NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

APPELLATE JURISDICTION

25.09.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)

JATINDRANATH SWAIN, MEMBER (TECHNICAL)

Company Appeal (AT) (CH) (Ins) No.410/2022
(IA Nos.1005 & 1060/2022)

In the matter of:

Employees State Insurance Corporation,
Sub-Regional Office,
R.R. House, Door No.45-57-21/1,
Beside SBI Saligramapuram Branch,
Main Road, Akkayyapalem,
Vishakhapatnam, 530024,
Rep. by N.S. Sujeendranath, SSO,
ESIC, Chennai. **... Appellant**

Vs

M/s. Sri Lakshmi Srinivasa Jute Mills Private Limited,
Registered Office at Bobbili Road,
Rajam, Srikakulam District - 532 124. **... Respondent No.1**

Shri. Maligi Madhusudhana Reddy,
Resolution Professional of
M/s. Sri Lakshmi Srinivasa Jute Mills Private Limited,
Registered Office at MMR Lion Corp.,
4th Floor, HSR Eden, Road No.2, Banjara Hills,
Hyderabad - 500 034. **... Respondent No.2**

M/s. Agrigo Trading Private Limited,
Old No.23/2, New No.20,
Mylai Ranganathan Street,
T Nagar, Chennai-600 017. **... Respondent No.3**

Present :

For Appellant : Mr. SP. Srinivasan, Advocate

For Respondents : Mr. Avinash Krishnan Ravi, Advocate for R1 & R3
Mr. NP. Vijaykumar, Advocate for R2

JUDGMENT
(Hybrid Mode)

[Per: Jatindranath Swain, Member (Technical)]

1. The instant appeal has been preferred by the Appellant, ESI Corporation Ltd., against the approval of the resolution plan by the Ld. NCLT passed in IA No. 183 of 2022 in CP(IB) No.73/9/AMR/2020 vide the impugned order dated in dated 01.09.2022.

Brief Facts:

2. The Corporate Debtor M/s. Sri Lakshmi Srinivasa Jute Mills Private Limited has 4 units under the ESI Act. Prior to commencement of the CIRP, the Corporate Debtor had incurred substantial statutory liabilities towards contributions payable under the Employees' State Insurance Act, 1948 ("ESI Act") for the period 2012 -2018. On the basis of the monthly contribution returns and statutory assessment notices, a cumulative amount of Rs.13,38,30,616/- was due and payable to the Employees' State Insurance Corporation ("ESIC") herein the appellant by the corporate debtor.

3. On 16.03.2022, the Corporate Debtor M/s. Sri Lakshmi Srinivasa Jute Mills Private Limited was admitted into CIRP by Ld. NCLT, Amaravati in CP(IB) No.73/9/AMR/2020, and Shri Maligi Madhusudhana Reddy, herein the 1st

respondent, was appointed as the Interim Resolution Professional ("IRP"). The IRP made a public announcement on 17.03.2022, inviting claims from the creditors of the Corporate Debtor.

4. In response thereto, on 07.04.2022, the Appellant submitted its claim in Form-B before the IRP, claiming Rs.13,38,30,616/- as an Operational Creditor towards the statutory ESI contributions due from the Corporate Debtor. The 1st meeting of the CoC held on 18.04.2022 wherein the appointment of the IRP as the Resolution Professional ("RP") was approved with 100% voting share.

5. The 2nd CoC meeting was scheduled on 17.05.2022 and an email was sent on 14.05.2022 (Saturday) to the claimants. The Appellant was unable to attend the said meeting due to the absence of concerned official and, consequently, by an email dated 19.05.2022 the appellant requested the RP to keep the appellant informed of all future meetings and proceedings of the CoC.

6. Meanwhile, on 24.05.2022, the RP issued a public announcement in Form-G, inviting Expressions of Interest from prospective resolution applicants. Pursuant thereto, nine prospective resolution applicants submitted their responses, and on 18.06.2022, the RP issued the final list of eligible prospective resolution applicants, which included M/s. Agrigo Trading Private Limited, the 3rd Respondent herein.

7. During the CIRP, the Appellant Corporation initiated steps for recovery of its statutory dues and the Recovery Officer of ESIC issued attachment notices dated 29.06.2022 in respect of the properties of the Corporate Debtor.

The RP, however, by communication dated 30.06.2022, brought to the notice of the Appellant that the moratorium under Section 14 of the IBC was declared against the corporate debtor and so the Appellant withdrew the attachment notices.

