IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAW) NO. 2303 OF 2023
IN
WRIT PETITION NO. 693 OF 2022

(MURLI INDUSTRIES LIMITED, VILLAGE NARANDA, DIST. CHANDRAPUR...VS.. CENTRAL BOARD OF TRUSTEES, EMPLOYEES PROVIDENT FUND ORGANISATION, NEW DELHI)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri M.G.Bhangde, Sr.Advocate a/b Shri S.S.Sarda, Adv. for Petitioner.
Dr. R.S.Sundaram, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : DECEMBER 01, 2023.

1. Heard.

2. By way of present application the petitioner is seeking leave to amend the petition.

3. The instant petition, *inter alia*, seeking declaration that since the Resolution Plan in respect of petitioner company has been approved by the National Company Law Tribunal (NCLT), Mumbai, National Company Appellate Tribunal (NCLAT), New Delhi and lastly by the Hon'ble Supreme Court of India, all the claims of the Employees provident Fund Organization against the petitioner i.e. corporate-debtor which are not a part of approved Resolution Plan stand extinguished and cannot be enforced in view of Section 31 of the Insolvency and Bankruptcy Code, 2016.

4. The petitioner used to operate in three business segments i.e. Cement, Solvent Extraction and Paper. That the Resolution Applicant i.e. Dalmia Cement (Bharat) Limited

(hereinafter referred to as 'DCBL') had submitted Resolution Plan which was approved by the Committee of Creditors in its meeting held on 20/12/2017 and was also approved by NCLT, Mumbai, NCLAT, New Delhi and Hon'ble Supreme Court of India. It is the case of the petitioner that, pursuant to the approval the Resolution Plan, the Resolution Applicant acquired the petitioner and the petitioner became wholly owned subsidiary of Resolution Applicant.

5. It is submitted that, as per the approved scheme, the petitioner has been demerged into two undertakings:

i. Demerged Undertaking 1 – Paper Unit.

ii.Demerged Undertaking2–Solvent Extraction Unit

6. The petitioner submits that, as per sanctioned scheme the Demerged Undertaking 1 – paper business and Demerged Undertaking 2 – Solvent Extraction Business of the petitioner vests in AMPL and MVPL respectively. Further the remaining business (Cement Business) is amalgamated into and vests in DCBL. That as per clauses 6.5, 17.5 and 27.3 of the sanctioned scheme AMPL, AMVPL and DCBL shall transfer to their name pending legal proceedings instituted by and against the undertakings which now vest in them. That the said scheme became effective after fulfilling of conditions stated in Clause 43 of the scheme on 01/07/2022.

7. It is submitted that on 01/02/2023 the DCBL received show cause notice dated 19/01/2023 issued by the Regional Provident Fund Commissioner-II, Regional Office, Nagpur claiming that there are outstanding dues against DCBL in respect of undertakings/ establishments stated in said notice

which were run by the petitioner before the above-stated scheme was sanctioned and became effective. Further, by the said notice DCBL was asked to show cause as to why recovery action should not be initiated against it.

8. That, thereafter, DCBL has on 20/07/2023 received notice of demand dated 13/07/2023 issued by the Regional Provident Fund Commissioner/ Recovery Officer, Regional Office, Nagpur demanding payment of alleged dues amounting to Rs.1,39,38,827/- in respect of various undertakings that were earlier run by the petitioner.

9. It is submitted by the petitioner that in view of above stated subsequent events it has become necessary for the applicants to amend their petition and bring the events on record and also to challenge the Show Cause Notice dated 19/01/2023 and Demand Notice dated 13/07/2023.

10. The application is opposed by the respondent on the ground that Section 11(2) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 declares deemed first charge on the property of the establishment and it also declares that the provident fund dues are recoverable on priority to all other debts.

11. It is further opposed on the ground that the subsequent notices issued are the fresh cause of action and not related to the notice under challenge in the present writ petition.

12. After going through the record, it is evident that the prayer clause (I) of the petition raises a challenge to the powers

of recovery by the respondent once the approval of Resolution Plan by the National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT) and the Hon'ble Supreme Court of India, is declared and thereby the Corporate Debtors, which are not included in the approved Resolution Plan, stands extinguished.

13. Thus, I am of the opinion that the subsequent events stated in the proposed amendment needs to be permitted to bring on record. Moreover, yet the petition is not admitted. Therefore, no prejudice would be caused to the respondent if the amendment is allowed.

14. As far as the submissions made by the respondent on merit to oppose the present applicant is concerned, the same shall be considered at the time of hearing the matter on merit.

15. In the circumstances, the application is allowed.

The amendment be carried out within four weeks from today.

The respondent is at liberty to make consequential amendment, if so desires.

The application is **disposed of** accordingly. No order as to costs.

JUDGE

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