



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

**IA(IBC)/127/KOB/2023**

**IN**

**IBA/258/CB/2019**

*(Under Section 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016)*

*In the matter of: M/s. Excel Glass Limited*

**REGIONAL PROVIDENT FUND COMMISSIONER**, