

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

Company Appeal (AT) (Insolvency) No. 807 of 2025

[Arising out of Order dated 21.03.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad, Court-2 in IA/114(AHM)2023 in CP(IB) 116 of 2017]

IN THE MATTER OF:

The Regional P.F. Commissioner, Employees' Provident Fund Organization **...Appellant**

Versus

Alok Kailash Saksena Liquidator of Gujarat Foils Ltd. & Anr. **...Respondents**

Present:

For Appellant: **Mr. Braja Bandhu Pradhan, Mr. Himanshu Rai and Mr. Kishan Kumar Behuria, Advocates.**

For Respondents: **Mr. Divyanshu Rai, Ms. Taruna and Mr. Shubh Gautam, Advocates for R-1.**

J U D G M E N T
(29th August, 2025)

Ashok Bhushan, J.

This Appeal by the Regional P.F. Commissioner, Employees' Provident Fund Organization has been filed challenging the order dated 21.03.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad, Court-2 in IA No.114(AHM)2023 filed by the Appellant. Adjudicating Authority by the impugned order dated 21.03.2025 rejected IA No.114 of 2023 aggrieved by which order, this Appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:-

2.1. The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor- M/s. Gujarat Foils Limited commenced by the order dated 30.11.2017. Adjudicating Authority vide order dated 16.09.2019 directed for liquidation of the Corporate Debtor. The Appellant concluded the inquiry under Section 7A of the EPF Act, 1952 on 11.10.2021 determining the Provident Fund dues to the extent of Rs.1,68,76,185/-. On 25.10.2021, Appellant submitted claim in Form-G before the liquidator in total amount of Rs.4,57,13,010/- which included damages and interest under Section 14B and 7Q of the EPF Act. Liquidator vide letter dated 20.11.2021 did not accept the claim principally on the ground of violation of Moratorium. On instructions of the Liquidator, the Corporate Debtor has challenged the order dated 11.10.2021 passed under Section 7A of the EPF Act before CGIT Ahmedabad in appeal bearing EPF Appeal (CGIT) No.36 of 2021. The property of the Corporate Debtor was sold as a going concern and management of the Corporate Debtor was handed over on 11.01.2022 to Respondent No.2. Appellant filed an IA No.114 of 2023 before the Adjudicating Authority seeking a direction to release the payment of Provident Fund dues in light of Section 36(4)(a)(iii) of the IBC read with Section 11 and 17B of the EPF Act. Notice was issued on the application, both Resolution Professional and the Successful Bidder filed replies. On 03.11.2023, Appeal filed by Corporate Debtor before CGIT Ahmedabad was dismissed for non-prosecution. Adjudicating Authority vide order dated 21.03.2025 rejected IA No.114 of 2023, aggrieved by which order, this Appeal has been filed.

3. We have heard Learned Counsel for the Appellant and Learned Counsel appearing for the Respondent.

4. Counsel for the Appellant in support of the Appeal submits that dues which were determined on 11.10.2021 were dues prior to initiation of the CIRP. It is submitted that under Section 36(4) of the IBC, it is obligation of the Liquidator to pay dues of the Provident Fund, Gratuity, Pension. Counsel for the Appellant in support of his submission relied on various judgment of the Hon'ble Supreme Court and this Tribunal.

5. Refuting the submissions of the Counsel for the Appellant, Counsel appearing for the Respondent No.1 submits that the assessment under Section 7A was made subsequent to liquidation commencement date. The claim which can be entertained under the liquidation proceedings are claim which are existing on the date of liquidation commencement. Adjudicating Authority on 04.10.2021 and 25.10.2021 allowed the liquidator to sell the Corporate Debtor as a going concern. E-auction was conducted on 10.12.2021 and Respondent No.2 was declared Successful Bidder on "as is where is basis", "as is what is basis", whatever there is basis" and "no recourse" basis. After conclusion of the liquidation, Liquidator has filed an application for closure of the liquidation which is pending. It is submitted that the last date for filing the claim was 23.10.2019 and claim was filed two years thereafter on 25.10.2021 which was rejected by the liquidator. Appeal under Section 42 of the IBC was also not filed within time. It is submitted that issues raised in the Appeal are fully covered by judgment of this Tribunal in ***"Employees' Provident Fund Organisation, Nashik v. Girish***

Siriram Juneja & Anr. (CA (AT) INS No. 693 of 2025 & I.A. No. 2676 of 2025)". Judgments relied by Counsel for the Appellant are not applicable.