8. Subsequently, M/s. Agrigo Trading Private Limited submitted its Resolution Plan on 22.07.2022. The said Resolution Plan was thereafter placed before the CoC, and in the 4th meeting of the CoC held on 30.07.2022, the plan was approved through e-voting with 100% voting share. The Resolution Plan was thereafter placed before the Adjudicating Authority for approval.

9. By order dated 01.09.2022, passed in IA No. 183 of 2022 in CP(IB) No.73/9/AMR/2020, the Ld. NCLT, Amaravati Bench approved the Resolution Plan submitted by M/s. Agrigo Trading Private Limited, involving a total sum of Rs. 21,51,65,246/-.

10. Pursuant to approval of the Resolution Plan, the RP, by an email dated 13.09.2022, informed the Appellant that its admitted claim of Rs.13,38,30,616/- had been treated under the Resolution Plan as Government Dues/Operational Creditor dues, against which only 1%, amounting to Rs. 13,38,306/-, had been allowed under the plan.

11. Aggrieved by the treatment of its statutory claim and the admission of only 1% of its admitted dues under the approved Resolution Plan, the Appellant preferred the present appeal.

Submissions of the Appellant:

12. The learned Counsel appearing for the Appellant submits that ESIC had submitted claim of Rs.13,38,30,616/- towards statutory contributions payable under the Employees' State Insurance Act, 1948 ("ESI Act"). However, the Resolution Professional communicated that only 1% of the admitted claim, amounting to Rs.13,38,306/-, would be paid under the Resolution Plan by treating the claim as ordinary Government dues/dues of an Operational Creditor.

13. Learned Counsel submits that the ESI contributions are statutory contributions intended for the benefit of employees/workmen and are required to be deposited into the Employees' State Insurance Fund in terms of the ESI Act and the Appellant Corporation does not acquire any beneficial ownership therein. It is therefore contended that such amounts cannot be treated in the same manner as an ordinary operational debt.

14. Learned Counsel accordingly submits that unpaid ESI contributions constitute amounts held by the Corporate Debtor in the nature of third-party funds/trust monies and, therefore, do not form part of the assets of the Corporate Debtor available for distribution. Under Section 36(4)(a)(i) of the Insolvency and Bankruptcy Code, 2016 ("IBC") assets owned by a third party but in possession of the Corporate Debtor, including assets held in trust for the benefit of third parties are excluded from the liquidation estate.

15. On this basis, it is contended that the statutory ESI contributions are required to be excluded from the liquidation estate and cannot be subjected to the distribution mechanism contemplated under Section 53 of the IBC.

16. Learned Counsel further submits that the fact that ESIC submitted its claim in Form-B, being the prescribed form for filing a claim as an Operational Creditor, cannot alter the substantive character of the statutory dues. It is contended that the filing of a claim in the prescribed form is a procedural compliance and it cannot override the substantive rights available to ESIC under the ESI Act and the IBC.

17. It is further contended that Section 94 of the ESI Act confers statutory priority upon ESI contributions. According to the Appellant, such statutory protection demonstrates that ESI contributions cannot be treated as ordinary Government dues for the purposes of distribution under the Resolution Plan.

18. In the alternative, learned Counsel submits that, even if the ESI dues are not to be excluded from the liquidation estate under Section 36(4)(a)(i) of the IBC, they ought to be treated as workmen's dues under Section 53(1)(a) and/or Section 53(1)(b) of the IBC, having regard to the purpose for which the contributions are collected and the beneficiaries for whom the said statutory fund is maintained.

19. The Appellant also raises a grievance with regard to the conduct of the CIRP proceedings. It is submitted that ESIC had specifically requested the Resolution Professional, after 17.05.2022, to keep it informed regarding the meetings of the Committee of Creditors and the further proceedings in relation

to the Resolution Plan. According to the Appellant, despite the said request, ESIC was not kept informed of the subsequent CoC meetings and the consideration and approval of the Resolution Plan.

20. Learned Counsel submits that the aforesaid circumstances assume significance because the Resolution Plan ultimately provided for payment of only 1% of ESIC's admitted statutory dues, and ESIC was allegedly not afforded an effective opportunity to place its objections before the CoC at the relevant stage.

