



NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.202
IA/346(MP)2024

in
(MP) CP(IB) 43 of 2020

Order under Section 60(5) r.w. Rule 11

IN THE MATTER OF:

Employees' Provident Fund Organization, Indore
through Regional Provident Fund Commissioner
V/s

.....Applicant

Chaya Gupta, Liquidator of M/s Rajpal Autolink Pvt Ltd

.....Respondent

Coram:

Brajendra Mani Tripathi, Hon'ble Member(J)

Man Mohan Gupta, Hon'ble Member(T)

ORDER

Delivered on 13/11/2025

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)

Harsh/LRA

Sd/-

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

IA No. 346 (MP) of 2024
in
CP (IB) No. 43 of 2020

*(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, Indore
Through the Regional Provident Fund Commissioner,
Regional Office: 7 Race course Road, Indore (MP).

.....Applicant

V/s

Ms. Chhaya Gupta
Liquidator of Rajpal Autolink Pvt. Ltd.
1 Bima Nagar, 202 Almas Dreams Apartment,
Indore - 452001, (MP).

.....Respondent

IN THE MAIN MATTER OF:

CP (IB) No. 43 of 2020

Rajpal Autolink Pvt Ltd

.....Applicant/Corporate Debtor

Order pronounced on: 13.11.2025

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 : Mrs. Chhaya Gupta, Liquidator

J U D G E M E N T

1. This Interlocutory Application is e-filed on 18.07.2024, 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 Regional Provident Fund Commissioner, EPFO, Indore (**hereinafter referred to as the Applicant**) against Ms Chhaya Gupta (**hereinafter referred to as the Respondent**), Liquidator of M/s Rajpal Autolink Pvt. Ltd. (**hereinafter referred to as the Corporate Debtor**).

2. Through this Application, the Applicant has sought directions to allow its claim amounting to **Rs. 46,873/- (Rupees Forty-Six Thousand Eight Hundred Seventy-Three only)** along with applicable interest, and to recognise such claim as having first charge over the assets of the Corporate Debtor, in priority to all other dues. Pending final adjudication of the Application, the Respondent is directed to retain assets of equivalent value and refrain from effecting any distribution thereof, in order to secure the claim amount.

3. The Applicant's case in brief is:

- a) The Applicant submits that Shri Amit Jain, Regional Provident Fund Commissioner- II, Regional Office, Indore was duly authorised to file the present application vide authority letter dated 03.05.2024. (Copy of the letter of authority is annexed and marked as **ANNEXURE A1** to the Application.)



- b) The Applicant submits that in IA No. 7 (IND) of 2021 in CP (IB) 43 of 2020, the Hon'ble NCLT, Ahmadabad Bench, passed a liquidation order dated **23.04.2021** under Section 33 (2) of the IB Code, 2016 and appointed the Respondent as the Liquidator.
- c) The Applicant submits that the claim for provident fund dues was filed on 26.02.2024, with reminders and is within limitation as no period is prescribed under Section 60(5) of the IB Code, 2016.
- d) 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/IND/1356546. 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.
- e) The Applicant submits that the CD committed default in remitting Provident Fund and allied dues from August 1996 to January 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. (Copy of the **orders dated 22/12/23, 15/01/2024 and 19/02/24** passed u/s 7-A, 14-B and 7-Q separately determining the Provident Fund and allied dues to the tune of Rs.46,873/- and RRC's issued in their regard are annexed and marked as **ANNEXURE A2 (Collectively) and ANNEXURE A3 (Collectively)** to the Application.)
- f) The particulars of amounts outstanding are as follows:

S.No.	Particulars of Dues	Period	Amount	Document
1.	7A	08/96 to 08/17	Rs. 1,425/-	RRC dated 20.02.2024



2.	14 B	04/18 to 11/23	Rs. 22,779/-	RRC dated 20.02.2024
3.	7Q	04/18 to 11/23	Rs. 20,878/-	RRC dated 20.02.2024
4.	14 B	12/23 to 10/01/24	Rs. 1209/-	RRC dated 20.02.2024
5.	7Q	12/23 to 10/01/24	Rs. 582/-	RRC dated 20.02.2024
Total			Rs. 46,873/-	

