

INSTITUTE OF INSOLVENCY PROFESSIONALS

A wholly owned subsidiary of ICSI and registered with IBBI

Learning Curve-771

May 30 2022

There has to be an obligation of the IRP/RP to inform the creditors whose liabilities are on the record of the Corporate Debtor: NCLAT, New Delhi

CASE TITLE	Employees Provident Fund Organisation Through Regional Provident Fund Commissioner-II v. Mr. Subodh Kumar Agarwal and Anr. ¹
CASE CITATION	Company Appeal (AT) (Insolvency) No. 116 of 2022
DATE OF ORDER	27.05.2022
COURT/ TRIBUNAL	NCLAT, New Delhi
SECTION/ REGULATION REFERRED	Section 7 of IBC, Regulation 36 (2)(1) IBBI (CIRP) Regulations, 2016 and Section 7A of Employees Provident Fund and Miscellaneous Provisions Act, 1952
CASES REFERRED	'Ghanashyam Mishra and Sons Pvt. Ltd. Through the Authorized Signatory vs. Edelweiss Asset Reconstruction Company Limited through the Directors & Ors.

Brief of the case:

This appeal was filed against the order of NCLT, Kolkata allowing application filed by the Resolution Professional for approval of the Resolution Plan in respect of corporate debtor. Appellant (EPFO) issued its order dated 21.01.2022 in the Section 7A proceedings under 1952 Act computing the liability of the Corporate Debtor as Rs.12,17,854/-. However, the resolution plan came to be approved by the Adjudicating Authority on 14.12.2021 wherein no allocation has been made towards dues of EPFO as mentioned under section 7A. Aggrieved by the said order, this appeal has been filed. Resolution Professional appeared in person and submitted that no claim was filed by the Appellant before the Resolution Professional, hence, there is no occasions for entertaining their claim.

Decision:

Hon'ble NCLAT disposed off the appeal and held that,

"16. The law as it exists today does not oblige the IRP/RP to send any information to any creditor or statutory authority even if the records of the Corporate Debtor reflect any liabilities of the Corporate Debtor towards them. It is his sweet will to give information or not to any such entities. We are of the view that there has to be an obligation of the IRP/RP to inform the creditors whose liabilities are on the record of the Corporate Debtor since the object of insolvency resolution is to take into account all liabilities of Corporate Debtor and thereafter resolve it. It is the matter on which attention of regulation making authority and Government has to be drawn by this Tribunal so as to take remedial measures, if any.

.. 17. The law as it stands today does not require any claim which is not filed to be included in the Resolution Plan. In the present case, the claim which is now crystalized under Section 7A was not there at the time of currency of the Corporate Insolvency Resolution Process"



QR CODE FOR FULL ORDER/JUDGEMENT: 

¹https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzlwMjltMDUtMjcvY291cnRzLzEvZGFpbHkvMTY1MzY0NzUwODE5MDA1MTkxNTQ2MjkwYTg5NGlxNDIklNkZg==