



**NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**  
**COURT NO. 1**

ITEM No.202  
IA/219(MP)2025  
in  
TP 174 of 2019 [CP(IB) 426 of 2018]

**Order under Section Sec 60(5)**

**IN THE MATTER OF:**

Employees Provident Fund Organization  
V/s  
Anil Agrawal Liquidator STL Exports Pvt Ltd

.....Applicant

.....Respondent

**Coram:**

Hon'ble Shri Brajendra Mani Tripathi, Member (J)  
Hon'ble Shri Man Mohan Gupta Member (T)

**PRONOUNCEMENT OF ORDER**  
**Delivered on 10/12/2025**

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

**MAN MOHAN GUPTA**  
**MEMBER (TECHNICAL)**

Sd/-

**BRAJENDRA MANI TRIPATHI**  
**MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**

**EPFO, Gwalior**  
**Vs**  
**Liquidator Anil Agrawal**

**IA No. 219 (MP) of 2025**  
**in**  
**TP 174 of 2019 [CP (IB) 426 of 2018]**

*(An interlocutory application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016.)*

**Employees Provident Fund Organisation, Gwalior**

Through Assistant Provident Fund Commissioner,  
Regional Office: Bhavishya Nidhi Bhawan,  
Near Inter-State Bus Terminal (ISBT) Morena  
Link Road, Gwalior (MP) - 474005

.....Applicant

V/s

**Mr. Anil Agrawal**  
Liquidator of M/S STL Exports Pvt. Ltd.  
Address: 2006, Napier Town, Naudra Bridge,  
Jabalpur, MP - 482001  
Email- anilagrwalca1999@gmail.com

.....Respondent

**IN THE MAIN MATTER OF:**

TP 174 of 2019 [CP (IB) 426 of 2018]

**Rashnidhi Kumar & Bros,**

.....Applicant/Operational Creditor

V/s

**STL Exports Limited**

.....Corporate Debtor



**Order pronounced on: 10.12.2025**

**Coram:**

Mr. Brajendra Mani Tripathi, Hon'ble Member (J)

Mr. Man Mohan Gupta, Hon'ble Member (T)

**Appearance:**

For the Applicant : Ms. Darshana Baghel, Adv. (EPFO)

For the Respondent : Mr. Rishabh S. Khemuka, Adv. a.w.

Mr. Anil Agrawal, CA

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

1. This Interlocutory Application is filed on 05.05.2025, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**the IB Code, 2016**), read with Rule 11 of the National Company Law Tribunal Rules, 2016 (**the NCLT Rules, 2016**) by the Assistant Provident Fund Commissioner, EPFO, Gwalior (**the Applicant**) against Mr Anil Agrawal (**the Respondent**), Liquidator of M/s STL Exports Pvt. Ltd. (**the Corporate Debtor**).

2. Through this present Application, the Applicant seeks following directions given below:

*a) To direct the Respondent/Liquidator to forthwith admit and accept the statutory claim of the Applicant towards provident fund dues amounting*



*to Rs. 44,10,204/- (Rupees Forty-Four Lakh Ten Thousand Two Hundred and Four only), together with Damages and accrued statutory Interest until realization.*

- b) To declare that the PF dues constitute a statutory first charge over the assets of the CD and stand excluded from the liquidation estate.*
- c) To direct the Respondent/Liquidator to earmark and disburse the aforesaid PF dues, along with Damages and accrued statutory Interest, on a priority and prior to any distribution of proceeds under Section 53 of the IB Code, 2016.*
- d) To restrain the Respondent/Liquidator from effecting any distribution of the proceeds or assets of the CD to any other creditors or stakeholders until the statutory provident fund dues, along with Damages and interest, are fully paid and discharged.*
- e) To pass an order Condoning any procedural delays, if any, in filing or adjudication of the present Application, in the interest of justice and equity.*

**3. The Applicant's case in brief is:**

- a) The Applicant submits that Shri Vivek Kumar Gupta, Assistant Provident Fund Commissioner, EPFO, Regional Office, Gwalior was duly authorised to file the present application.

