

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - I

ITEM No.302

IA/302(AHM)2024 in CP(IB) 305 of 2018

Order under Section 60(5) IBC

IN THE MATTER OF:

Pradeep Kumar Kabra Liquidator of Pacific Pipe Systems
Private Limited
Vs
Employees Provident Fund Organisation

.....Applicant

.....Respondent

Order delivered on 03/05/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH - I
AHMEDABAD**

**IA/302(AHM)2024
in
CP(IB)/305(AHM)2018**

*[An application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016]*

In the matter of:

SHRI PRADEEP KUMAR KABRA

Liquidator of Pacific Pipe Systems Private Limited

Having address at:-

3rd Floor, Reegus Business Centre,
Above Mercedes Showroom,
New City Light Road, Bharthana,
Vasu, Surat – 395 007, Gujarat.

... Applicant

VERSUS

EMPLOYEES PROVIDENT FUND ORGANIZATION

Having address at:-

EPF Regional Office, Near
Income Tax Circle, Ashram
Road, Ahmedabad – 380 014

... Respondent

Order Pronounced on 03.05.2023

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant : Mr. Ravi Pahwa, Advocate

For the Respondent : Mr. Arvindakshan Nair, Advocate

O R D E R

Per: Bench.

1. The present application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 in CP (IB) No. 305 of 2018 seeking the following prayers: -

[A] *That this Hon'ble Tribunal may be pleased to allow the present application, in the interest of justice;*

[B] *That this Hon'ble Tribunal may be pleased to declare that the order dated 05.02.2021 (Annexure-A) passed by respondent u/s. 7A of the EPF Act is against the provisions of IB Code, more particularly Sec. 14 and 33(5) of IB Code, in the interest of justice;*

[C] *That this Hon'ble Tribunal may be pleased to hold and declare that the respondent has right to claim/recover only Rs. 5,19,411/- as admitted by the applicant in accordance with the provisions of IB Code, in the interest of justice;*

[D] *That this Hon'ble Tribunal may be please to grant any ancillary or consequential directions or such other and further reliefs as may be deemed fit and*

proper by this Hon'ble Tribunal, in the interest of justice.

2. It is stated by the applicant that Company Petition was filed by the Bank of India under Section 7 of the IB Code, 2016 against the Corporate Debtor bearing CP (IB) No. 305 of 2018 and this Tribunal vide order dated 18.12.2019 admitted the petition and Mr. Chandra Prakash Jain was appointed as an IRP for the Corporate Debtor. Thereafter, the Applicant was appointed as the Resolution Professional in the first CoC meeting dated 03.02.2020 which was approved by this Tribunal vide order dated 02.03.2020 in IA No. 175 of 2020.
3. It is stated that the respondent submitted its claim of Rs.5,19,411/- during the CIRP on 25.01.2021.
4. It is stated that the Committee of Creditors in the 6th CoC meeting held on 10.09.2020 had resolved by 100% vote to liquidate the Corporate Debtor as CIRP period was going to end on 29.09.2020. Therefore, the Applicant filed an application being IA No. 638 of 2020 for liquidation of the Corporate Debtor. This Tribunal vide order dated

04.11.2020 allow the application and ordered liquidation of the Corporate Debtor.

5. It is stated that the respondent initiated inquiry under Section 7A of the Act against the Corporate Debtor for the period of July, 2010 to December, 2014 in the year 2014. Subsequently on 18.12.2019, the Corporate Debtor was admitted into CIRP. It is further stated that on 03.11.2020, the representative of applicant as the erstwhile Resolution Professional of the Corporate Debtor appeared before the Respondent and informed about the CIRP order and requested to stay the proceedings on the ground that moratorium was imposed by this Tribunal under Section 14 of the Code. Applicant has also produced the copy of the order of CIRP before the Respondent. However, contrary to the provisions of IB Code, more particularly Section 14(1)(a) of IB Code, the respondent continued the proceedings. Applicant submits that in the meantime, liquidation order was passed by this Tribunal on 04.11.2020.
6. It is stated that the respondent then reserved the inquiry for orders on 27.01.2021 and, thereafter, passed the order

dated 05.02.2021 directing the applicant to deposit a sum of Rs.92,94,943/- with the office of respondent. The same is annexed with the application. Thus, after the liquidation order dated 04.11.2020, the proceedings u/s. 7A were concluded vide impugned order dated 27.01.2021. The impugned order dated 05.02.2021 is contrary to Section 14(1)(a) and 33(5) of IB Code, 2016.

