

## Employee Provident Fund Organization Vs M/s. Refractory Specialties (IND) Ltd. Jamtara

**Court:** Jharkhand High Court

**Date of Decision:** Feb. 12, 2025

**Acts Referred:** Companies Act 2013 " Section 529(3)(b)

Company Court Rules, 1959 " Rule 177

Employees Provident Fund & Miscellaneous Provisions Act, 1952 " Section 7Q, 11(2), 14B

**Hon'ble Judges:** M.S. Ramachandra Rao, CJ; Deepak Roshan, J

**Bench:** Single Bench

**Advocate:** Rupesh Singh, H.K.Mehta, Manjusri Patra, Rishav Raj, Leena Mukherjee

**Final Decision:** Dismissed

### Judgement

Deepak Roshan, J

1. Heard learned counsel for the parties.

2. This intra court appeal has been preferred by the appellant for setting aside the Interlocutory order dated 26th April, 2013 passed in I.A. No. 3050

of 2012 filed in CP Case No.12Å, ofÅ, 1998(P)Å, byÅ, theÅ, learnedÅ, SingleÅ, Judge,Å, wherebyÅ, the interlocutory application was rejected

with a direction to the Union of India to deposit the amount of Rs. 2,47,471/- towards the dues of Provident Fund of the employees and thereafter

recover the said amount from the salary and/or pension of the Regional Provident Fund Commissioner or such other officers after holding enquiry.

3. The brief fact of the case is that M/s Refractory Specialties (IND) Ltd. Jamtara, Dumka was ordered to be wound up by the Patna High Court

vide order dated 22.11.1999. Subsequently, though the Official Liquidator (hereinafter to be referred as OL) invited claims in July, 2007 till August,

2007 but the appellant missed the deadline. The appellant then approached the Company Court under Rule 177 of Company Court Rules, 1959 and

filed I.A. No. 3050/12 in Company Petition No. 12/1998(P). The learned Company Judge instead of giving any direction to the OL to recover amount

already paid to the secured creditor and repay the same to the Provident Fund (hereinafter as PF) authorities, rejected the I.A. with further direction

to recover the dues from the salary of the concerned Regional PF Commissioner.

4. Mr. Rupesh Singh, learned counsel for the appellant submits that PF dues are in the nature of workmen's dues defined under Section 529(3)(b)

of Companies Act and by virtue of Section 11(2) of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter to be referred

as EPF & MP Act), it is a statutory first charge on assets of the establishment.

He further submits that a Division Bench of Orissa High Court in *E mployees Provident Fund Organisation v. Official Liquidator*, C.O.A. No. 2

of 2011 relied on the decision rendered by the Hon'ble Apex Court in the matter of *Employees Provident Fund Commissioner v. Official*

*Liquidator of Esskay Pharmaceuticals Ltd.* (2011) 10 SCC 727 and held that the OL can recover amount already paid to the secured creditors and

repay the same to PF authority with simple interest.

He contended that the learned Single Judge ought to have taken into consideration that EPF & MP Act, 1952 does not prescribe any period of

limitation on the assessment of penal damages on account of delay in remittance.

5. Learned counsel for the respondents submits that after the confirmation for liquidation by this Court vide order dated 28.06.2006, the claims were

invited by issuing notice in newspapers on 19.07.2007 giving time till 28.08.2007. However, other claimants except EPFO who had not submitted their

claims within stipulated time had sought for condonation of delay from this Court and filed their claims later which were also either

admitted/adjudicated/settled or rejected. The OL filed report dated 07.09.2010 for declaration of "Dividend" and on the said report, this Court by

order dated 16.12.2010 permitted the OL to declare "Dividend". The payment has been done by 28.12.2010.

It has been further submitted that the claim of the PF department was filed after an unexplained delay of 4 years. The allegations of lapses on part of

OL are frivolous and lapses are on the part of EPF department. Thus, the claim of the appellant at a belated stage cannot be considered by the OL

without the permission of Company Court. Prior Application also cannot be taken into consideration by OL because the dates are being fixed by the

Court under the provisions of law and Rules made in Companies Act.

It has been lastly submitted that the order passed by the Company Court is just and proper because the EPF department approached to the OL and

the Court beyond the period fixed by this Court and virtually thereafter almost all amount has been spent/disbursed to the secured creditors by the

order of the Company Court.

6. Having heard learned counsel for the parties and after perusing the impugned order, we notice that this appeal has been filed to set aside the

interlocutory order dated 26th April, 2013 passed in I.A. No. 3050 of 2012. It is further evident that the order for winding up of the company (in

liquidation) was passed by the Patna High Court on 22.11.1999, and possession of the assets and properties of the company (in liquidation) was taken

by the OL on 23.02.2000 and in terms of the order dated 21.04.2005 passed by this Court, notice for the sale of the assets and properties of the

company (in liquidation) was published in newspapers on 01.05.2005. Further, the claims against the company (in liquidation) were invited by way of

publication of notice in the newspaper on 19.07.2007. Thereafter, claims were received from the secured creditors and workmen of the company

before or by the last date of submission of claims i.e. 27.08.2007 and were admitted and adjudicated as per the provisions of The Companies Act,

1956.

It further transpires from record that other claimants who have not submitted their claims within stipulated time, had sought condonation of delay from

the High Court and filed their claims later except EPFO, and the same were entertained.

7. We fail to understand as to why the claim was not lodged by the appellant within the prescribed time. Learned counsel for the appellant has failed

to assign any reason, whatsoever, for such a huge delay in lodging the claim. It is also evident that the department of Regional Provident Fund

Organization, Ranchi by letter dated 10.06.2011 addressed to the OL claimed an amount of Rs. 11,354/- under Section 14B and Rs. 12,608/- as

interest under Section 7Q of E.P.F. & M.P., Act 1952 calculated up to June 2011 that too, without filing any application for condonation of delay

before the Company Court.

Learned Counsel for the appellant has relied upon the decision of Division Bench of Orissa High Court in the case of Employees Provident Fund

Organization (Supra) wherein the Court relied upon the judgment of the Supreme Court rendered in Esskay Pharmaceuticals Limited (Supra) and

had contended that the claim of the EPFO has to get priority over and above the debts of the secured creditors.

8. So far as the question regarding the priority of the dues payable to the EPFO is concerned, though the appellant has relied upon the judgment of the

Supreme Court rendered in Esskay Pharmaceuticals Limited (Supra), the said judgment is not applicable on the facts of this case. In that case, the

EPFO dues already stood determined and crystallized by the EPFO authorities by passing specific orders. Even the properties of the employer were

attached. Thereafter, the liquidation order was passed by the Court. Hence, the amount determined by the EPFO authorities was taken as

consolidated amount, which was given priority over the other dues of the secured creditors and the workmen.

However, in the present case, the public notice was given in the month of July, 2007 inviting claims from the sale proceeds of the property of the

company, in winding up. No claim was lodged by this appellant within the prescribed time. Thereafter, the property of the company, in liquidation, was

auctioned. Sale proceed was also distributed in accordance with law and as per the order passed by this Court. Now, nothing is left out to give to this

appellant. Moreover, it has been submitted by the OL that no property is left of the company in liquidation to be auctioned, so that the claim of the

Regional Provident Fund Commissioner, Ranchi can be satisfied.

Thus, it is crystal clear that only because of the lethargic approach on part of the office of Regional Provident Commissioner, Ranchi, the claim could

not be satisfied.

9. Having regard to the aforesaid facts and circumstances, we see no reason to entertain this appeal. Consequently, the instant appeal is dismissed.

Pending I.A., if any, shall also stand closed.