(Copy of the resolution passed by CBT dated 25.05.1989 is annexed and marked as **ANNEXURE A1** to the Application.)

- b) The Applicant submits that in **IA No. 186 (MP) 2021 in TP 174 of 2019 (CP (IB) 426 of 2018)**, this Adjudicating Authority, passed a liquidation order dated **11.08.2023** under Section 33 (2) of the IB Code, 2016 and



appointed the Respondent as the Liquidator.

- c) The Applicant submits that the EPF dues constitute statutory liabilities and not contractual debts. Hence, Provident Fund, Gratuity, and Pension Fund dues stand excluded from the liquidation estate in terms of Section 36 of the IB Code, 2016, and are not governed by the IBBI (Liquidation Process) Regulations, 2016.
- d) The Applicant submits that, if any procedural delay is observed in filing or updating the claim, this Adjudicating Authority may be pleased to condone the same, the delay having occurred due to assessment proceedings and procedural difficulties.
- e) The Applicant submits that the PF dues are statutory in nature, protected under the Employees Provident Funds & Miscellaneous Provisions Act, 1952 (**the EPF & MP Act, 1952**), enacted to ensure social security to employees. It further submits that any minor and unintentional procedural delay ought not to defeat substantive justice or prejudice the employees legitimate statutory entitlements, who depend upon these funds for their welfare and livelihood.
- f) The Applicant submits that the EPFO is a social security organization governed by its own Act, the EPF & MP Act, 1952. The Corporate Debtor/CD is covered under the EPF & MP Act, 1952 and allotted **EPF Code No. MP/GWL/0010922000**. The CD was legally obligated to



comply with the EPF & MP Act, 1952 and its Schemes by timely remitting dues and submitting returns since the date of inception.

- g) The Applicant submits that the CD committed default in remitting Provident Fund and allied dues from **May 1998 to November 2024**. Consequently, proceedings under Sections 7-A, 14-B, and 7-Q of the EPF & MP Act, 1952, were initiated to determine and recover the dues.
- h) The Applicant submits that upon receiving information regarding the CD being under liquidation, an inspection was assigned to the Area Enforcement Officer, who submitted a report dated 25.07.2024, subsequently forwarded to the Respondent/Liquidator for response. However, no response was received. Consequently, proceedings under Section 7-A of the EPF & MP Act, 1952 were initiated vide summons No. EPF/RO/GWL/ENF/10922/712 dated 04.10.2024. The Officer's final report dated 12.11.2024 recorded that the CD last filed its ECR in June 2017, and several employees had their exit dates marked, indicating cessation of service and withdrawal of their contributions.
- i) The Applicant submits that the Enforcement Officer calculated PF dues only in respect of employee's active till June 2017 who had no recorded **"date of exit"**. The report dated 12.11.2024 lists 17 such employees along with their respective PF dues.

(A copy of the Report dated 12.11.2024 is annexed under **ANNEXURE**



A/2.)

- j) The Applicant submits that for the purpose of determining and recovering the PF dues, orders were passed under Sections 7-A, 14-B, and 7-Q of the EPF & MP Act, 1952, dated 04.11.2024, 13.11.2024 and 14.11.2024 respectively.

(Copy of the **Orders dated 04.11.2024, 13.11.2024 and 14.11.2024** passed u/s 7-A, 14-B and 7-Q separately determining the Provident Fund and allied dues and RRC's issued in their regard are annexed under **ANNEXURE A/3, A/4, A/5, A/6 and A/7** to the Application.)

- k) The particulars of amounts outstanding are as follows:

S.No.	Particulars of Dues	Period	Amount of Dues	Document
1.	Order under Sec 14B dated 04.11.2024	05/1998 to 12/2023	Rs. 3,24,819/-	RRC dated 14.11.2024
2.	Order under Sec 7Q dated 04.11.2024	05/1998 to 12/2023	Rs. 1,68,581/-	RRC dated 14.11.2024
3.	Order under Sec 7A dated 13.11.2024.	01/2010 to 07/2024	Rs 12,55,691/-	RRC dated 14.11.2024
4.	Order under Sec 14B dated 14.11.2024	01/2010 to 07/2024	Rs. 12,54,760/-	RRC dated 14.11.2024
5.	Order under Sec 7Q dated 14.11.2024	01/2010 to 07/2024	Rs. 14,06,353/-	RRC dated 14.11.2024
Total			Rs. 44,10,204/-	

(The details of proceedings for determination of EPF and allied dues



against the CD duly supported with the relevant documents are annexed under **ANNEXURE A/7 (COLLY)** of the application.