7. It is stated that, thereafter, respondent submitted its claim for Rs. 2,89,75,370/- in Form-F on 08.04.2021, though the respondent during the CIRP had submitted its claim for only Rs. 5,19,411/-. The respondent had not submitted any document evidencing calculation of damages and interest, details of contribution of Employee, share and employer's share etc. The applicant, therefore, called upon the respondent to give supporting documents in support of its claim. The same is annexed with the application.
8. It is stated that the respondent has not supplied any documents in support of its claims and, therefore, the applicant admitted the claim of respondent qua Rs. 5,19,411/-.

9. It is stated that being aggrieved by the order dated 05.02.2021, the applicant approached the Hon'ble High Court of Gujarat by filing a writ petition being Special Civil Application No. 17051 of 2021. The Hon'ble High Court vide order dated 17.12.2021 r/w. 23.12.2021 made on speaking to minutes was pleased to direct that there would be no question of recovery. The Hon'ble High Court, thereafter, vide order dated 08.11.2022 stayed the proceedings pending before this Tribunal. The Hon'ble High Court finally vide order dated 02.01.2024 dispose of the petition directing the applicant to file appropriate application before appropriate authority. The same is annexed with the applicant.

10. It is stated that in the above set of facts, the applicant is constrained to approach this Tribunal under Section 60(5) of the IB Code, 2016 on the following grounds:-

a) It is stated that Section 33(5) of the Code is relevant and hence is reproduced herein below:-

“Section 33 : Initiation of liquidation

(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 proceedings may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.”

Thus, from the above provision, it is clear that once the liquidation of the Company commences, no suit or legal proceedings would lie against the Company. In the facts of the present case, the order is passed on 05.02.2021, therefore, is required to be interfered with as it is passed during the course of liquidation.

- b) The order is passed under Section 7A of the EPF Act, Section 7A of the Act reads as under:-

Section 7A : Determination of moneys due from employers

[(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, be order:-

- (a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and*
- (b) determine the amount due from any employer under any provision of this Act, the Scheme or the [***] Pension Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct*

such inquiry as he may deem necessary.]

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:-

- (a) enforcing the attendance of any person or examining him on oath;*
- (b) requiring the discovery and production of documents;*
- (c) receiving evidence on affidavit;*
- (d) issuing commissions for the examination of witnesses; and any such inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196, of the Indian Penal Code, (45 of 1860).*

*(3) No order [***] shall be made under sub-section (1), unless [the employer concerned] is given a reasonable opportunity of representing his case.*

[(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.]

[(4) Where an order made under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show-cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.]]

A bare perusal of Sec.7A would make it clear that the proceedings u/s. 7A are quasi-judicial in nature. They are not mere assessment proceedings. The inquiry u/s. 7A is deemed to be a judicial proceeding within the meaning of Sec. 193 and 228 of the Indian Penal Code. Therefore, the proceedings which have severe repercussions are not allowed during the process of liquidation.

- c) The paragraph explains that the order itself mentions a consequence for the Employer. If they don't pay the

amount decided by the Authority, it will be recovered following a specific process outlined in the EPF Act (sections 8A to 8G).

