

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1521 of 2019**

**[Arising out of Order dated 11<sup>th</sup> October 2019 passed by the Adjudicating Authority, Chennai Bench in MA No. 830 of 2019 in Company Petition No. CP/1037/(I.B.)/2018]**

**IN THE MATTER OF:**

**Regional Provident Fund Commissioner  
EPFO Regional Office Chennai  
Through  
Asst. P.F. Commissioner Delhi (Legal)  
28, Wazirpur Industrial Area  
Delhi – 110052**

**...Appellant**

**Versus**

**T.V. Balasubramanian  
Resolution Professional  
Representing  
Corporate Debtor Sholingur Textiles Limited  
KRD Gee Gee Crystal, No. 91-92  
7<sup>th</sup> Floor, Dr. R.K. Salai  
Chennai – 600004**

**...Respondent**

**Present:**

**For Appellant : Mr Manish Dhir, Advocate**

**For Respondent : Ms Namitha Mathews and Mr Pulkit Malhotra,  
Advocates**

**J U D G M E N T**

**[Per; V. P. Singh, Member (T)]**

This Appeal emanates from the Order dated 11<sup>th</sup> October 2019 passed by the Adjudicating Authority, Chennai Bench in MA No. 830 of 2019 in Company Petition No. CP/1037/(I.B.)/2018. The Parties are represented by their original status in the company petition for the sake of convenience.

2. Brief facts of the case are as follows:

3. The Financial Creditor, Edelweiss Asset Reconstruction Company Ltd had filed a company petition under Section 7 of the IBC. The Adjudicating Authority admitted the petition and appointed the Resolution Professional, who has filed M.A No.830/2019 to cancel the encumbrance, which was created by the impugned Order of attachment, registered by the EPFO Vellore.

4. The Corporate Debtor filed MA No. 830 of 2019 through Resolution Professional of the Corporate Debtor to cancel the encumbrance which had been created by way of attachment

5. The notice of the said application was issued vide Order dated 05.09.2019. The EPFO filed its Reply on 11.10.2019 with the Registry of NCLT, Chennai. The Adjudicating Authority vide the impugned Order dated 11.10.2019 heard MA 830 of 2019 and disposed of the application even without considering the Reply of the Recovery Officer of EPFO, the Appellant. (Rupees Fifty-Three Crore Eighty Lacs Twenty One Thousand three Hundred Seventy-Six and thirty-one paisa only).

6. The Resolution Professional has filed its counter-affidavit on behalf of the Corporate Debtor, wherein it is stated that creation of the charge of the security interest effected by the Appellant by registering the deed is in contravention of the Moratorium as contemplated under Section 74(2) read with Section 14(1) of the Code. Further, the same would result in defeating the interest of the creditors, if the Appellant herein crystallises security interest to his advantage and take the benefit of Section 52 of the Code and thus, violate the distribution under Section 53 in the event of the liquidation

of the Corporate Debtor. The aforesaid deed registered on dated 28<sup>th</sup> March 2019 was made during the CIRP is contrary to the Moratorium declared by the Adjudicating Authority, is in gross violation of Section 14(1) of the Code.

7. It is stated by the Respondent that the Learned Adjudicating Authority while passing the impugned Order duly considered the immovable properties belonging to the Corporate Debtor, which were attached and under the legal custody of Recovery Officer, EPFO and only upon such information proceeded and passed the impugned Order.

8. We have heard the arguments of the learned counsel for the parties and perused the records.

9. The Adjudicating Authority has stated in its order that *“during course of hearing a representation on behalf the Respondent that Reply has been filed today in the registry. Counsel for the Applicant brings it to the notice of the Tribunal that a delay of more than three weeks in filing the Reply hampers the CIRP of the Corporate Debtor prejudicially as the CIRP is to expire on 02<sup>nd</sup> November, 2019 and the CIRP is a time bound process. Pursuant to this, the Tribunal is constrain to take the application today itself for disposal but without consideration of the submissions made and contentions raised in the Reply as filed by the Respondent being not available”*.

10. It is thus, clear that the Adjudicating Authority has decided the application without considering the submissions made by the Respondent, even though objections were filed by the Respondent but that was not

considered and Order was passed in haste, which is against the Principles of Natural Justice.

11. The Learned Adjudicating Authority has allowed the application of the Resolution Professional on the pretext that during Moratorium, no encumbrance or charge can be created over the property, by any authority including the Respondent, except in accordance with the provision of IBC 2016 even for the dues which are payable by the Corporate Debtor.

12. The Adjudicating Authority has further observed that the provision of Section 238 of the IBC shall have effect notwithstanding anything in consistent therewith contained in any other law for the time being in force. In the circumstances, the Adjudicating Authority allowed the M.A. and passed the impugned Order that encumbrance, which had been created by way of attachment, registered by the Respondent stands cancelled.