- l) The Applicant submits that the claim for PF dues amounting Rs. 44,10,204/- was filed on 14.11.2024 with the Respondent/Liquidator. In response Liquidator vide letter dated 25.11.2024 informed the applicant that the aforesaid claim is not in the prescribed format and cannot be accepted due to non-adherence to the time limit as provided under the IB Code, 2016 Liquidation Regulation 16. The Respondent further stated that as the Inquiry and assessment was done Post-Liquidation Commencement Date therefore are non-maintainable.

(Copy of the claim letter dated 14.11.2024 and email response dated 25.11.2024 are annexed under **ANNEXURE A8 and ANNEXURE A9** to the Application.)

- m) The Applicant submits that the Respondent/Liquidator, by not admitting the Applicant's claim, has failed to discharge his fiduciary duty. Under Section 35(b) of the IB Code, 2016, the Liquidator is obligated to protect and preserve the assets of the CD, including those held in trust. The employee's contributions deducted but not deposited constitute trust property under Paragraph 29 of the EPF Scheme, 1952 and therefore, cannot form part of the liquidation estate of the CD.

- n) The Applicant relies on the following grounds:**



- i) Section 11(2) of the EPF & MP Act, 1952 contains a non-obstante clause making any amount due from the employer, whether employee or employer contributions, the first charge on the establishment's assets, payable in priority to all other debts. This provision provides a double safeguard, ensuring provident fund arrears enjoy priority over all other debts, facilitating more effective recovery than other acts.
- ii) The dues are statutory, owed to employees, forming part of their fundamental rights, protected distinctly from other creditors by Section 36(4)(a)(iii) of the IB Code, 2016.
- iii) Section 155 of the IB Code, 2016 excludes provident fund sums from the bankrupt estate, safeguarding these dues from liquidation claims.
- iv) The IBBI (Liquidation Process) Regulations, 2016 do not govern claims arising under the EPF & MP Act, 1952. The said Regulations apply only to stakeholders having claims under Section 53 of the IB Code, 2016, from the liquidation estate. Accordingly, the timelines prescribed therein are inapplicable to the Applicant's statutory claim.
- v) The IB Code, 2016 mandates liquidation assets be taken over only after Provident Fund dues under the EPF & MP Act, 1952 are fully liquidated, ensuring priority payment before creditor distribution.
- vi) Provident Fund dues differ from government dues. They enjoy a first charge, unlike banks or secured creditors who lack such statutory



charges over borrower property.

vii) Section 11 of the EPF & MP Act, 1952 accords the Applicant statutory first charge priority for its dues over all other claims.

**o) For the payment of dues, the Appellant has relied on the following rulings:**

*i) Sunil Kumar Jain & others vs Sundresh Bhatt & others (Civil Appeal No. 5910/2019)*, the Hon'ble Apex Court on 19.04.2022 observed that the Provident Fund, gratuity, and pension dues are excluded from the liquidation estate under Section 36(4) of the IB Code, 2016 and are to be paid directly to employees outside the liquidation asset distribution.

*ii) The damages under section 14B are to be treated in the same manner as the interest under section 7Q of the Act as per the Judgement of the Hon'ble Supreme Court in the case of Maharashtra State Co-operative Bank Ltd. v. Asst. Provident Fund Commissioner 2009 15 (ADDL.) SCR 1.*

*iii) In the Greater Noida Industrial Development Authority yy v. Prabhjit Singh Soni & Anr (2024) 6 SCC 767*, the Hon'ble Supreme Court held that even if a claim is filed in a format not strictly conforming to the relevant regulations, the Resolution Professional ("RP") is nonetheless duty-bound to examine and consider it on merits. Procedural regulations cannot override the substantive rights of stakeholders, and



minor deviations in form or slight delays in submission do not negate the underlying claim.