6. We have considered the submissions of the Counsel for the parties and perused the record.

7. There is no dispute between the parties that liquidation process of the Corporate Debtor commenced by order dated 30.11.2017 and last date for submitting claims to the liquidator was 23.10.2019. The claim which was filed by the Appellant was on 25.10.2021 i.e. after more than two years. By detailed letter dated 20.11.2021, liquidator communicated to the EPFO Regional Office that claim is inadmissible. Regulation 16 of the IBBI (Liquidation Process) Regulations, 2016 provides for submission of claim. Sub-regulation (2) of Regulation 16 provides that a person shall prove its claim for debt or dues to him, including interest, if any, as on the liquidation commencement date. Sub-regulation (2) of Regulation 16 is as follows:-

"16. Submission of claim. (2) A person shall prove its claim for debt or dues to him, including interest, if any, as on the liquidation commencement date."

8. Thus, the claim which is required to be filed before the Liquidator is as on the liquidation commencement date. In the present case, there was no claim. The claim filed by the Appellant before the Liquidator was on the basis of assessment made under Section 7A of the EPF Act on 11.10.2021 and orders under Section 7Q and Section 14B thereafter. Thus, the claim which was filed by the Appellant was a claim subsequent to liquidation commencement date along with the Form G filed by the Appellant dated

25.10.2021. Order passed under Section 7A dated 11.10.2021 and the order passed under Section 7Q and Section 14B thereafter have been relied.

9. We have already noted above that the Corporate Debtor had filed an Appeal against the order passed under Section 7A and Section 14B and Section 7Q dated 11.10.2021 and 20.10.2021 respectively being appeal bearing EPF Appeal (CGIT) No.36 of 2021. After the Liquidator did not admit the claim of the Appellant, Appellant filed IA No.114 of 2023 in which IA following prayers were made:-

“(A) This Hon'ble Adjudicating Authority may be pleased to admit and allow the present application;

(B) This Hon'ble Adjudicating Authority may be pleased to set-aside the communication/decision dated 20/11/2021 issued by the Liquidator Respondent no. 2 herein, rejecting the claim of Provident Fund dues amounting to Rs. 4,57,13,010/-, as submitted by the applicant (at Annexure A), and direct the Respondents no. 1- Liquidator and no. 2- Successful Auction Bidder to make the payment of the entire claim of Provident Fund dues to the extent of Rs. 4,57,13,010;

(C) This Hon'ble Adjudicating Authority may be pleased to direct the Respondent no. 1- Liquidator of M/s. Gujarat Foils Limited to supply the details of distribution made to the creditors of the proceeds received from the sale of the Corporate-debtor as a going concern, and direct the re-distribution of assets of the Corporate-debtor, in accordance with law;

(D) This Hon'ble Adjudicating Authority may be pleased to direct the respondent to pay costs to the

applicant as may be determined by this Hon'ble Tribunal;

(E) This Hon'ble Adjudicating Authority may be pleased to pass any further order as may be deemed fit and proper in the interest of justice."

10. The said IA was opposed both by the Resolution Professional as well as the Successful Bidder. Counsel for the Appellant submits that the proceedings were initiated for assessment under Section 7A with due information to the Liquidator and order passed under Section 7A was required to be admitted in liquidation proceeding. Counsel for the Appellant has relied on the judgment of the Hon'ble Supreme Court in ***"Employees Provident Fund Commissioner vs. Official Liquidator of Esskay Pharmaceuticals Limited- (2011) 10 SCC 727"*** where Hon'ble Supreme court in paragraphs 48, 49, 50, 51 and 52 has held that all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund established for the welfare of the employees were payable in priority to all other debts in a winding-up proceedings. In paragraphs 48, 49, 50, 51 & 52, following was laid down:-

