

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1743 of 2024

IN THE MATTER OF:

**The Assistance Provident Fund
Commissioner (Legal), EPFO**

...Appellant

Versus

**Chandra Prakash Jain,
Liquidator of Khushi Foods Ltd.**

...Respondent

Present:

For Appellant : Mr. Hitesh Sachar, Ms. Anju Jain and Mr. Dev Inder Singh, Advocates

For Respondent : Mr. Ravi Raghunath, Advocate

ORDER
(Hybrid Mode)

24.09.2024 Heard Learned Counsel for the Appellant and Learned Counsel Mr. Ravi Raghunath, appearing on behalf of the Respondent.

This Appeal has been filed against the order passed by the Adjudicating Authority dated 23.07.2024 by which the Application filed by the Appellant in I.A. No. 739 of 2023 has been dismissed. The Application was filed by the Assistant, Provident Fund Commissioner, seeking direction to set aside the communication dated 22.08.2022 and 11.11.2022 issued by liquidator refusing to accept the claim, the Appellant sought a direction to liquidator to make an additional payment of 16,58,159/-. The said application came to be dismissed.

The Adjudicating Authority noticed that liquidation commencement date was 09.10.2019, whereas the order under Section 7A was passed on 10.03.2021 and order under Section 7Q was passed on 21.04.2021. Hence,

the claim of the Appellant for payment of interest and damages was not accepted.

Let Learned Counsel for the Appellant challenging the order submits that the amount for damages and interest pertain to the periods 04.04.2016 to February, 18 i.e. prior to the liquidation commencement date, hence the Appellant was entitled for the interest @ 12%.

It is submitted that Adjudicating Authority ought to have allowed the interest @12% till the liquidation commencement date at least. Mr. Ravi Raghunath, Learned Counsel for the Respondent submits that in so far as the claim which was filed by the Appellant. Earlier, was admitted which did not contain any amount of interest and damages which were assessed interest only on 21.04.2021. He has referred to the letter issued by the Assistant Provident Fund Commissioner dated 23.04.2021.

We have considered submission of Counsel for the parties and perused the record. There is no dispute in the parties that the liquidation commenced on 09.01.2019. The claim which was filed by the Appellant on the basis of the order dated 10.03.2021 and 21.04.2021 are subsequent to passing of the said order and the said claim was not accepted and declined by the liquidator, which letters were sought to be challenged.

Learned Counsel for the Respondent has relied on the judgments of this Tribunal in ***Regional Provident Fund Commissioner Vs. Manish Kumar Bhagat and Anr. 2023 SCC OnLine NCLAT 731*** where it was held that the claim under Section 14B which was subsequent to the CIRP could not have

been accepted. Another judgment relied by the Respondent in ***DBS Bank India Limited Vs. Kuldeep Verma in Company Appeal (AT) (Insolvency) No. 1048 of 2024*** where this Tribunal has laid down paragraph 20 are as follows:

“20. We have noticed above that statutory scheme provides submission of claim on a liquidation commencement date which is a fixed connotation. When a statute provides for liquidation commencement date as a date up to which claims can be filed and proved, no claim thereafter can be entertained by the Liquidator. The amount of interest which was retained by the Appellant claiming to be interest in addition to the claim as filed by it in Form D till the date of realization of receipt of the sale, cannot be permitted to be retained by the Appellant and the Adjudicating Authority has rightly passed the order allowing application filed by the Liquidator to hand over the additional amount to the Liquidator. Learned Counsel for the Appellant submits that out of Rs. 1.84 Crores, amount of Rs. 20 Lakhs have already been paid.”

The submission of the Appellant that since the claim was for April 26 to February, 2018 interest liability was their @ 12%, which is statutory interest. There is no dispute that assessment for the interest was done in the year, 2021 much after the liquidation commencement date. The claim under Regulation 12 and 16 of Liquidation Regulation, 2016 had to be filed as on liquidation commencement date. When the claim has to be filed on the liquidation commencement date any claims subsequent including any on the basis of assessment subsequent to the liquidation commencement date

cannot be given any credence by the liquidator and no error was committed by liquidator in not accepting the claim of damages and interest consequent to the assessment paying in the year 2021.

We thus, do not find any error in the order of Adjudicating Authority.

Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

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