4. **The Respondent's reply in brief is:**

- a) In response to the notice issued to the Respondent/Liquidator, a reply affidavit filed on 20.06.2025, and submits that the present application is not maintainable under law.
- b) The Respondent submits that the liquidation of the CD was ordered on 11.08.2023 in I.A. No. 186 of 2021, followed by a public announcement on 31.08.2023, with the last date for submission of claims falling in September 2023. The Applicant, however, filed its claim only on 14.11.2024, i.e., more than a year after commencement of liquidation. Upon due consideration, the Respondent/Liquidator rejected the said claim on 25.11.2024.
- c) The Respondent submits that upon rejection of its claim by the Liquidator on 25.11.2024, the Applicant had a statutory remedy under Section 42 of the IB Code, 2016, to challenge the said decision within 14 days. However, the Applicant failed to do so and has instead filed the present application under Section 60(5) in the year 2025. The Hon'ble NCLAT Principal Bench, New Delhi in *Asean International Limited v. Sanjeev Maheshwari, Liquidator of Varun Resources Ltd. (Company Appeal (AT) (Insolvency) No. 1647 of 2023)*, while adjudicating on similar facts,



held that if decision of the liquidator is to be challenged the same has to be done within 14 days from the date of order as per section 42 of the IB Code, 2016 and filing of any application under section 60(5) is a circumvention of process of law and an attempt to circumvent the remedy provided under the IB Code, 2016.

(Copy of the NCLAT judgement passed on 20.02.2025 is annexed under **ANNEXURE R1** of the Affidavit in Reply.)

- d) The Respondent submits that a creditor is required to file its claim as on the date of commencement of liquidation and not on the basis of any order passed thereafter. The Hon'ble NCLAT, in *The Assistant Provident Fund Commissioner (Legal), EPFO v. Chandra Prakash Jain, Liquidator of Khushi Foods Ltd. (Company Appeal (AT) (Insolvency) No. 1743 of 2024)*, held that claims under Regulations 12 and 16 of the IBBI (Liquidation Process) Regulations, 2016 must be filed as on the liquidation commencement date. Any assessment or claim, including that for interest or damages, made subsequent to the commencement of liquidation cannot be admitted by the Liquidator. Consequently, the NCLAT upheld the Adjudicating Authority's order and dismissed the appeal.

(Copy of the order passed by the Hon'ble NCLAT dated 29.04.2024 is annexed under **ANNEXURE R2** of the Affidavit in Reply.)



- e) The Respondent submits that no claims were received from any workmen or employees of the CD during the entire liquidation process.
- f) The Respondent submits that the Hon'ble NCLAT, New Delhi, in *Company Appeal (AT) (Insolvency) No. 1743 of 2024*, has categorically held that any assessment made post initiation of liquidation cannot be admitted as a valid claim by the Liquidator.
- g) The Respondent submits that the liquidation process of the CD was completed on 11.02.2025. After three unsuccessful auctions, the CD was sold as a going concern, and the sale proceeds were duly distributed.
- h) The Respondent submits that the Liquidator's decision is proper and requires no interference. The Applicant had erroneously filed its claim in Form F instead of the appropriate form, and despite being informed, failed to rectify the same. The Applicant now seeks, after conclusion of the liquidation process, to reopen and unsettle the same, which is untenable in law.

**5. The Applicant's rejoinder in brief is:**

- a) In response to the reply, the Applicant filed a rejoinder on 04.07.2025 and submits that the Respondent's objection as to non-maintainability of the present application under Section 42 of the IB Code, 2016 is fundamentally misplaced because of following reasons:
  - i) The PF dues being statutory and held in trust, do not fall within the



liquidation estate per Section 36(4)(a)(iii) of the IB Code, 2016 rendering Section 42 timelines inapplicable.