21. In support of the aforesaid submissions, learned Counsel for the Appellant places reliance upon various decisions dealing with statutory employee-benefit contributions and their treatment under the IBC. Reliance is first placed upon ***Nurani Subramanian Suryanarayanan, Liquidator of M/s. Care IT Solutions Pvt. Ltd. v. Employees State Insurance Corporation***, wherein the Appellant submits that this Tribunal considered the treatment of statutory contributions under the ESI Act and held that such amounts fall within the exclusion contemplated under Section 36(4)(a)(i) of the IBC, being amounts held for the benefit of third parties.

22. The appellant also placed reliance on the following cases:

- Para 45 of *Tourism Finance Corporation of India Pvt. Ltd. V. Rainbow Papers Ltd. & Ors.,* [CA(AT)(Ins) No.354, 364, 404 & 1001/2019 NCLAT Delhi] / *State Tax Officer V. Rainbow Papers Ltd.* [2022 SCC Online SC 1162]

- Para 71,72 & 76 of *Jet Aircraft Maintenance Engineers Welfare Association V. Ashish Chhawchharia, Resolution Professional of Jet Airways (India) Ltd. & Ors.*,
- Para 23 and 24 of *State Bank of India V. Moser Baer Karamchari Union & Anr.* [2019 SCC Online NCLAT 447]
- *Para 17 of Savan Godiwala V. Apalla Siva Kumar* [2020 SCC online NCLAT 191]
- *Para 19 of Sunil Kumar Jain & Ors. V. Sundaresh Bhatt & Anr.*, reported in (2022) 7 SCC 540

In all these judgements, dues in the nature of employee contributions and meant for employee welfare have been accorded priority and given the status of third-party asset as per Section 36(4)(a)(i) of the IBC.

23. Based on the above submission the appellant seeks the following relief:

> *'a) To set aside the Impugned Order passed passed in IA(IBC) 183/2022 in CP(13) No. 73/9/AMR/2020 dated 01.09.2022, by National Company Law Tribunal, Amaravati Bench at Mangalagiri allowing IA by approving the Resolution Plan annexed to the application preferred by Resolution Professional in favour of the Successful Resolution Applicant,*
>
> *b) To direct the 2nd Respondent Resolution Professional to consider the claims of the Appellants not under Operational Creditors (Government dues) instead to consider under 36(4)(a)(i) Of IBC, 2016 or in the alternative under Operational Creditors (workmen dues and Employees). c) To hold that the appellants dues under Section 36(4)(a)(i) of*

Insolvency and Bankruptcy Code, 2016 or in the alternative under Operational Creditors (workmen dues and Employees).

d) To direct the RP/2nd Respondent to re-determine and reassess the dues of various creditors, after priority being given to appellant under Section Of IBC, 2016 or in the alternative treating ESIC dues as workmen dues and settle the dues of Appellant on priority basis.

e) Pass such further or other orders as may be deemed fit and proper in the interests of justice.'

Submissions of the Respondent:

24. The learned Counsel appearing for the 1st Respondent/Corporate Debtor and the 3rd Respondent/Successful Resolution Applicant submits that:

25. Since the Appellant submitted its claim in Form B, the Appellant has rightly been treated as an unsecured Operational Creditor under the provisions of the IBC. If the Appellant wanted to claim a status other than that of an Operational Creditor, it was incumbent upon the Appellant to submit its claim in Form F, applicable to "Other Creditors". Having elected to submit its claim in Form B, the Appellant cannot subsequently seek to alter the nature or classification of its claim and contend that it ought to be treated otherwise.

26. According to the Respondents, the specific exclusion contemplated under Section 36(4)(a)(iii) relates to provident fund, pension fund and gratuity fund. It is contended that ESI contributions are distinct in nature and constitute insurance contributions under the Employees' State Insurance Act,

1948 ("ESI Act"), and cannot be equated with provident fund, pension or gratuity funds specifically referred to in the said provision. According, to the Respondents, ESIC's claim constitutes a statutory monetary claim against the Corporate Debtor and forms part of the liabilities to be dealt with under the insolvency process.

27. The Respondents contend that, ESIC did not, at the relevant stage, assert that the amounts claimed were third-party assets falling outside the liquidation estate, and that if ESIC intended to contend that the amounts were assets held in trust for a third party and therefore outside the distribution matrix, it ought to have asserted such a position before the Resolution Professional at the appropriate stage.

28. The Respondents further submit that the ESI Act does not create any statutory first charge over the properties of the Corporate Debtor in favour of ESIC. It is further submitted that, in any event, the provisions of the IBC, by virtue of Section 238, have overriding effect over provisions of other Acts.

