BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI

Appeal no. D-2/01/2023, D-2/04/2023

M/s. Revent Precision Engineering Ltd. ….Appellant

Through:- Ms. Kanishka Prasad, Ld. Counsel for the appellant.

Vs.

Regional P.F. Commissioner-II, Gurugram (West) ...Respondent

Through:-Sh. B.B. Pradhan, Ld. Counsel for the respondent.

Order Dated:- 02.06.2026

A very short question arises in the these two appeals filed by the appellant against the orders passed under sections 7A, 14B and 7Q of the **Employees Provident Fund and Misc. Provisions Act, 1952 (Hereinafter referred to as 'the Act'),** namely, whether the respondent is competent to pass orders under sections 7A and 14B of the Act in respect of the period prior to the CIRP (Corporate Insolvency Resolution Process). Respondent has assessed the amount of Rs. 3,41,779/- as PF dues for the period 01/2015 to 03/2019 under section 7A and assessed damages and interest for the said period of Rs. 3,41,143/- and Rs. 2,45,055/- under section 14B and 7Q respectively.

The relevant facts of these cases are as follows. The appellant took over the management of **'Amtek Auto ltd.'** after the Hon'ble NCLAT approved the resolution plan submitted through the Resolution Professional in the year 2020. According to the appellant, the hon'ble NCLT, Chandigarh Bench, admitted an application bearing C.P. (IB) no. 42/Chd/Hry/2017 filed by Corporation Bank against Amtek Auto Ltd. under section 7 of the Insolvency and Bankruptcy Code, 2016 and initiated the Corporate Insolvency Resolution Process against the Corporate Debtor. The

Adjudicating Authority also declared a moratorium under section 14 of the Code on 24.07.2017. Sh. Dinkar T. Venkatsubramanian was appointed as the Interim Resolution Professional (IRP). In the first meeting of the Committee of Creditors (CoC) held on 22.08.2017, he was confirmed as the Resolution Professional.

Thereafter, a public announcement was issued by the IRP under Form A on 29.07.2017 and published in **Times of India and Navbharat Times** inviting submissions of claims from all the creditors of Corporate Debtor. According to the appellant, no claim was received from the EPFO department in respect of any outstanding dues.

The CoC, in its meeting held on 02.04.2018, approved the Resolution plan submitted by Liberty Housing Group (LHG). In pursuance thereof, the Resolution Professional filed CA no. 114/2018 under sections 30(6) and section 31(1) of the code seeking approval of the Resolution Plan. Although the said plan was initially approved by the adjudicating authority, it was subsequently held that the resolution plan submitted by LHG was not capable of implementation due to default in adhering to the payment schedule. Consequently, the CoC was restored for consideration of the plan submitted by the Deccan Value Investors LP and DVI PE (Mauritius) Ltd.

Thereafter, a company appeal was preferred before the Hon'ble NCLAT against the order dated 13.02.2019 passed by the Ld. Adjudicating Authority whereby the Hon'ble NCLAT vide order dated 16.08.2019 held that NCLAT was not inclined to give any direction as was sought for by the 'Committee of Creditors' nor inclined to exclude any period calling for fresh 'Resolution Plan', and further directed the Adjudicating Authority to pass appropriate orders for liquidation. Aggrieved by the aforesaid order dated 16.08.2019, the CoC preferred a Civil Appeal (6707 of 2019) before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court, vide order dated 24.09.2019, permitted the Resolution Professional to invite fresh offers from Prospective Resolution Applicants (PRA) within a period of 21 days, and directed the CoC members to take a final call within two weeks thereafter.

Subsequently, the Adjudicating Authority, vide order dated 09.07.2020, approved the Resolution Plan submitted by DVI and held that the same would be binding upon the Corporate Debtor and its employees, members, creditors, including the Central Government and State Government authorities.

After approval of the Resolution plan on 09.07.2020, an Implementation and Monitoring Committee (IMC) was formed, which was in charge of the affairs of the Appellant Company from 09.07.2020 to 08.12.2021. Thereafter, the new management under DVI took over the affairs of the Appellant Company from 08.12.2021.