- ii) The PF dues being statutory obligations and not debts owed to the creditor within the meaning of the IB Code, 2016.
  - iii) PF dues held in trust under the EPF & MP Act, 1952, are neither financial nor operational debts.
  - iv) The applicant does not fall under the definition of stakeholder, and hence the Regulation 12 and 16 of the IBBI (Liquidation Process) Regulations, 2016 & its timeline does not apply.
- b) The Applicant submits that the Respondent's reliance on the limitation under Section 42 of the IB Code, 2016, is misplaced. The Hon'ble Supreme Court in *Sunil Kumar Jain v. Sundaresh Bhatt [(2022) 7 SCC 540]* has categorically held that PF dues stand excluded from the liquidation estate. Accordingly, procedural timelines governing creditor claims are inapplicable to such statutory dues.
- c) The Applicant further relies on the judgment of the Hon'ble Supreme Court in *Maharashtra State Co-operative Bank Ltd. v. Assistant Provident Fund Commissioner [(2009) 15 SCR 1]*, wherein it was held that statutory obligations, including damages and interest under Sections 14B and 7Q of the EPF & MP Act, 1952, constitute "amounts due" carrying a first charge and statutory priority, thereby reinforcing the



Applicant's entitlement to such dues independent of creditor claim timelines.

d) The Applicant submits that the Respondent/Liquidator's refusal to admit PF dues violates the fiduciary obligation under Section 35(b) of the IB Code, 2016 to protect and preserve trust-held assets. EPF contributions deducted from employee wages but undeposited are trust property per Paragraph 29 of the EPF Scheme, necessitating their prioritization and protection.

6. **The Respondent's reply to the rejoinder dated 25.08.2025, in brief is:**

a) The Respondent submits that the Applicant while asserting that the application is within limitation, has simultaneously sought condonation of delay, rendering its stance inconsistent.

b) The Respondent submits the Applicant's assertion of having submitted the claim to the Liquidator in due manner and within time is incorrect and stands contradicted by the facts and records.

c) The Respondent submits that although the EPF & MP Act, 1952 is a beneficial social welfare legislation enacted for the protection of employees, it does not confer upon the Applicant an unaccountable right to file a claim at any time contrary to the procedure and timelines prescribed by law.

d) The Respondent submits that the assessment proceedings under the EPF



& MP Act, 1952 were initiated by the Applicant only after commencement of the liquidation process.

- e) The Respondent submits that upon admission of the CD into CIRP and then liquidation the provisions of the IB Code, 2016 attain overriding effect in terms of Section 238, and therefore prevail over the EPF & MP Act, 1952.
- f) The Respondent submits that despite being aware of non-payment of provident fund dues since 1998, the Applicant took no action until 2024 and has approached this Adjudicating Authority only after completion of the liquidation process, rendering the present reliefs infructuous.
- g) The Respondent submits that though there might not be a bar to conduct assessment post initiation of liquidation but the claim of the EPFO which must be submitted needs to be submitted as on the date of commencement of liquidation and not on the basis of the assessment conducted post initiation of liquidation.
- h) The Respondent submits that the liquidation process of the Corporate Debtor stands concluded, the sale proceeds from the going concern sale have been distributed, and the liquidation bank account has been closed.
- i) The Respondent submits that there is no intention to deny legitimate claims of workmen or employees. However, all actions of the Respondent/Liquidator have been in strict compliance with the provisions



of the IB Code, 2016 and applicable regulations.

7. **The Applicant's rejoinder dated 03.11.2025 in brief is:**

- a) The Applicant submits that the Respondent's plea that EPF claims were not lodged within the prescribed timeframe is misconceived and untenable.
- b) The Applicant submits that Respondent's actions demonstrate non-compliance with statutory obligations under the EPF & MP Act 1956 and the EPF dues were wrongly ignored which is a direct violation of the social security principles upheld by the Hon'ble Supreme Court.
- c) The Applicant relies on the decision of the Hon'ble NCLT, Mumbai Bench, in *Securities and Exchange Board of India v. Mr. Vishak Ghisulal Jain, Liquidator of Sterling International Enterprises Ltd. (CA No. 12 of 2023, dated 14.09.2023)*, wherein it was held that moratorium under Sections 14 and 33(5) of the IB Code, 2016, does not bar assessment of statutory dues during the liquidation and that corresponding claims cannot be rejected merely on the ground of delay, subject to non-disturbance of distributions already made under Section 53.
- d) The Applicant further places reliance on *M/s Globe Express Services v. M/s MM Cargo*, wherein the Hon'ble NCLT, New Delhi Bench (order dated 21.05.2018) observed that "it is only after distribution of Assets that no further claim can be entertained". Therefore, it is evident that this



Adjudicating Authority has the power to condone the delay in submitting the claim to Liquidator before the distribution of Assets.