"48. It is also important to bear in mind that even before the insertion of Section 529(1) proviso, Sections 529(3) and 529-A [Vide Act 35 of 1985, proviso to Section 529(1), sub-section (3) of Section 529 and Section 529-A were inserted and amendment of Section 530(1) was carried out.] and amendment of Section 530(1), all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund established for the welfare of the

employees were payable in priority to all other debts in a winding-up proceedings [Section 530(1)(f)]. Even the wages, salary and other dues payable to the workers and employees were payable in priority to all other debts. What Parliament has done by these amendments is to define the term “workmen's dues” and to place them on a par with debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to Section 529(1). However, these amendments, though subsequent in point of time, cannot be interpreted in a manner which would result in diluting the mandate of Section 11 of the EPF Act, sub-section (2) whereof declares that the amount due from an employer shall be the first charge on the assets of the establishment and shall be paid in priority to all other debts. The words “all other debts” used in Section 11(2) would necessarily include the debts due to secured creditors like banks, financial institutions, etc. The mere ranking of the dues of workers on a par with debts due to secured creditors cannot lead to an inference that Parliament intended to create first charge in favour of the secured creditors and give priority to the debts due to secured creditors over the amount due from the employer under the EPF Act.

49. *At the cost of repetition, we would emphasise that in terms of Section 530(1), all revenues, taxes, cesses and rates due from the company to the Central or State Government or to a local authority, all wages or salary of any employee, in respect of the services rendered to the company and due for a period not exceeding 4 months, all accrued holiday remuneration, etc. and all sums due to any employee from a provident fund, a pension fund, a gratuity fund*

or any other fund for the welfare of the employees maintained by the company are payable in priority to all other debts. This provision existed when Section 11(2) was inserted in the EPF Act by Act 40 of 1973 and any amount due from an employer in respect of the employees' contribution was declared first charge on the assets of the establishment and became payable in priority to all other debts. However, while inserting Section 529-A in the Companies Act by Act 35 of 1985 Parliament, in its wisdom, did not declare the workmen's dues (this expression includes various dues including provident fund) as first charge.

50. *The effect of the amendment made in the Companies Act in 1985 is only to expand the scope of the dues of workmen and place them on a par with the debts due to secured creditors and there is no reason to interpret this amendment as giving priority to the debts due to secured creditor over the dues of provident fund payable by an employer. Of course, after the amount due from an employer under the EPF Act is paid, the other dues of the workers will be treated on a par with the debts due to secured creditors and payment thereof will be regulated by the provisions contained in Section 529(1) read with Sections 529(3), 529-A and 530 of the Companies Act.*

51. *In view of what we have observed above on the interpretation of Section 11 of the EPF Act and Sections 529, 529-A and 530 of the Companies Act, the judgment of the Division Bench of the Gujarat High Court, which turned on the interpretation of Section 94 of the Employees' State Insurance Act and Sections 529-A and 530 of the Companies Act and on which reliance has been placed by the learned Company Judge and the Division Bench of the High*

Court while dismissing the applications filed by the appellant, cannot be treated as laying down the correct law.

52. *In the result, the appeals are allowed. The impugned judgment as also the order of the learned Company Judge are set aside and the applications filed by the appellant are allowed in terms of the prayer made. The Official Liquidator appointed by the High Court shall deposit the dues of provident fund payable by the employer within a period of 3 months. The parties are left to bear their own costs.”*