- g) The Applicant/EPFO submits that the claim for Rs. 46,873/- was filed on 26.02.2024 with the Respondent/Liquidator. The Respondent/Liquidator, via email dated 07.03.2024, disputed the claim, stating the company M/s Rajpal Autolink Pvt. Ltd. is under liquidation and as per Supreme Court judgments the IB Code, 2016 will prevail and any pay must be made in accordance with the IB Code, 2016 provisions. (Copy of the claim letter dated 26.02.2024 and email response dated 07.03.2024 are annexed and marked as **ANNEXURE A5 and ANNEXURE A6** to the Application.)
- h) The Applicant further submits that immediately upon receiving the Liquidator's communication, a detailed reply was sent on 18.03.2024, citing law and judicial decisions affirming Provident Fund dues as first charge labour dues. The Applicant sought liquidation of the dues, however despite the lapse of considerable time, the Liquidator has failed to respond or act, disregarding the legitimate claim and compelling the filing of this application. (Copy of the letter dated 18.03.2024 issued by the applicant to the Respondent/Liquidator is annexed and marked as **ANNEXURE A7** to the Application.)
- i) 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 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.
- v) 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.
- vi) Sections 52 and 53 of the IB Code, 2016 have to be complied with before asset distribution to financial creditors.
- vii) Delay or inaction by the Respondent/Liquidator in settling these dues amounts to gross error.
- viii) Section 11 of the EPF & MP Act, 1952 accords the Applicant statutory first charge priority for its dues over all other claims.
- j) 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 Hon'ble NCLT, Ahmedabad Bench in ***Mr. Ravi Kapoor, RP of***



Arya Filament Pvt. Ltd. v/s Branch Manager, State Bank of India (IA 29/2019, order dated 23.4.2021) held that dues under the EPF & MP Act, 1952 are statutory dues owed to workers, forming an intrinsic part of their right to life. The legislature, through Section 36(4)(a)(iii) of the IB Code, 2016 expressly excludes provident fund, pension, and gratuity dues from the liquidation estate. Section 155 of the IBC states that such dues shall not be included in the bankrupt estate. These dues are thus protected and not subject to the creditor claims or the priority hierarchy of the IB Code, 2016 waterfall mechanism. The court further pointed out that superior courts consistently hold that provident fund, pension, and gratuity dues must be paid before the corporate debtor's assets are taken over in liquidation, and these dues do not fall within the waterfall mechanism under Section 53 of the IB Code, 2016. This underscores the special priority and protection accorded to workers statutory dues over other claims in insolvency proceedings.

iii) The Hon'ble NCLAT in *Tourism Finance Corporation of India Pvt. Ltd. v. Rainbow Papers Ltd & Ors, Company Appeal (AT) (Insolvency) No 354 of 2010*, was pleased to allow an appeal filed by the Regional Provident Fund Commissioner for non-payment of entire EPF dues along with interest calculated as per the provisions of the EPF & MP Act, 1952 by concluding that there was no inconsistency between the EPF & MP Act, 1952 and the IB Code, 2016 since EPF dues have been categorically treated as assets not forming part of the liquidation estate under Section 36(4)(a)(iii) of the IB Code, 2016.

k) The Applicant submitted and prayed that, the claim of Rs. 46,873/- be acknowledged as a first charge over all other dues of the Financial Creditor/Corporate Debtor, directing the Respondent to prioritise this claim as per the IBC, 2016 and EPF & MP Act, 1952. Pending final