Thus, it is clear that the proceedings u/s. 7A of the Act being quasi-judicial in nature are in complete contravention of Section 33(5) of the IB Code, 2016. Section 33(5) overrides the provisions of Section 7A of EPF Act.

d) As demonstrated in the facts above, the respondent continued the proceedings u/s. 7A even after the Corporate Debtor was admitted into CIRP on 18.12.2019 and the said fact was brought to the notice of respondent authority. Sec. 14(1)(a) of IB Code prohibits continuation of any suit or proceedings. The proceedings u/s. 7A being quasi-judicial in nature therefore could not have been continued. The proceedings u/s. 7A were concluded on 5.2.2021 which is much after the order of liquidation passed on 4.11.2020. The impugned order dated 27.1.2021 is thus contrary to Sec. 14(1)(a) and 33(5) of IB Code.

- e) That the notes on clauses appended to the Statement of objects and reasons of IB Code clearly show that the intent of legislature behind enactment of Sec.33 (5) was to provide moratorium on the initiation and continuation of any suit or legal proceedings by or against the Corporate Debtor. The impugned order however is passed in contravention of scheme of IB Code and Sec.33 (5) of the IB Code.
- f) That even otherwise, to the best of the knowledge of applicant, there is no separate account for provident fund maintained by the Corporate Debtor with the respondent department for its employees. Therefore, as per settled law, the applicant being liquidator is not liable to pay any amount towards provident fund to the employees of Corporate Debtor.

11. Certain Reliefs were sought by the Applicant against which the Reply was filed on 12.03.2024 under Inward Diary No. D2173 by the Respondent which reproduced as under:

- a) It is submitted that the present application, under Section 60(5) of the IBC, for seeking a declaration that the order dated 05/02/2021 passed under Section 7A of the EPF Act is de-horse the Section 14 and Section 33(5) of the IB Code, is

misconceived and fallacious in the facts of the present case, and legally not tenable in light of the Judgment of the Hon'ble Supreme Court in the case of S. V. Kondaskar V/s. V. M. Deshpande reported in AIR 1972 SC 878, which was followed by the Hon'ble Supreme Court in the case of Sundaresh Bhatt, Liquidator of ABG Shipyard V/s. Central-Board of Indirect Taxes and Customs reported in (2022) ibclaw.in 103 SC and the same have been followed by the Hon'ble High Court of Kerela in the case of Kerela State GST Department V/s. NCLT & others reported in (2024) ibclaw.in 85HC, while considering the provisions of Moratorium under Section 14 and 33(5) of the IB Code, holding that Moratorium under Section 14 or 33(5) of the IB Code is not a bar for determination of quantum of dues or taxes or other levies, if any against the Corporate debtor, and the embargo of Moratorium is only against its enforcement.

- b) It is submitted that the applicant herein has materially suppressed the true and correct facts, and attempted to mislead the Hon'ble Adjudicating Authority (NCLT) by placing incomplete facts. Accordingly, the true and correct facts in brief are annexed with the reply with list of dates and events.
- c) It is submitted that from the events stated hereinabove, it is evident that the applicant/ Liquidator herein has been delaying the adjudication of the IA No. 806 of 2021, wherein his action of partially rejecting the claim of Provident fund dues to the tune of Rs. 2,89,75,370/- is under challenge, by first filing the writ application, on the grounds which are not germane to the facts of the present case. In this regard, it is submitted that in absence of any challenge to the order dated 05/02/2021 passed under Section 7A of the EPF Act by way of statutory appeal under Section 7-1 of

the EPF Act before the Competent Appellate Tribunal, the Liquidator herein is bound to disburse the claimed amount, in light of Section 36(4)(a)(iii) of the IB Code read with Section 11 of the EPF Act. Thus, considering the limited scope of Section 60(5) of the IB Code visa-vis the facts stated hereinabove, the present application is devoid of any merits, and accordingly the same may kindly be dismissed with heavy cost.