In between, proceedings under section 7A of the Act were initiated. The Resolution Professional of the appellant company strongly contended that, in view of the section 238 of IBC code and judicial dicta, the said SCN issued by the respondent department was against and in contravention of the code. Hence, the present appeals have ben been filed contending that the orders passed under 7A, 14B and 7Q of the Act are liable to be set aside, being contrary to the the well settled law and the provisions of the IBC.

In response, the respondent filed a counter reply to both the appeal. First it narrated the purpose of enactment of the Act which is a social security legislation. Further, it stated that the 7A authority had assessed the dues for the period January 2015 to March 2019 and determined the dues a sum of Rs. 3,41,779/-. He further submits that it is relevant to mention herein that the Hon'ble Supreme Court of India in the case of **Bhupender Singh vs. Unitech Ltd. Civil appeal no. 10856 of 2016 decided on 20.01.2020**, the court had agreed that the order of moratorium should not foreclose the statutory entitlement of the EPFO to enforce the claims for the payments of EPFO and other related statutory dues as per law against the erstwhile management. PF and allied dues against the establishment has been calculated on the component of allowances which was uniformly paid to its employees till wage ceiling of Rs. 15,000/-. It further quoted section 17B of the Act wherein it is stated that:

> ***17B. Liability in case of transfer of establishment.—Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or 1 [the 2 [Pension] Scheme or the Insurance Scheme], as the case may be, in respect of the period up to the date of such transfer: Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.]***

In sum and substances, the respondent's argument rests on the premise that considering the legal provisions, the respondent has passed just orders.

Certain facts are admitted in the present matters, namely that M/s. Revent Precision Engineering Ltd. is the new name of Deccan Value Investors LP and DVI PE (Mauritius) Ltd., erstwhile DVI Ltd., who was the successful resolution applicant of erstwhile M/s. Amtek Auto Ltd. It is also an admitted position that dues for the period from January 2015 to March 2019 had been determined under section 7A proceedings on the component of the conveyance allowance. An amount of Rs. 3,71,779/- was deposited by the present appellant in the year 2022. Thereafter, damages and interest had been assessed for belated remittance of the said dues.

It is further the admitted case of the appellant that it took over the management of **M/s. Amtek Auto Ltd.** after the Hon'ble NCLT approved the resolution plan submitted through the resolution professional in the year 2022. Earlier, on an application filed by Corporation Bank under section 7 of Insolvency and Bankruptcy Code, 2016, the Hon'ble NCLT had initiated the Corporate Insolvency Resolution Process (CIRP) against M/s. Amtek Auto Ltd. Sh. Dinkar T. Venkatsubramanian was appointed as the Interim Resolution

Professional (IRP), and in the first meeting of the Committee of Creditors (CoC) held on 22.08.2017, he was confirmed as the Resolution Professional. After the matter travelled up to the Hon'ble Supreme Court of India, the CoC ultimately approved the Resolution Plan in favour of the appellant herein, which was thereafter confirmed by the adjudicating authority.

The arguments of the appellant rest of the premise that once it took over erstwhile M/s. Amtek Auto Ltd. by operation of law pursuant to the approved Resolution Plan, it had no liability to pay the dues pertaining to the prior period. Reliance has been placed upon the judgments of Hon'ble Supreme Court of India in **Employees Provident Fund Organisation Vs. Fanendra Harakchand Munot & Anr., Comp. App.(AT)(Ins.) No. 427 of 2023, Order dated 19.04.2023**, **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Others, (2020) 8 SCC 531**, **Ghanashyam Mishra & Sons Private Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd. & Ors., (2021) 9 SCC 657**, **Jaypee Kensington Boulevard Apartment Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors., (2022) 1 SCC 401**, **Tata Steel Limited Vs. Deputy Commissioner of Income Tax** and **Murli Industries Ltd. Vs. Assistant Commissioner of Income-tax and Others, 2021 SCC OnLine Bom 6187.**

Per contra, the Ld. Counsel for the respondent has argued that sections 36 (1) and 36 (2) of the IBC code, 2016 allows the EPFO to take first charge in the liquidation process.