- e) The Applicant further relies on the judgment of the Hon'ble Kerala High Court in *Deputy Commissioner (Works Contract), Kerala State Goods and Services Tax Department v. National Company Law Tribunal & Vinod Balachandran (Resolution Professional), W.P.(C) No. 39185 of 2022*, which held that while moratorium under Sections 14 and 33(5) of the IBC restrains enforcement and recovery, it does not prohibit determination or assessment of statutory dues during the moratorium period.
- f) The Applicant submits that the assessment proceedings under the EPF & MP Act, 1952 were conducted strictly in accordance with law, after affording due opportunity of hearing to the establishment and the Liquidator, and that the Respondent's challenge to the validity of the assessment order, without any supporting material, is baseless and unsustainable.
- g) The Applicant submits that the definition of "debt" under Section 3(11) of the IBC includes financial and operational debts. PF dues, held in trust under the EPF & MP Act, 1952, are not financial or operational debts. This distinction has been clearly recognized by the Bombay High Court in *Dalmia Cement (Bharat) Ltd. v. Central Board of Trustees, EPFO (W.P.*



No. 693/2022) which held that Provident Fund dues are statutory trust obligations, distinct from debts owed to creditors.

### **Observations and Analysis**

8. We have heard the arguments advanced by both the parties and have meticulously perused the records placed before us.

9. We have noted that the primary issues for consideration are below:

- i. *Whether the claim for dues in the present application has been filed within the prescribed timelines as mandated under the provisions of the Insolvency and Bankruptcy Code, 2016 and the Employees Provident Funds and Miscellaneous Provisions Act, 1952?*
- ii. *Whether a claim based on an assessment made after the commencement of liquidation proceedings is admissible under law?*

10. The present application was filed on 05.05.2025, pertaining to EPF dues which was filed on 14.11.2024 before the Liquidator. It is noted that the liquidation process of the Corporate Debtor has been concluded, the sale proceeds from the going concern sale have been duly distributed, and the liquidation bank account has been closed.

11. It is observed that the Liquidation of the Corporate Debtor commenced on 11.08.2023. However, the assessment order under Section 7A, 7Q and 14B of the EPF & MP Act, 1952 was passed on 04.11.2024, 13.11.2024 and



14.11.2024, all subsequent to the commencement of the liquidation proceedings.

The relevant details are placed in the tabular form below:

Date	Subject matter
11.08.2023	This Adjudicating Authority passed the Liquidation order in IA. No.186 (MP) of 2021.
04.11.2024	Order passed under Section 7Q & 14B of EPF & MP Act, 1952 for the period of 05/1998 to 12/2023.
13.11.2024	Order passed under Section 7A of EPF & MP Act, 1952 for the period of 01/2010 to 07/2024.
14.11.2024	Order passed under Section 7Q & 14B of EPF & MP Act, 1952 for the period of 01/2010 to 07/2024.
14.11.2024	Revenue Recovery Certificate (RRC) issued.
14.11.2024	Claims of PF dues were filed with the Liquidator.