d) It is submitted that now needs to respond to the contents of the present application para-wise which is as under:-

i) It is stated that, in response to the factual contents of sub-Para No. (2), (6) and 7 of the present application, it is incorrect to state that the Respondent herein had submitted its claim of Rs.5,19,411/- only on 25.01.2021, but in fact the same was initially submitted on 12.02.2020 during the CIRP, as per the recovery Section, based on orders dated 11.05.2015 and 17.11.2017 under Section 14B and 7Q for the default periods 20.09.2008 to 28.02.2014 and 01.03.2014 to 31.01.2017. It is further stated that upon the commencement of the liquidation process w.e.f. 04.11.2020 and upon conclusion of the impugned inquiry under Section 7A of the EPF Act vide order dated 05.02.2021, the office of the Respondent herein had submitted the fresh claim to the tune of Rs.2,89,75,370/- which included Rs.5,19,411/- (As per recovery certificates prior to 2018), Rs.92,94,943/- (as determined under Section 7A vide order dated 05.02.2021), and Rs.1,91,61,016/- (including Rs.92,88,940/- under Section 14B towards tentative damages and Rs.98,72,076/- under Section 7Q toward tentative interest, for the default period from 07/2010 to 06/2015, before the applicant/liquidator herein on

08.04.2021, who had rejected the said claim on the ground of delay vide communication dated 28.04.2021, constraining the respondent herein to approach this Tribunal, vide I. A. No. 494 of 2021, which came to be allowed vide order dated 27.07.2021, with a direction to the liquidator to consider the claim as per law. Thereafter, upon resubmission of the Claim Form with the requisite documents on 05.08.2021 by the Respondent herein, the applicant/liquidator had partially admitted the claim of the respondent to the tune of Rs.5,19,411/-, vide communication dated 12.10.2021, and rejecting the rest of the claimed amount on the ground of impugned order herein being during the moratorium under Section 33(5) of the IB Code, against which the respondent herein had preferred the IA No. 806 of 2021, which is pending adjudication before this Tribunal.

- ii) It is stated in response to the factual averments in para-8 of the application, it is submitted that the same are concerning the proceedings before the Hon'ble High Court, which are not in serious dispute and accordingly the same do not call for any special comments from the answering-deponent.
- iii) It is stated in response to the ground raised in sub-para-(9) of the present application, it is submitted that the same are non-germane to the facts of the present case, misconceived and frivolous, and accordingly liable to be discarded, in light of the precedents of the Hon'ble Supreme Court of India and the Hon'ble High Court of Kerala referred hereinabove.
- iv) It is further stated that the attempt of the applicant to place reliance on the Notes on clauses to the Statement of Object and

reasons of the IB Code to read into the word “Continuation” in Section 33(5) of the IB Code, is highly misplaced and the same is even beyond the scope of jurisdiction vested under Section 60(5) of the IB Code. Even other in light of the Judgment of the Hon’ble Supreme Court in the case of Bhaiji V/s. Sub-Divisional Officer, Thandla reported in 2003 (1) SCC 692, the word “continuation” cannot be read into Section 33(5) of IB Code, on the basis of notes on Clause 33(5) in the statement of objects and reasons, as the provision is evidently clear and does not lead to any patent injustice, anomaly or invalidation of law.

12. In response to the reply the applicant has filed rejoinder on 19.04.2024 vide Inward Diary No. D3362 in which it is stated as under:-

- a) With reference to para 4, it is submitted that the judgment cited by the respondent in this paragraph are not applicable to the facts of present case. I reiterate that the order u/s. 7A of the EPF Act is in contravention to Sec.14 and Sec.33(5) of the IB Code. It is submitted that as per various judgments rendered by Hon’ble High Courts, Hon’ble National Company Law Appellate Tribunal and Hon’ble NCLTs, the proceedings u/s 7A of EPF Act are quasi-judicial in nature. It is submitted that the order dated 05.02.2022 passed u/s. 7A not only determined the amount but also directed the applicant to deposit a sum of Rs.92,93,943/- with the office of respondent, failing which, it was stated that the same will be recovered as per Sec. 8(B)B to 8(G) of the EPF Act. The said order, therefore, is in contravention to Sec.14 and Sec.33(5) of the IB Code. It is further submitted that during the moratorium period, the Resolution Professional had duly appraised the respondent

Authority about the moratorium. However, the Respondent in contravention to the provisions of IB Code, continued with the proceedings and passed the impugned order.