29. Ld. Counsel for the Respondent submits that the Resolution Plan has nevertheless dealt with the claim of ESIC in accordance with the statutory framework. It is contended that the amount proposed to be paid to ESIC under the Resolution Plan is higher than the amount that would have been payable to it in the event of liquidation. Thus, according to the Respondents, the requirements of Section 30(2)(b) read with Section 53(1)(e) of the IBC have been duly complied with.

30. It is further submitted that an Operational Creditor does not have the same rights of participation in the decision-making process of the CoC which are available to Financial Creditors. Reliance is placed upon the judgment of the Hon'ble Supreme Court in ***Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India***, reported in **(2019) 4 SCC 17**, to contend that the differential treatment between Financial Creditors and Operational Creditors under the IBC has been recognised as constitutionally valid.

31. Reliance is placed upon ***Beacon Trusteeship Ltd. v. Jayesh Sanghrajka & Ors.***, to contend that the statutory framework does not guarantee payment of the entire value of a creditor's security or claim under a Resolution Plan merely because such amount may have been claimed by the creditor.

32. Further reliance placed on:

- *State Tax Officer (1) V. Rainbow Papers Limited* [Civil Appeal Nos. 1661 and 2568 of 2020]
- *Paschimanchal Vidyut Vitran Nigam Ltd. V. Raman Ispat Private Limited and Ors.* [CA (AT) (Ins) No. 639 of 2018]
- *Sanjay Kumar Agarwal and Ors. V. State Tax Officer (1) and Ors.* [Review Petition (Civil) No. 1620 of 2023 in Civil Appeal No. 1661 of 2020]
- *Assistant Commissioner of Commercial Taxes LGSTO V. Alok Kailash Saksena and Ors.* [CA (AT) (CH) (Ins) No. 302/2023 and IA No.968/2023]

- *Commissioner of State Tax Department V. Ramchandra Dallaram Chaudhary Liquidator of Anil Ltd.* [CA (AT) (Ins) No.34 of 2024, I.A. Nos. 105, 106 and 990 of 2024]
- *Regional Director, ESIC V. George Samuel Liquidator of Shreem Spa & Resorts Ltd.* [IA/8(AHM)2022 in CP(IB) 550 of 2018 (NCLT Ahmedabad)]
- *Mr. Vinod Agrawal Resolution Professional of M/s. Mayfair Leisures Limited* [IA/542(AHM)/2022 in CP (IB) 213 of 2018 (NCLT Ahmedabad)]
- *Ashwini Fal Dessai and Ors. V. Anneel Saraogi and Ors.* [Cont.A/01(MB)/2022 in C.P.(IB)-2119(MB)/2019 (NCLT Mumbai)]
- *Bangalore Turf Club Ltd. and Ors. V. Regional Director, Employees State Insurance Corporation and Ors.* [Civil Appeal Nos. 2416 of 2003]

33. It is further submitted that the Resolution Plan has already been approved and has proceeded towards implementation. According to the Respondents, the first tranche of amounts contemplated under the Resolution Plan has already been disbursed to the creditors on 25th and 26th October 2022. The Respondents therefore contend that substantial equities have arisen in favour of the Successful Resolution Applicant and other stakeholders and that the approved Resolution Plan ought not to be reopened at this stage on the basis of a claim which ESIC had itself submitted and pursued as an Operational Creditor.

Findings:

34. We have considered the submissions advanced by the learned Counsel for the parties and perused the material available on record. The principal question which arises for consideration is whether the ESI contributions payable by the Corporate Debtor, including the amounts deducted from the wages of the employees and required to be remitted to the Employees' State Insurance Corporation, can be treated merely as an ordinary operational debt forming part of the liquidation estate, or whether such amounts are required to be excluded from the liquidation estate by virtue of Section 36(4)(a)(i) of the Insolvency and Bankruptcy Code, 2016.

35. The issue is no longer res integra. The controversy stands squarely covered by the decision of this Appellate Tribunal in ***Nurani Subramanian Suryanarayanan, Liquidator of M/s. Care IT Solutions Pvt. Ltd. V. Employees State Insurance Corporation & Ors.*****, TA (AT) No. 212/2021, CA (AT) (Ins) No. 116/2020**, decided on 18.07.2024. In the said decision, this Tribunal considered the interplay between Section 40(4) of the Employees' State Insurance Act, 1948 and Section 36(4)(a)(i) of the I&B Code and held that the ESI amounts contributed by the employer as well as the employee, lying with the Corporate Debtor, are held in trust and consequently fall within the exclusion contained in Section 36(4)(a)(i) of the I&B Code. The amounts so held cannot, therefore, form part of the liquidation estate available for distribution under Section 53 of the Code.