Before proceeding further, the section 31 and section 36 (Page 58) of the IBC code is required to be reproduced herein:

Section 31 – Approval of Resolution Plan

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central

Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1), the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect and the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval under sub-section (1) or within such period as provided for in such law, whichever is later: Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the approval of the Competition Commission of India under that Act shall be obtained prior to the approval of such resolution plan by the committee of creditors.

Section 36 – Liquidation Estate

(1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which shall be called the liquidation estate in relation to the corporate debtor.

(2) The liquidation estate shall be held by the liquidator in fiduciary capacity for the benefit of all the creditors.

(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following: (a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by

the Board, including shares held in any subsidiary of the corporate debtor; (b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets; (c) tangible assets, whether movable or immovable; (d) intangible assets including intellectual property rights, goodwill, etc.; (e) assets subject to the determination of ownership by the court or authority; (f) any assets or rights of action, whether contingent or prospective in nature; (g) any assets belonging to the corporate debtor, including any assets that may be recovered through proceedings for avoidance of transactions under Chapter III; (h) assets of any Indian or foreign subsidiary of the corporate debtor; and (i) any other asset which may be specified by the Board.

(4) The following shall not be included in the liquidation estate assets and shall not be available for distribution: (a) assets owned by a third party which are in possession of the corporate debtor, including assets held in trust for any third party, bailment contracts, and assets of any Indian or foreign subsidiary of the corporate debtor; (b) assets of any Indian or foreign subsidiary of the corporate debtor; (c) personal assets of any shareholder or partner of the corporate debtor as the case may be; (d) assets of any guarantor of the corporate debtor; (e) any other assets as may be specified by the Board.

The objective of the Insolvency and Bankruptcy Code, 2016 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.

The Code seeks to provide for designating the NCLT and DRT as the Adjudicating Authorities for corporate persons and firms and individuals, respectively, for resolution of insolvency, liquidation and bankruptcy. The Code separates commercial aspects of insolvency and bankruptcy proceedings from judicial aspects. The Code also seeks to provide for establishment of the Insolvency and Bankruptcy Board of India (Board) for regulation of insolvency professionals, insolvency professional agencies and information utilities. Till the Board is established, the Central Government shall exercise all powers of the Board or designate any financial sector regulator to exercise the powers and functions of the Board. Insolvency professionals will assist in completion of insolvency resolution, liquidation and bankruptcy proceedings envisaged in the Code. Information Utilities would collect, collate, authenticate and disseminate financial information to facilitate such proceedings. The Code also proposes to establish a fund to be called the Insolvency and Bankruptcy Fund of India for the purposes specified in the Code.

The Code seeks to provide for amendments in the Indian Partnership Act, 1932, the Central Excise Act, 1944, Customs Act, 1962, Income-Tax Act, 1961, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Finance Act, 1994, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, the Payment and Settlement Systems Act, 2007, the Limited Liability Partnership Act, 2008, and the Companies Act, 2013.

The Ld. Counsel for the appellant has stated that the Hon'ble Supreme Court of India in Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta and Others, (2020) 8 SCC 531, held that:

> *Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors, it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate, as it were.*

In **SBI v. V. Ramakrishnan (2018) 17 SCC 394,** the Hon'ble Supreme Court, relying upon Section 31 of the Code, has held (SCC p. 411, para 25).

> *For the same reason, the impugned NCLAT judgment, in holding that claims that may exist apart from those decided on merits by*

the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted, as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count.

