

19.03.2024
Sl. No.27
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 655 of 2018
with
CAN 1 of 2018
CAN 2 of 2019
CAN 3 of 2020
CAN 4 of 2019

Ashok Kumar Poddar
Vs.
State Bank of India & Ors.

Mr. Soumya Majumder,
Mr. Chayan Gupta,
Mr. P. Bandyopadhyay,
Mr. S. Nandy,
Mr. Deepankar Thakur,
Mr. Gyan Prakash

....for the petitioner.

Mr. Anil Kumar Gupta

....for P. F. Authorities.

Mr. Rittick Choudhury,
Mr. Shoham Sanyal

....for the respondent no.8.

The writ petition was filed on 10th January, 2018 challenging a recovery proceedings by which a sum of Rs.4,19,43,881/- was directed to be recovered by the Recovery Officer vide order dated 14th December, 2017 for a default on the part of the establishment, M/s. Falcon Tyres Limited, Mysore, (respondent no. 7) having the code KN/6707, which resulted initiation of a proceedings under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short, EPF & MP Act). By the said order, the said sum of Rs. 4,19,43,881/- was directed to be

recovered from a savings bank account bearing no.32899201231 maintained with the State Bank of India or any other account maintained with the said bank. Prior to issuance of the said order, the operation of the subject bank account was freezed by a prohibitory order dated 28th June, 2016. The company-Falcon Tyres Limited had gone into liquidation on 30th December, 2019 by virtue of an order of the adjudicating authority in a proceedings filed under the Insolvency and Bankruptcy Code, 2016 (in short, IBC). One Shri Shivadutt Bannanje was appointed as a Liquidator of the Corporate Debtor. The EPF Authorities lodged a claim before the said Liquidator on 10th June 2022. The claim was for an aggregate sum of Rs.22,89,67,613/- which was said to be due on 10th June, 2022. The principal claim as appears from the said statement of claim at page 248 of the supplementary affidavit affirmed by the petitioner on 25th January, 2024 is for Rs. 4,19,43,881/- for the period 12/2013 to 01/2015. The balance amount is on account of interest and penalty. The supplementary affidavit affirmed by the petitioner on 24th January, 2024 is not on record but a copy thereof has been served on the respondents. A copy of the supplementary affidavit affirmed by the petitioner on 24th January, 2024 as made over to Court is retained with the records.

The Liquidator has considered the claim of the EPF Authorities and allowed a total claim of Rs.20,58,09,617/-. The claim as allowed by the Liquidator was approved by the National Company Law Tribunal (NCLT), Bengaluru Bench by an order dated 2nd June, 2023 passed in C.P. (IB) No.14/BB/2017 by which several interlocutory applications were disposed of. This amount was received by the EPF Authorities from the Liquidator from out of the assets of the company in liquidation on 20th December, 2023.

The writ petitioner says that the savings bank account, bearing no.32899201231 and maintained with the State Bank of India Ballygunge Park Branch is a joint account of the petitioner and the respondent nos.8, 9 and 10. The said bank account, according to the petitioner, has no nexus with the establishment, Falcon Tyres Limited, the respondent no.7 in this proceedings. The petitioner says that the entire amount receivable by the EPF Authorities has been quantified by the Liquidator, approved by the NCLT, Bengaluru Bench and paid in full as on 20th December, 2023 and as such, nothing is due and recoverable from such account. The writ petitioner, therefor, prays for de-freezing the said bank account and disposed of the writ petition as nothing further requires to be adjudicated.

The concerned bank account as appears from the order of the Recovery Officer dated 14th December, 2017 had a balance sum of Rs.6,51,93,094/-. The balance, according to the petitioner, as per the statement for the period dated 10th January, 2007 to 10th July, 2007 was Rs.5,25,93,851/-.

The respondent nos. 8, 9 and 10, being the other joint account holder support the cause of the petitioner on the ground that the entire provident fund dues with interest and penalty has been duly received by the authorities on 28th December, 2023.

The EPF Authorities objected to such prayer. By placing a letter dated 16th January, 2024, issued by the Regional Provident Fund Commissioner-II, Regional Office, Mysure, learned advocate representing the PF Authorities submits that a sum of Rs.1,35,03,477/- is recoverable as interest from 10th June, 2022 when the claim was lodged and 28th December, 2023 when the final payment was received in view of the provisions of Section 7Q of the EPF & MP Act. The EPF Authorities also say that they are entitled to receive the balance claim by deducting Rs.20,58,09,617/- from Rs.22,89,67,613/- and as such, the aggregate remaining amount for recovery is Rs.3,66,61,473/-. The EPF Authorities say that this sum of Rs.3,66,61,473/- is required to be secured by

the petitioner if he wants his bank account to be made operational/de-freezed.

The same claim was raised by the EPF Authorities before the NCLT, Bengaluru Bench by filing an application, being I. A. No.404 of 2022 which was disposed of by an order dated 28th June, 2023. By the said order while considering the application being I. A. No.404 of 2022, the NCLT has taken note of the amount claimed by the EPF Authorities, the amount allowed by the Liquidator as also the additional amount. It was clearly held that the additional demand raised by the Employees' Provident Fund Organization that is EPFO is not admissible and allowable. The application, being IA 404 of 2022 was accordingly dismissed. This order has not been challenged as yet and should be taken to have achieved finality.

The claim for securing a sum of Rs.3,66,61,473/-, the particulars whereof is provided in the letter dated 16th January, 2024 as raised herein, therefor, was raised before an authority *in seisin* of the liquidation proceedings to the extent of the balance claimed by deducting Rs.20,58,09,617/- for Rs.22,89,67,613/- and the interest from 10th June, 2022 till 2nd June, 2023 has been considered by the said authority and has been specifically negated. The same claim cannot be made again and

again when competent forum dealing with the liquidation proceeding have turned down the same without having assailed the order dated 2nd June, 2023, in accordance with law. The NCLT is also a fact finding forum and as such all factual aspects of the claim of the EPFO has been placed and considered resulting in specific refusal of the same. Taking advantage of this proceedings being one before a different forum cannot be entertained once the same has been gone into. The date of initiation of the liquidation proceedings has been clearly notified in the order dated 2nd June, 2023 and any claim beyond that date has also been specifically negated.

In the aforesaid facts and circumstances, there is no merit in the arguments advanced by the EPFO. The State Bank of India is, therefor, directed to withdraw, cancel and/or rescind any direction given for de-freezing the savings bank account, bearing no. 32899201231, maintained jointly by the petitioner and the respondent nos.8, 9 and 10 with the State Bank of India Ballygunge Park Branch issued under the instructions of the EPF Authorities. Any direction for de-freezing the savings bank account in question given by the EPF authorities is also set aside in the facts and circumstances of the case by recording accord and satisfaction of the claim of the EPF authorities.

The bank account in question should be made operational within 24 hours from service of a server copy of the instant order.

All parties including the State Bank of India, the EPF authorities shall act on a basis of a server copy of this order downloaded from the official website of this Court without insisting upon production of a certified copy thereof.

Since this writ petition is heard on affidavits and order of the NCLT, the claim lodged by EPFO and the direction of the Liquidator has been considered as part of the supplementary affidavit, nothing further remains to be adjudicated in the writ petition. The same is accordingly is disposed of.

Allegations, if any, contained in the supplementary affidavit affirmed by the petitioner on 24 January, 2024 are deemed to have not been admitted by the EPF Authorities.

The disposal of this writ petition will also dispose of all the applications filed in the said writ petition which are pending for adjudication.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)