

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – III

COMPANY APPEAL/21/2023

In

C.P.(IB)/1619(MB)/C-III/2019

*(Under Section 42 of the Insolvency and
Bankruptcy Code, 2016 AND Section 5 of the
Limitation Act, 1963.)*

Employees Provident Fund Organization
*Through Regional Provident Fund,
Commissioner-II, Vashi.*

.....Appellant

Vs.

Mr. Sreekumar Radhakrishnan Nair,
Liquidator of Kalpyog Chemicals Pvt. Ltd.

.....Respondent

In the matter of

Sai Projects & Engineers Private Limited

.....Operational Creditor

Vs.

Kalpyog Chemicals Private Limited

.....Corporate Debtor

Order Pronounced on: 24.01.2024

CORAM:

SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)

SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)

Appearances:

For the Appellant : Adv. Uinaq Kafe

For the Respondent: Adv. Laukik Palekar

ORDER

Per- Ms. Lakshmi Gurung, Member Judicial

1. The present application has been filed by the Employees Provident Fund Organization (“EPFO/Appellant”) under Section 42 of the Insolvency & Bankruptcy Code, 2016 (“IBC, 2016/the Code”) against Mr. Sreekumar Radhakrishnan Nair, alleged Liquidator of M/s. Kalpyog Chemicals Private Limited (“Corporate Debtor”), seeking *“to quash and set aside the adjudication/order dated 26.04.2023 passed by the Liquidator in respect of provident fund dues of Rs. 15,29,995/- under section 14B of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 as part of the liquidation asset under section 53 of the IBC, 2016”*. The Appellant further prayed to treat abovementioned dues in priority to all other claims.

Relevant Facts in brief:

2. The Corporate Debtor was admitted to CIRP vide order dated 29.08.2019 and order for liquidation under section 33 of IBC was passed on 21.09.2020 wherein Mr. Sreekumar Radhakrishnan Nair was appointed as liquidator. Pursuant to this, the public announcement was made by the Liquidator for the purpose of inviting claims from the creditors of the Corporate Debtor.

3. The Appellant filed claim in Form C before Liquidator for Rs. 40,80,002/- on 17.12.2020. extract of which is reproduced below:

FORM C

PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT
WORKMEN AND EMPLOYEES

4.	Details of documents by reference to which the debt can be substantiated	7A ORDER DATED 15.12.2020 14B AND 7Q ORDER 17.12.2020.
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4. From above Form C it is clear that the orders under section 7A and 7Q and 14B under Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as “the EPF & MP Act, 1952”) were passed during the liquidation period.
5. The above claims of the Appellant were fully admitted by the Liquidator and communication was sent to the Appellant vide letter dated 23.12.2020 stating that the amounts will be distributed as per waterfall mechanism provided under Section 53 of the IBC, 2016.
6. The Liquidator paid the dues under section 7A and 7Q of the Act to the tune of Rs. 25,50,007/- on 06.07.2022. Thereafter, dissolution order under section 54 of IBC was passed by this Adjudicating Authority on 14.12.2022.
7. The Appellant vide letter dated 19.04.2023 communicated to the Respondent that EPFO is the sole social security providing agency of Government of India empowered with provisions

under the EPF & MP Act, 1952 and the schemes framed thereunder from time to time as to protect the social security benefits of poor workers and attention was invited to section 11(2) of the EPF & MP Act, 1952 wherein any dues payable to EPFO is considered to be first charge notwithstanding anything contained in any other law for the time being in force, be paid in priority of all other debts.

8. The Respondent vide letter dated 26.04.2023 informed that balance claim (damage dues) under section 14B of the EPF & MP Act, 1952 are part of the liquidation estate and required to be liquidated as per waterfall mechanism provided under section 53 of IBC, 2016.
9. The Appellant submits that dues of the appellant are in priority over all other dues by virtue of section 11(2) of the EPF & MP Act, 1952. The Appellant further submits that dues of the appellant would not form part of the Liquidation Estate under section 36(4)(a)(iii) of IBC, 2016 and hence the liquidator can exercise his rights only over the assets which are forming part of the Liquidation Estate and the liquidator has no control over the assets which are not forming part of the Liquidation Estate, therefore, order of liquidator including the dues Rs. 15,29,995/- under section 14B of the EPF & MP Act, 1952 as part of the liquidation asset under section 53 of the IBC, 2016 is not in accordance of law.
10. The Respondent submits that the order for dissolution of the Corporate Debtor was passed by this Hon'ble Tribunal vide

order dated 14.12.2022 and consequentially the Respondent was discharged from his duties as the Liquidator.

11. The Respondent further states that appeal under Section 42 of IBC, 2016 can only be filed against the decision of a Liquidator. In the present case the Appellant has filed the present appeal against letter dated 26.04.2023 addressed by the Respondent in good faith in reply to the appellant's letter dated 19.04.2023. The reply dated 26.04.2023 addressed by the Respondent was not in the capacity of Liquidator.
12. In light of the above, the Respondent submitted that the present appeal is to be dismissed.

Observations and Findings:

13. Heard Ld. Counsel for the Parties and perused the record.
14. We note that the Corporate Debtor has already been dissolved vide order dated 14.12.2022. The dissolution order is passed upon an application filed by Liquidator after completion of liquidation process i.e. distribution of all assets to the creditors as per waterfall mechanism under section 53 of the IBC.
15. The effect of the dissolution of a Corporate Debtor under section 54 of IBC is that all liabilities of the corporate debtor get settled and automatically extinguished and the company ceases to exist as the liquidation process is completed under the supervision of the Adjudicating Authority.

16. As the dissolution order has already been passed on 14.12.2022 and the liquidator has been discharged from his duties as Liquidator, nothing survives in the present appeal.
17. We agree with the submission of the Respondent that the reply dated 26.04.2023 in response to the Appellant's letter dated 19.04.2023 cannot be treated as an adjudicating order by Liquidator who stood discharged from his duties upon order of dissolution of the corporate debtor on 14.12.2022.
18. As per Section 42 of IBC, 2016 appeal can be filed against the decision of Liquidator. Section 42 is as follows:

“42. Appeal against the decision of liquidator-

A creditor may appeal to the Adjudicating Authority against the decision of the liquidator accepting or rejecting the claims within fourteen days of the receipt of such decision.”

19. On bare perusal of the abovementioned provision, it is clear that the appeal under section 42 of IBC, 2016 can only be filed against the decision of a Liquidator. Since letter dated 26.04.2023 is not order of Liquidator, hence there is no question of setting aside the same. As far as issue whether amount under 14B of the EPF & MP Act, 1952 is outside liquidation estate of the Corporate Debtor may be decided in an appropriate case.
20. In any case the Corporate Debtor has been dissolved, there is no question of priority in payment or recovery of EPFO dues.

For all the reasons mentioned above, there is no merit in the appeal.

21. Accordingly, the present appeal is **dismissed**. No order as to cost.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)

Arpan, LRA