13. It is pertinent to mention that the Adjudicating Authority has passed the impugned Order without considering the attachment order dated 04<sup>th</sup> August, 2017. It is on record that the Recovery Officer in order to realise outstanding dues, attached the immovable properties belonging to the Corporate Debtor, in the exercise of powers vested in him under Section 8(B) of the EPF and M.A. Act, 1952, vide order of attachment EPFCP-16 bearing reference No. T.N./VL/6294/Recovery/2017 dated 04<sup>th</sup> August, 2017. On perusal of this letter (Annexure A-4), it is clear that Authorised officer, Regional officer, Vellore, issued a Recovery Certificate to the Recovery Officer, Regional Office, Vellore in exercise of powers conferred under Section 8(B) to 8(G) of the **Employees Provident Fund and Miscellaneous**

**Act, 1952.** Copy of Order of attachment EPFCP-16 is also enclosed with the attachment order passed by the Recovery Officer, Employees Provident Fund Organization. Thus, it is undisputed that the attachment of immovable property of the Corporate Debtor was made by the Recovery Officer EPFO Organization on 04<sup>th</sup> August 2017 much before the petition under Section 7 of the Code.

14. Appellant has also filed the letter (Annexure A-5) issued to the Sub Registrar for issuing attachment certificated dated 10<sup>th</sup> May, 2018. It is stated that the:

*“Recovery Officer has attached the immovable properties belonging to the said establishment and had requested to encumber the scheduled properties in your records as per the provisions. Whereas it is ascertained through your official website ([www.tnreginet.com](http://www.tnreginet.com)) the above-said property has not been encumbered in the name of EPFO, Vellore till date. Copy of the acknowledgement along with EPFCP-16 are enclosed for ready reference.*

*Hence, you are once again requested to encumber the property in the name of Employees Provident Fund Organization, Vellore and not to allow the owner of the property to enter into any transaction for sale of the attached properties without the prior written approval of the undersigned. You are also requested to issue Encumbrance certificate duly incorporating the attachment of EPFO. This office has to recover the statutory dues by selling the encumbered property through e-auction. Your cooperation is very much solicited.”*

15. On perusal of the above-mentioned letter, it is clear that the Recovery Officer had issued a reminder to Sub Registrar for issuance of encumbrance

certificate about the property attached by EPFO Vellore, to put a restriction on the Corporate Debtor from alienating the property, already attached by the Recovery Officer for the dues of Employees Provident Fund, by Order dated 04<sup>th</sup> August, 2017. The Recovery Officer has also demanded the encumbrance certificate duly incorporating the attachment of EPFO.

16. It is also apparent that the Sub Registrar failed to incorporate the attachment in the register. Therefore, the Recovery Officer of EPFO issued a reminder on 10<sup>th</sup> May 2018 and 29<sup>th</sup> November 2019 for incorporating attachment of the immovable property in the record. The Respondent has filed the attachment order dated 04<sup>th</sup> August 2017, which shows that the attachment order of immovable property of the Corporate Debtor was made by the Recovery Officer Employees Provident Organization on 04<sup>th</sup> August 2017. The petition under Section 7 was admitted by the Adjudicating Authority by Order dated 04<sup>th</sup> February 2019. Thus it is apparent that the attachment of the immovable property in question had already existed prior to the initiation of CIRP of the Corporate Debtor. The Sub Registrar indeed failed in his duty to incorporate the attachment in the register, despite receiving the attachment order on 16<sup>th</sup> August 2017 and after that reminder letter DT 14<sup>th</sup> May 2018 and 29<sup>th</sup> November 2018. The Section 14 of the Insolvency and Bankruptcy Code, 2016 prohibits transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein by the Corporate Debtor. In this case, the alleged encumbrance certificate which was issued during Moratorium is only the incorporation of earlier Order in the record. But in

fact attachment of the property was made much before the initiation of Corporate Insolvency Resolution Process. It is also clear that the Adjudicating Authority has passed the Order even without considering the submission and objections of the Appellant. Adjudicating Authority failed to consider the fact that attachment of the property was made much before the issuance of the CIRP.

17. It is thus clear that the Adjudicating Authority failed to take notice that attachment of the property of the corporate debtor was made much before the initiation of CIRP, but it was only recorded in the register during CIRP. It is on record that the impugned order is passed without considering the objections of the Recovery Officer, EPFO, though the objection by EPFO was already filed in the Registry of NCLT. In the circumstances, we are of the considered opinion that Appeal deserves to be allowed.

18. The Appeal is allowed. The impugned Order is set aside. No order as to Costs.

[Justice Venugopal M.]  
Member (Judicial)

[V. P. Singh]  
Member (Technical)

[Shreesha Merla]  
Member (Technical)

**NEW DELHI**  
**08<sup>th</sup> JUNE, 2020**

*pks/nn*