disposal of this application, the Respondent directed to retain assets of equivalent value without distribution to ensure payment of the 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 13.09.2024.
- b) The Respondent submits that, pursuant to an email dated 17.05.2023, in which the Applicant had sought inspection of records under the EPF & MP Act, 1952. In response, the Respondent, via email dated 10.06.2023, informed the Applicant that no such documents had been received from the suspended management of the Corporate Debtor. Consequently, the Respondent filed an application under Section 19(2) of the IB Code, 2016 for non-cooperation in the said matter. (Copy of the email dated 10.06.2023 is annexed and marked as **ANNEXURE B Colly** to the Reply Affidavit.)
- c) The Respondent submits that the Applicant's claim was neither in the prescribed format under the Code nor filed within the time limit mandated by Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, which requires claims to be submitted with proof to the Liquidator within 30 days from the commencement of liquidation. The Respondent further stated that, as Liquidator, she informed the Applicant by email dated 07.03.2024 that the Hon'ble Supreme Court has clarified through various judgments that the IBC, 2016 prevails over other laws, and payments must be made strictly according to its provisions. (Copy of the letter dated 26.02.2024, the email dated 27.02.2024, and the email dated 07.03.2024 are annexed herewith and marked as **ANNEXURE C (Colly)** to the Reply Affidavit.)
- d) The Respondent submits that by the time the claim was lodged, the



Respondent/Liquidator had already filed the dissolution application of the Corporate Debtor with the approval of the SCC members. The dissolution application, filed by the Respondent/Liquidator as Interlocutory Application No. 236/MP/2023, before this Adjudicating Authority.

- e) The Respondent submits that present application is devoid of merit and legally unsustainable as it ignores the primacy of the IBC, 2016. Section 53 of the IBC mandates a strict order of priority for asset distribution during liquidation, which overrides EPFO's statutory dues under the EPF & MP Act, 1952. The liquidation estate must be distributed according to the prescribed waterfall mechanism. And refer judgement of the Hon'ble Supreme Court in *Sunil Kumar Jain v. Sundaresh Bhatt, Liquidator of ABG Shipyard [(2022) 8 SCC 243]*, upheld the primacy of the IB Code, 2016 over other statutory claims during liquidation, emphasizing that the process must be conducted strictly in accordance with the hierarchy established under Section 53 of the IB Code, 2016 and that belated claims cannot override the structured distribution mechanism established by the IB Code, 2016.
- f) The Respondent submits that the Applicant's failure to comply with the prescribed timeline under Section 38 of the IB Code 2016, warrants rejection of their claim. Additionally, at the time of claim submission, the CD assets were valued at only Rs. 2,300/- (Rupees Two Thousand Three Hundred Only). Even if the belated claim were considered, it would have no likelihood of recovery given the negligible remaining assets, which were already insufficient to cover the basic costs of liquidation.
- g) The Respondent submitted and prayed that the Adjudicating Authority may be pleased to dismiss the Applicant's application in its entirety for failing to submit the claim in accordance with the provisions of the IB Code, 2016 and the IBBI (Liquidation Process) Regulations, 2016.



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

- a) In response to the reply, the Applicant filed a rejoinder on 25.09.2024 and submits that the Respondent's contention that EPF claims were not submitted within the prescribed timeframe is untenable because of following reasons:
- i) The EPF dues do not fall under the IBBI (Liquidation Process) Regulations, 2016 as they are statutory liabilities, not contractual debts.
 - ii) The applicant does not fall under the definition of stakeholder, and hence Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 & its timeline does not apply.
- b) The Applicant submits that in the case of EPF dues, the Liquidation process does not apply since the debt is not payable from the estate of the Liquidator as per section 36(4)(iii) of the IB Code, 2016. The Regulations apply only when the claimant has a case/claim under section 53 of the IB Code, 2016 from the pool of the Liquidation estate and not otherwise.
- c) The Applicant again relies on the case of ***Sunil Kumar Jain v. Sundaresh Bhatt, [(2022) 17 SCR 318]***.
- d) The Applicant submits that despite repeated notices, the Respondent failed to process EPF dues, ignored her prior acknowledgement of liability, and violated social security principles upheld by the Hon'ble Supreme Court.
- e) The Applicant submits that the interest under section 7Q of the EPF & MP Act, 1952 should continue to be levied even after the commencement of the Liquidation process. The Applicant submits that the damages under Section 14B are to be treated in the same manner as the interest under Section 7Q of the EPF & MP Act, 1952 as per the Judgement of the Hon'ble Supreme Court of India in the case of ***Maharashtra State Co-***



operative Bank Ltd. v. Asst. Provident Fund Commissioner 2009 15 (ADDL.) SCR 1.