12. Recently, on 25.11.2025, the NCLAT, Principal Bench (New Delhi) in ***Regional PF Commissioner II Vashi Vs. Harish Kant Kaushik (RP) of Protocol Marine Service Ltd. (Comp. App. (AT) (Ins) No. 159 of 2025 & I.A. No. 639 of 2025)***, held that claim for PF damages and interest arising from an order passed after the Liquidation Commencement Date cannot be allowed. The relevant extract of the order is given below:

*Adjudicating Authority has given reasons for not accepting the claim pertaining to damages and interest in para-6, which is as follows:*

*“The claim of Rs. 1,82,824/- and Rs. 96,686/-, pertains to damages and*



*interest demanded for delayed remittances for the period July, 2019 to December, 2020 and this Claim has been raised by order dt. 05.02.2024, passed by Regional PF Commissioner - II, Vashi. This Order has been passed after the commencement of Liquidation i.e. 04.12.2023. It is trite law that the claim of debt as on the Liquidation Commencement date has to be settled and no claim can arise from any Order passed after the Liquidation Commencement Date. Accordingly, the said claim is not permissible.”*

*The perusal of the order indicates that order with respect to interests and damages was passed on 05.02.2024 and the reasons given by the Adjudicating Authority in para 6 cannot be faulted with for not accepting the claim which arose after the liquidation commencement date. The issue raised in this appeal is fully covered by CA (AT) (Ins.) No. 17 of 2025, EPFO Vs. CA Pankaj Sah, decided on 03.09.2025.*

*We, thus, are of the view that no error has been committed by Adjudicating Authority in partly allowing the claim of the Appellant. There is no merit in the appeal. The appeal is dismissed.*

13. Recently, on 29.08.2025, the NCLAT, Principal Bench (New Delhi) in ***The Regional P.F. Commissioner, EPFO Vs. Alok Kailash Saksena Liquidator of Gujarat Foils Ltd. and Anr. (Company Appeal (AT) (Insolvency) No. 807 of 2025)*** held that only claims in existence as on the liquidation commencement date and filed within the prescribed period are entertainable.

14. Further, the Hon’ble NCLAT Principal Bench, in ***Employees Provident Fund Organisation, Nashik vs. Girish Siriram Juneja & Anr., in Company Appeal (AT) (Insolvency) No. 693 of 2025 and I.A. No. 2676 of 2025***, made



certain observations which are relevant and applicable to the present case. The relevant portions of the said order passed by the Hon'ble NCLAT are reproduced below:

*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 Company Appeal (AT) (Ins.) No.693 of 2025 to interfere in the order rejecting claim filed by the Appellant. There is no merit in the appeal. Appeal is dismissed.”*

15. It is observed that the Respondent rely on the ruling of the Hon'ble NCLAT Principal Bench in *The Assistance Provident Fund Commissioner (Legal), EPFO Vs. Chandra Prakash Jain, Liquidator of Khushi Foods Limited (Company Appeal (AT) (Insolvency) No. 1743 of 2024)*, wherein held that any claim made subsequent to the liquidation commencement on the basis of assessments subsequent to the liquidation commencement date cannot be entertained and upheld the decision of the liquidator who rejected the claim. However, Applicant contended the reliance as misplaced and distinguishable on facts. In that case, the assessment proceeded without the Liquidator's



participation or acknowledgment of dues, whereas here, the proceedings were duly notified to the Liquidator with full opportunity to participate, which was not availed despite statutory obligations under the EPF & MP Act, 1952. Moreover, the said judgment is under challenge before the Hon'ble Supreme Court and remains sub-judice, rendering reliance thereon premature and untenable.

16. In the present case, the liquidation order was passed on 11.08.2023. It is noted that the claim was submitted before the Liquidator belatedly, subsequent to the last date prescribed for submission of claims. The said claims are based on assessment orders issued by the EPFO on 04.11.2024, 13.11.2024 and 14.11.2024, all of which were passed after the commencement of liquidation. It is therefore evident that the assessments in question were made during the year 2024, after almost a year of the liquidation commencement date.