- b) With reference to para 5, it is submitted that the applicant has materially suppressed the true and correct facts. I deny that the applicant has attempted to mislead the NCLT by placing incomplete facts.
- c) With reference to Para 6, it is submitted that the applicant/Liquidator has been delaying the adjudication of IA 806 of 2021. I deny that in absence of any challenge to order dated 05.02.2021 passed u/s. 7A of EPF Act by way of statutory appeal u/s. 7-1 of the EPF Act before the competent Appellate Tribunal, the Liquidator is bound to disburse the claim amount in light of Sec.36(4)(a)(iii) of IB Code r/w. Sec.11 of the EPF Act. I deny that considering the limited scope of Sec.60(5) of the IB Code, the present application is devoid of any merits and accordingly, the same may be dismissed with heavy costs. It is further submitted that as per settled law laid down by various Hon'ble NCLTs and Hon'ble NCLATS, the present application is maintainable as the order dated 05.02.2021 passed u/s. 7A of EPF Act is in contravention of provisions of IB Code.
- d) With reference to Para 7.3, it is submitted that the applicant vide letter dated 28.04.2021 rejected part claim of respondent by recording detailed reasons and after considering various provisions of IBC and concerned Regulations. The same is annexed at **Annexure-F1**.
- e) With reference to Para 7.4 and 7.5, I reiterate what is stated in the application, more particularly that there is violation of moratorium u/s. 14 and 33(5) of the IB Code.

- f) With reference to Para 7.6, I reiterate what is stated in the application and hereinabove, it is submitted that the judgments of the Hon'ble Supreme Court and Hon'ble High Court of Kerala referred by the respondent are misconceived and not applicable to the facts of present case.
- g) With reference to Para 7.7, I deny that the applicant's reliance on the notes on Clauses to the statement of object and reasons of the IB Code to read into the word "continuation" in Section 33(5) of the IB Code is highly misplaced and the same is beyond the scope of jurisdiction vested u/s. 60(5) of the IB Code. I deny that in light of judgment of the Hon'ble Supreme Court in the case of Bhaiji vs. Sub-Divisional Officer Thandala, the word "continuation" cannot be read into section 33(5) of the IB Code.

13. We have heard the learned counsels for the Applicant and respondent and have perused the documents placed before us. The observation of this Tribunal are as follows:

- 1) The liquidation of the Corporate Debtor was ordered on 04.11.2020.
- 2) The order under Section 7A of the Code was passed on 05.02.2021 post the date of the liquidation order.
- 3) Regulation 12 of IBBI (Liquidation Process) Regulations, 2016 is reproduced below:

12. Public announcement by liquidator.

(1) *The liquidator shall make a public announcement in Form B of Schedule II within five days from his appointment.*

(2) 10[*The public announcement shall-*

(a) *call upon stakeholders to submit their claims or update their claims submitted during the corporate insolvency resolution process, **as on the liquidation commencement date**; and*

(b) *provide the last date for submission or updation of claims, which shall be thirty days from the liquidation commencement date.]*

(3) *The announcement shall be published-*

(a) *in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations;*

(b) *on the website, if any, of the corporate debtor; and*

(c) *on the website, if any, designated by the Board for this purpose.*

4) Proof of claim by the Operational Creditor is to be submitted in Form-C which is reproduced below:-

FORM C

PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN AND EMPLOYEES

(Under Regulation 17 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016)

[Date]

To

The Liquidator

[Name of the Liquidator]

[Address as set out in the public announcement]

From

[Name and address of the operational creditor]

Subject: Submission of proof of claim in respect of the liquidation of [name of corporate debtor] under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

[Name of the operational creditor] hereby submits this proof of claim in respect of the liquidation of [name of corporate debtor]. The details for the same are set out below:

1.	NAME OF OPERATIONAL CREDITOR (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION, IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	
2.	ADDRESS OF OPERATIONAL CREDITOR FOR CORRESPONDENCE	
3.	TOTAL AMOUNT OF CLAIM, INCLUDING ANY INTEREST, AS AT LIQUIDATION COMMENCEMENT DATE AND DETAILS OF NATURE OF CLAIM	PRINCIPAL : INTEREST : TOTAL CLAIM :

4.	DETAILS OF DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED	
5.	DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OF SUIT OR ARBITRATION PROCEEDINGS	
6.	DETAILS OF HOW AND WHEN DEBT INCURRED	
7.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE DEBTOR AND THE OPERATIONAL CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM	
8.	DETAILS OF ANY RETENTION OF TITLE IN RESPECT OF GOODS OR PROPERTIES TO WHICH THE DEBT REFERS OR ANY OTHER SECURITY	
¹⁰⁷ [8A]	WHETHER SECURITY INTEREST RELINQUISHED	Yes/ No]
9.	DETAILS OF ANY ASSIGNMENT OR TRANSFER OF DEBT IN HIS FAVOUR	
10.	DETAILS OF THE BANK ACCOUNT TO WHICH THE OPERATIONAL CREDITOR'S SHARE OF THE PROCEEDS OF LIQUIDATION CAN BE TRANSFERRED	
11.	LIST OUT AND ATTACH THE DOCUMENTS RELIED ON IN SUPPORT OF THE CLAIM.	(i) (ii) (iii)

Signature of operational creditor or person authorised to act on his behalf (Please enclose the authority if this is being submitted on behalf of the operational creditor)
Name in BLOCK LETTERS
Position with or in relation to creditor

Address of person signing

*PAN, Passport, AADHAAR Card or the identity card issued by the Election Commission of India.

AFFIDAVIT

I, [*name of deponent*], currently residing at [*address of deponent*], do solemnly affirm and state as follows:

1. The above named corporate debtor was, at liquidation commencement date, that is, the _____ day of _____ 20____ and still is, justly and truly indebted to me [or to me and [*insert name of co-partners*], my co-partners in trade, or, as the case may be] in the sum of Rs. _____ for _____ [*please state consideration*].
2. In respect of my claim of the said sum or any part thereof, I have relied on and the documents specified below:
[*Please list the documents relied on as evidence of debt.*]
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief.
4. In respect of the said sum or any part thereof, I have not, nor have my partners or any of them, nor has any person, by my/our order, to my/our knowledge or belief, for my/our use, had or received any manner of satisfaction or security whatsoever, save and except the following:

[*Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the operational creditor which may be set-off against the claim.*]

Solemnly, affirmed at _____ on _____ day, the _____ day of _____ 20_____

Before me,

Notary / Oath Commissioner

Deponent's signature

VERIFICATION

I, the Deponent hereinabove, do hereby verify and affirm that the contents of para ___ to ___ of this affidavit are true and correct to my knowledge and belief. Nothing is false and nothing material has been concealed therefrom.

Verified at _____ on this _____ day of _____ 201_____

Deponent's signature

5) Point No. 3 of Form- C, states that:-

THE TOTAL AMOUNT OF CLAIM INCLUDING ANY INTEREST, AS AT LIQUIDATION COMMENCEMENT DATE AND DETAILS OF NATURE OF CLAIM	PRINCIPAL : INTEREST : TOTAL CLAIM :
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6) As determination under 7A of the EPF Act was done on 05.02.2021 (Annexure-A) is post the liquidation commencement date which is against the provisions of IB Code, more particularly Section 14(1)(a) and 33(5) of IB Code, 2016.

7) Hence, we are of the view that claim of Rs.2,89,75,370/- submitted in Form-F on 08.04.2021 by the Respondent cannot be admitted under the Liquidation Process Regulations and in our view the Respondent has right to claim/recover only Rs.5,19,411/- as admitted by the Applicant in accordance with the provisions of IB Code.

8) With the above directions, we hereby dispose of this application.

9) A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-
SHAMMI KHAN
MEMBER (JUDICIAL)

SK