36. The aforesaid principle has subsequently been reaffirmed by principal bench of this Appellate Tribunal in its judgement dated 24.09.2005 in

Regional Director, ESI Corporation v. Manish Kumar Bhagat, Liquidator, Gupta Dyeing & Printing Mills Pvt. Ltd., Comp. App. (AT) (Ins) No. 301 of 2024. In that case also, the ESI Corporation's claim had been admitted by the Liquidator as an operational creditor. The Respondents therein raised substantially the same objection that the claim had been dealt with under the I&B Code and that ESI dues did not enjoy any special status. The Tribunal, however, held that the controversy was squarely covered by ***Nurani Subramanian (supra)*** and allowed the appeal, setting aside the impugned order.

37. In the present case, the Appellant's claim relates to statutory ESI contributions payable under the ESI Act. The mere fact that the Appellant submitted its claim in Form B and that the claim was consequently described as an Operational Creditor claim cannot alter the substantive character of the amount in question. The form prescribed for submission of a claim is procedural in nature and cannot have the effect of converting an amount which is statutorily required to be held for the benefit of the employees into an asset beneficially belonging to the Corporate Debtor.

38. Consequently, the contention of the Respondents that, having submitted the claim in Form B, the Appellant is estopped from asserting the benefit of Section 36(4)(a)(i) cannot be accepted.

39. The contention that Section 36(4)(a)(iii) specifically mentions provident fund, pension fund and gratuity fund and does not expressly mention ESI contributions also does not advance the case of the Respondents. The Appellant's claim under consideration is not being excluded merely by analogy

with provident fund, pension fund or gratuity fund. The exclusion flows from the independent operation of Section 36(4)(a)(i), when the statutory character of the ESI contribution is examined in the light of Section 40(4) of the ESI Act, 1948, as explained in ***Nurani Subramanian*** and reaffirmed in ***Regional Director, ESI Corporation v. Manish Kumar Bhagat***.

40. We are, therefore, unable to accept the Respondents' submission that the Appellant's claim was liable to be dealt with as an ordinary unsecured operational debt merely because it was filed in Form B. The ESI contributions, being amounts held by the Corporate Debtor in trust for the beneficiaries contemplated under the ESI Act, will not constitute part of the assets of the Corporate Debtor and hence cannot be subjected to distribution under the waterfall mechanism contained in Section 53 of the I&B Code.

41. The same principle necessarily governs the treatment of such dues in the present proceedings. The Resolution Plan could not have treated the amounts dues to ESIC, which stood outside the estate of the Corporate Debtor, as an ordinary Government/Operational Creditor claim, so as to provide for payment of only a fraction thereof under the plan on the footing that the entire claim will have to be paid in accordance with the waterfall mechanism under Section 53 of the IBC.

42. In the present case, the question is as to how to treat the claim of ESIC under the Resolution Plan. Once the ESI contributions are held to be amounts entrusted for the statutory purpose contemplated under the ESI Act and consequently excluded under Section 36(4)(a)(i), they cannot be treated as an ordinary operational debt merely because the claim has been filed in Form B.

Therefore, the treatment of the said amount in the approved Resolution Plan requires reconsideration.

43. For the foregoing reasons, the appeal deserves to be allowed. The Impugned Order dated 01.09.2022 passed by the National Company Law Tribunal, Amaravati Bench in IA No. 183 of 2022 in CP(IB) No. 73/9/AMR/2020, insofar as it approves the Resolution Plan treating the Appellant's ESI contributions as ordinary Government/Operational Creditor dues and provides for payment of only 1% thereof, is set aside to that extent.

44. The Resolution Professional/Successful Resolution Applicant shall give effect to the present order in respect of the ESI contributions which fall within the scope of Section 40(4) of the ESI Act, 1948 read with Section 36(4)(a)(i) of the I&B Code. The exact amount, if any, qualifying for such exclusion shall be determined on the basis of the statutory records and the contribution period in accordance with law.

45. The appeal is accordingly allowed in the aforesaid terms. Pending Interlocutory Applications, if any, stand disposed of.

[Justice N. Seshasayee]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

AR/MS/AK