- f) The Applicant submits that the Hon'ble National Company Law Appellate Tribunal (NCLAT), in *Satish Kumar Gupta vs. The Employees Provident Fund Organisation, Company Appeal (AT) (Ins.) No. 580 of 2023*, has categorically held that the claims of all EPFO offices are to be treated on par, and that the entire amount of dues determined under Sections 7A, 7Q, and 14B of the EPF & MP Act, 1952, shall be paid to the respective PF Authorities from the funds available in the attached bank accounts of the CD. In the event such available funds are insufficient, the said claims shall be satisfied from the proceeds arising out of the disposal of other assets of the Corporate Debtor. Only the balance remaining after liquidation of such provident fund dues shall form part of the liquidation estate.
- g) The Applicant submits that the Respondent's attempt to subordinate EPF dues under Section 53 of the IB Code, 2016 is legally wrong, violating statutory provisions, and prays for a direction to settle the outstanding EPF dues immediately.

Observations and Analysis

6. We have heard the arguments advanced by both the parties and have meticulously perused the records placed before us.
7. 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?

8. The present application was filed on 18.07.2024, pertaining to EPF dues which was filed on 26.02.2024 before the Liquidator, even after the filing of the dissolution application of the Corporate Debtor on 10.08.2023. However, the dissolution application in IA 236 (MP) of 2023 was dismissed by the Adjudicating Authority as premature.

9. It is observed that the Liquidation of the Corporate Debtor commenced on 23.04.2021. However, the assessment order under Section 7A of the EPF & MP Act, 1952 was passed on 22.12.2023, and the consequential orders under Sections 7Q and 14B of the said Act were issued thereafter, all subsequent to the commencement of the liquidation proceedings. The relevant details are placed in the tabular form below:

Date	Subject matter
23.04.2021	NCLT Ahmadabad Bench passed the Liquidation order in IA No. 7 of 2021.
22.12.2023	Order passed under Section 7A of EPF & MP Act, 1952 for the period of 10/2019 to 04/2021.
15.01.2024	Order passed under Section 14B and demand made under Section 7Q of EPF & MP Act, 1952 for the period of 04/2018 to 11/2023.
19.02.2024	Order passed under Section 14B and demand made under Section 7Q of EPF & MP Act, 1952 for the period of 12/2023 to 01/2024.
20.02.2024	Revenue Recovery Certificate (RRC) issued.
26.02.2024	Claims of PF dues were filed with the Liquidator.

10. 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.

11. 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.”

12. Furthermore, the Hon'ble NCLAT Principal Bench in *Company Appeal (AT) (Insolvency) No. 1743 of 2024 The Assistance Provident Fund Commissioner (Legal), EPFO Vs. Chandra Prakash Jain, Liquidator of Khushi Foods Limited* was pleased to rule 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.

13. In the present case, the liquidation order was passed on 23.04.2021. 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 22.12.2023, 15.01.2024, and 19.02.2024, all of which were passed after the commencement of liquidation. It is therefore evident that the assessments in question were made during the year 2023–2024, much after the liquidation commencement date.

14. 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 rendered without jurisdiction and 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.”

15. It is further noted that any assessment pertaining to the same period, initiated or continued after the commencement of liquidation, would not be permissible in view of the Section 33(5) of the Code. In the instant matter, the claim for an amount of Rs. 46,873/- filed on the basis of such post-liquidation assessment is found to be inadmissible and cannot be entertained.



16. 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 claim filed by the Employees Provident Fund Organisation is based on assessment orders passed subsequent to the commencement of liquidation proceedings. Such assessments, having been issued after the liquidation commencement date, are clearly barred under the provisions of Section 33(5) of the Insolvency and Bankruptcy Code, 2016, and are thus devoid of legal force.

ORDER

17. Accordingly, the claim filed on the basis of those post-liquidation assessments cannot be sustained in law and is held to be inadmissible.

18. In view thereof, **IA No. 346 (MP) of 2024** in **CP (IB) No. 43 of 2020** is **dismissed and disposed of**. No order as to costs.

Sd/-

**MAN MOHAN GUPTA
(MEMBER TECHNICAL)**

Sd/-

**BRAJENDRA MANI TRIPATHI
(MEMBER JUDICIAL)**

Harsh LRA