17. It is observed that Section 33(5) of the IB Code, 2016 expressly bars the institution or continuation of any suit or legal proceeding once a liquidation order has been passed. The proceedings initiated under the EPF & MP Act, 1952, being quasi-judicial in nature, ought not to have been undertaken after the commencement of liquidation. In the present case, such proceedings were done and orders were passed during the liquidation stage, which are clearly hit by the provisions of Section 33(5) of the IB Code, 2016. Accordingly, any assessment or proceedings conducted post the liquidation commencement date are ***liable to***



*be ignored.* The relevant portion of Section 33(5) of the IB Code, 2016 is given below:

***“33. (5) — Subject to Section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:***

***Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the adjudicating authority.”***

18. The Applicant rely on decision of the Hon'ble Kerela High Court in ***Deputy Commissioner (Works Contract), Kerala State Goods and Services Tax Department v. National Company Law Tribunal & Vinod Balachandran (Resolution Professional), W.P.(C) No. 39185 of 2022*** wherein held and observed that:

*"5. The Supreme Court, in the case of SV Kandoakar v. V M Deshpande (1972) 1 SCC 438 held that the authorities can only take steps to determine the tax, interest, fines or any such penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium. The Supreme Court in Sundaresh Bhat Liquidator of ABG Shipyard v. Central Board of Indirect Tax & Customs (2023) 1 SCC 472 agreed with the said ratio lai down in V M Deshpande and held that the authority could only initiate assessment or reassessment of the duties or other levies However, they cannot transgress such boundary and proceeding to initiate recovery in*



*violation of Sections 14 and 33(5) of the IBC. The Interim Resolution Professional or the Liquidator, as the case may be, is empowered to question the legality of the assessment order before the deputed authority." Paragraphs 47 to 49 of the judgment in the case of Sundaresh Bhatt (supra), are extracted hereunder:*

*"47. Therefore, this Court in V.M. Deshpande cases held that the authorities can only take steps to determine the tax, interest, fines or any penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium. We are of the opinion that the above ratio squarely applies to the interplay between the IBC and the Customs Act in this context.*

*48. From the above discussion, we hold that the respondent could only initiate assessment or reassessment of the duties and other levies. They cannot transgress such boundary and proceed to initiate recovery in violation of Sections 14 or 33(5) of the IBC. The interim resolution professional, resolution professional or the liquidator, as the case may be, has an obligation to ensure that assessment is legal and he has been provided with sufficient power to question any assessment, if he finds the same to be excessive."*

*"57.1 Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act."*

19. The Applicant further relies on decision of the on ***M/s Globe Express***



*Services vs M/s MM Cargo*, wherein the Hon'ble NCLT, New Delhi Bench (order dated 21.05.2018) observed that "it is only after distribution of Assets that no further claim can be entertained".

20. We have gone through the observations made by the Hon'ble Courts in the aforesaid decisions, it is evident that while the assessment authorities are not barred from initiating or continuing assessment proceedings during the pendency of moratorium, they are restrained from effecting recovery of any assessed amounts during such period. In view of the said legal position, the Applicants are not entitled to effect recovery of the assessed amount during the subsistence of the liquidation proceedings of the Corporate Debtor.

21. In view of the foregoing discussion, and having regard to the facts and circumstances of the case as well as the judicial precedents cited, it is evident that the Applicant's contentions stand decisively contradicted. The liquidation process of the Corporate Debtor having been conclusively completed, with the sale proceeds from the going concern sale duly distributed and the liquidation bank account closed, it is impermissible in law to permit belated claims that undermine the finality and sanctity of the insolvency resolution process. Upholding such claims would not only jeopardize the legislative intent of the Insolvency and Bankruptcy Code, 2016 but also unsettle the orderly distribution envisaged therein. Further any assessment pertaining to the period, initiated or continued after the commencement of liquidation, would not be permissible in



view of the Section 33(5) of the IB Code, 2016. In the instant matter, the claim for an amount of Rs. 44,10,204/- filed on the basis of such post-liquidation assessment is *found to be inadmissible and cannot be entertained*.

### **ORDER**

22. Accordingly, the claim filed on the basis of assessment during post-liquidation cannot be sustained in law and is held to be inadmissible.

23. In view thereof, **IA No. 219 (MP) of 2025** in TP 174 of 2019 [CP (IB) 426 of 2018] is **dismissed and disposed of**. No order as to costs.

Sd/-

**MAN MOHAN GUPTA  
(MEMBER TECHNICAL)**

Sd/-

**BRAJENDRA MANI TRIPATHI  
(MEMBER JUDICIAL)**

*Harsh LRA*