11. There can be no dispute to the proposition as laid down by the Hon’ble Supreme Court in the above case. The above case, however, considered the winding up proceeding and entitlement of payments of employees of Provident Funds, Gratuity Funds and Pension Funds. The present is a case where the claim filed by the Appellant in liquidation proceeding has not been admitted. We have noted Regulation 16(2) of the IBBI (Liquidation Process) Regulations, 2016 which clearly provides that claim can be filed as on the liquidation commencement date. According to the own case of the Appellant, the claim was filed on the basis of assessment order passed on 11.10.2021 and 20.10.2021. Thus, the said claim was not in existence on the liquidation commencement date. Counsel for the liquidator has rightly placed reliance on judgment of this Tribunal in **“Employees Provident Fund Organisation, Nashik vs. Girish Siriram Juneja & Anr.- Company Appeal (AT) (Insolvency) No.693 of 2025 & IA No.2676 of 2025”** which was also a case where application filed by the EPFO before the Adjudicating Authority for accepting the claim was rejected. In the above case, a revised claim was filed on the basis of an order passed

under Section 7Q and Section 14B dated 23.10.2023 which claim was subsequent to the liquidation commencement date. This Tribunal in its judgment dated 30.06.2025 upheld the order of the Adjudicating Authority rejecting the application of the Appellant. This Tribunal in the above case has noted that the claim which was filed on the basis of Section 7A order was admitted in liquidation and subsequent claim which was filed on the basis of order dated 23.10.2023 was not admitted since liquidation has commenced by order dated 28.04.2023. It is useful to notice paragraphs 5 and 6 of the judgment which is as follows:-

“5. There is no dispute to the proposition that claim under 7Q and 14B arises after 7A is determined. In the present case, claim under 7A was filed within the time on 28.04.2023, which was admitted. Subsequently, claim under 7Q and 14B arose out of two orders dated 23.10.2023, which claims were subsequent to the liquidation commencement date. In paragraph 9 of the order the Adjudicating Authority has noticed the above fact, which is as follows:

“9. These communications clearly evidence that the revised claim of the Applicant EPFO was rejected on 02.01.2024 in clear terms as being inadmissible on account of it having been filed beyond the last date for filing of the claim; the original claim of the Applicant was admitted; and the revised claim is arising from two orders passed on 23.10.2023 which is after the liquidation commencement date. The Applicant had a remedy in the form of Appeal in terms of Section 42 of the Code specifically providing for

an Appeal within 14 days of the receipt of the decision of the Liquidator rejecting or admitting the claim of the Creditor. Undisputedly, this remedy was not availed by the Liquidator herein. Since there is a specific provision providing for appeal, this Tribunal cannot have jurisdiction in terms of Section 60(5) of the Code. Nonetheless it is trite law that the claims of the Creditor in existence as on the liquidation commencement date are only admissible and such claims has to be filed within the time period allowed by the Liquidator in terms of public announcement made after commencement of the Liquidation or such period as is extended thereafter. In the present case even, the revised claim has not been filed within the time prescribed by the Liquidator for filing of claim.”

6. Any claim which arises after liquidation commencement date cannot be entertained by the Liquidator as per the statutory scheme under Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Claim under 7Q and 14B arose only on 23.10.2023 i.e. subsequent to liquidation commencement date. The Adjudicating Authority did not commit any error in not accepting the said claim. We, thus, do not find any ground to interfere in the order rejecting claim filed by the Appellant. There is no merit in the appeal. Appeal is dismissed.”

12. Counsel for the Appellant has also placed reliance on the judgment of the Hon’ble High Court of Judicature at Bombay in Writ Petition No.693 of

2022- ***“Dalmia Cement (Bharat) Limited & Anr. Vs. The Central Board of Trustees, Employees Provident Fund Organization”***. The above was a case where question was as to whether by approval of the Resolution Plan the claim of Appellant shall stand wiped out. The question which has arisen in the present case i.e. regarding admission of claim in liquidation process was not subject matter of consideration in the above case. Hence, above case does not help the Appellant in the present matter. The Adjudicating Authority however, in the impugned order has observed that the Resolution Professional has to keep track of the Appeal filed by the Corporate Debtor and make necessary arrangements contingent upon the decision of the Appeal. In the application which was filed by the Appellant being IA No.114 of 2023 was an application praying for admission of the claim of the Appellant which was not accepted by the liquidator. We, however, make it clear that non-admission of the claim of the Appellant in liquidation proceeding shall not preclude it from taking such steps as available in law for realisation of its claim which arose after liquidation commencement date.

13. In view of the foregoing discussions and conclusions, subject to what has been said above, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi
Anjali