17.02.2025
Court No.13
Item No.20
AP/sp

MAT 1657 of 2024
With
CAN 1 of 2024

The Employees Provident Fund Organisation & Ors.
Vs.
Shri Ashok Kumar Poddar and Ors.

Mr. Anil Kumar Gupta
...For the Appellants.

Mr. Soumya Majumdar, Senior Advocate
Mr. Chayan Gupta
Mr. Soumyajyoti Nandy
Mr. DeepankarThakur
...For the Respondent No.1.

1. The instant appeal is directed against a judgement and/or order dated 19th March, 2024 passed in WP 655 (W) of 2018 (Ashok Kumar Poddar Vs. State Bank of India and Ors.).

2. The brief facts relevant to the case are that one M/s. Falcon Tyres Limited went into liquidation on 30th December, 2019 under the provisions of the Insolvency and Bankruptcy Code of 2016 (hereinafter referred to as "the IBC 2016"). A liquidator was appointed on the corporate debtor. The EPF authorities lodged a claim before the liquidator on 10th June, 2022 for a sum of Rs.22,89,67,613/- as outstanding dues upto 8th June, 2022.

3. A supplementary affidavit was filed on 20th January, 2024 two years after the original claim was filed for Rs.4,19,43,881/- for the period between

December 2013 and January 2015. The balance amount was towards interest and penalty.

4. The liquidator under powers conferred on him under the IBC 2016 and the rules framed thereunder allowed the claim of the EPF authorities to the extent of Rs.20,58,09,617/-. The said sum was paid to the EPF authorities, who received the same without protest and demur.

5. The NCLT, Bangalore confirmed the said adjudication by the liquidator as regards the entitlement of the EPF authorities. No appeal has been preferred thereagainst by the EPF. The adjudication of the liquidator therefore assumed finality.

6. Prior thereto sometime in 2016 one of the bank accounts of the writ petitioner, Shri Ashok Kumar Poddar jointly held with Shri Pawan Kumar Ruia, Smt. Rajni Lath and Smt. Gitika Shah being respondent Nos.8 to 10 in the writ petition, was subject matter of the proceedings before the EPF authorities prior to liquidation.

7. The EPF authorities had attached the said bank account which had a substantial credit balance of well over Rupees Six Crores. The EPF authorities however continued the order of attachment despite conclusion of the liquidation proceeding and receipt of the aforesaid adjudicating sum of Rs. 20,58,09,617/-.

8. In the above circumstances, the continued attachment of the subject bank account of the State Bank of India, Ballygunge Branch was and is ex facie illegal.

9. Counsel for the appellant has relied upon an order dated 2nd September, 2019 passed by a Single Bench of this Court in WP 16731 (W) of 2019, whereby a writ petition filed by the respondent no.8, was dismissed when he sought de-freezing of the aforesaid bank account.

10. Learned counsel for the appellant also relies upon an order dated 8th October, 2020, filed by the writ petitioner in WP 655 (W) of 2018 whereby a similar application for de-freezing the subject bank account was dismissed by a Single Bench of this Court. Yet another writ petition filed by the State Bank of India against the order of attachments being WP 9757 (W) of 2017 was also dismissed by a Single Bench of this Court.

11. It is submitted that the EPF authorities had instructed Mr. Gupta by a communication dated 16th January, 2024 to raise a claim for Rs.3,66,61,473/- towards interest under 7Q and balance dues, against M/s. Falcon Tyres Limited in WP 665 (W) of 2018 and MAT 625 of 2019 therefrom.

12. This Court notes that each of the orders in the aforesaid proceeding were either after the company went into liquidation or when the proceedings in liquidation, were pending before the concerned NCLT under the provisions of the Code of 2016. It is now far too well-settled that the dues of the workman towards a company in liquidation, are required to be settled by the official liquidator under the (now repealed) 1956 Act, particularly under Sections 529A and 530 thereof and by the liquidator corresponding provisions of the IBC 2016.

13. It appears in the instant case in no uncertain term that the adjudication by the liquidator of the EPF dues of the company liquidation has been decided by the liquidator under the provisions of the IBC 2016 and confirmed by the NCLT. There being no challenge thereto by the EPF authorities, the same has assumed finality.

14. The liquidator has specifically rejected the claim raised by the EPF authorities towards interest and other claims post the date of liquidation. The EPF authorities have accepted the order of the NCLT and have received the sums without demur. The decision of the NCLT confirming the adjudication by the liquidator having assumed finality, the question of any further claims by the EPF authorities towards PF dues of the workmen of the company in liquidation, namely,

M/s. Falcon Tyres Limited under the EPF & MP Act of 1952, therefore, does not and cannot arise.

15. The order of attachment of the said bank account of the writ petitioner and the private respondent nos. 8, 9 and 10 ought to have come to an end on the date of confirmation of the adjudication by the NCLT of the adjudication by the liquidator.

16. In view of the above, this Court finds absolutely no fault in the impugned order.

17. The appeal fails and is hereby dismissed.

18. Consequently, all connected pending applications, if any, are also disposed of.

19. There shall, however, be no order as to costs.

20. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)