Similar views have been reiterated by the Hon'ble Court in **Ghanshyam Mishra & sons Private Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd. & Ors. (2021) 9 SCC 657**, where it was held that:

102.1. *That once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of the resolution plan by the Adjudicating Authority, all such claims which are not a part of the resolution plan shall stand extinguished, and no person will be entitled to initiate or continue any proceedings in respect of a claim which is not part of the resolution plan.*

102.3. *Consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished, and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.*

138. *In the foregoing paragraphs, we have held that the 2019 Amendment to Section 31 of the I&B Code is clarificatory and* *declaratory in nature and therefore will have a retrospective operation. As such, when the resolution plan is approved by the NCLT, the claims which are not part of the resolution plan shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject-matter of the petition concerns proceedings which relate to the claims of the respondents prior to the approval of the plan, in the light of the view taken by us, the same cannot be continued. Equally, the claims which are not part of the resolution plan shall stand extinguished.*

In **Jaypee Kensington Boulevard Apartment Welfare Association & Ors. v. NBCC (India) Ltd. & Ors., (2022) 1 SCC 401**, it was held that :

178.1. The CIRP Regulations make the position clearer still, where, by virtue of Regulation 12, a creditor is required to submit his claim with proof "on or before the last date mentioned in the public announcement"; and a creditor who fails to submit the claim within the stipulated time may yet submit the claim with proof "on or before the ninetieth day of the insolvency commencement date". As per Regulation 13, the resolution professional concerned is to verify the claims within seven days of the last date of receipt of claims.

178.2. Due adherence to the timelines provided in the Code and the related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution; and if a claim is not made within the stipulated time, the same cannot become a part of the Information Memorandum to be prepared by the IRP and obviously, it would not enter into consideration of the resolution applicant as also of the Committee of Creditors. In the very scheme of the corporate insolvency resolution process, a resolution applicant cannot be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the time stipulated and the extended time as permitted by Regulation 12.

On the other hand the counsel for the respondent has relied upon section 36 (1) of the IBC code, 2016 where the claim of the respondent stands first in case of the liquidation.

After going through arguments and facts of present case, it appears that the counsel for respondent is confused with the resolution process, reconstruction of the business and liquidation of a company. The sole purpose of the enactment of the IBC code is to prepare the effective legal frame work for timely resolution of insolvency and bankruptcy which would further improve Ease of doing business initiative taken by the Government of India and facilitate more investments leading to higher economic growth and development. The Supreme Court again and again reiterated that once a resolution plan is approved by the CoC, it shall be binding on all stakeholders including guarantors. A successful Resolution Applicant cannot suddenly be faced with pop-up claims. If It will be allowed, then whole purpose of IBC code for restarting the businesses by the new entrepreneur will be frustrated. It aims to save the industry, not ruin it. Therefore, the provision has been made in the IBC code for surviving the company by inviting the proposal from the applicants after he has seen the pros and cons, i.e., assets and liability, and infuse necessary money into it so that, it became viable for both employer and employees.

Now coming to the facts of the cases in hand, here in the present cases, the respondent had unnecessarily made the assessments on the allowances upon which matching contributions had not been paid. It is not the case of the respondent that the erstwhile M/s. Amtek Auto ltd. had not paid the contributions of its employees. Assessments had been made after the company M/s. Amtek Auto Ltd. was under the process of CIRP, which it cannot. If there were any dues determined, the respondent should have submitted the same before the Resolution Professional, but it failed to do so. Therefore, all the debts of the Central Government, State Government and any other authority stands extinguished. The successful Resolution Applicant who succeeded the business is allowed to run its business on a new slate without any hinderance, which is the purpose of IBC code.

In light of the discussion above, the impugned orders passed by the respondent in both these appeals are set aside and recalled. The amount deposited by the appellant before the respondent in compliance with the impugned orders, shall be refunded within two weeks of receipt of this order, along with an interest at the rate of 10% per annum. So far so the amount deposited with the Registrar of this Tribunal as a condition for filing the appeals is concerned, the same shall be refunded along with accrued interest within two weeks. The Authorized Representative for the respondent is directed to collect LCR from the registry of this Tribunal. A copy of this order shall be placed in each of the connected files. The records of these appeals are consigned to the record room.

Atul Kumar Garg
(Presiding Officer)