits given the evolving jurisprudence. The Tribunal acknowledged the NCLAT's recent judgments in Harshavardhan Cotton and Anuj Bajpai, wherein it was held that Section 36(4)(a)(iii) takes precedence over the waterfall mechanism under Section 53, and that the expression "all sums due" from provident fund is of wide amplitude, encompassing principal contributions, interest under Section 7Q, and damages under Section 14B. However, the Tribunal also took note of the subsequent NCLAT judgment in EPFO v. Rachna Jhunjhunwala, Chairperson of the Monitoring Committee of Power Max (India) Pvt. Ltd., which introduced a critical distinction. The NCLAT therein held that where proceedings under Sections 7Q and 14B had not attained finality as on the insolvency commencement date, the liabilities remained uncrystallised and could not be introduced or adjudicated during the subsistence of the moratorium. The insolvency framework proceeds on the basis of liabilities crystallised as on the insolvency commencement date, and the continuation of assessment proceedings resulting in enhanced liabilities during the moratorium would be inconsistent with the scheme of the IBC.

Applying this principle to the facts, the Tribunal noted that the Corporate Debtor was admitted into CIRP on 23 September 2020. The order under Section 7A determining the principal dues was passed on 8 November 2021 and was fully admitted and paid by the Liquidator. The impugned order determining penal damages and interest was passed only on 23 November 2021, well after the insolvency commencement date. The Liquidator consistently maintained that the rejected amount of ?38,85,792 represented interest and damages computed for the period 12 December 2020 to 12 October 2021, that is, during the moratorium and post-liquidation period. The Tribunal found that the Applicant had placed no material to demonstrate that this specific amount had crystallised as a liability payable on the insolvency commencement date. The Tribunal was unable to accept the submission that every liability under Sections 7Q and 14B necessarily relates back to the date of the original default irrespective of the period for which such liability is computed. The claim therefore could not be equated with the pre-insolvency provident fund liabilities considered in Harshavardhan Cotton and Anuj Bajpai. The claim pertaining to interest and damages computed for the CIRP and post-liquidation period stood on a materially different footing.

The Tribunal ultimately dismissed the application on both limitation and merits. It held that the application was barred by the fourteen-day limitation under Section 42 of the IBC, and that on merits, the Section 7Q and Section 14B demands created during the moratorium period could not be considered as pre-insolvency crystallised liabilities. The decision reinforces the position that while provident fund dues enjoy statutory protection under Section 36(4)(a)(iii), such protection is contingent upon the liability having crystallised prior to the insolvency commencement date. The judgment is a significant precedent for Liquidators and statutory authorities alike, clarifying that the moratorium under Sections 14 and 33(5) of the IBC operates as a strong shield against the accrual of fresh penal liabilities during the insolvency process, and that the burden of establishing crystallisation rests squarely upon the claimant.

For further details write to contact@indialaw.in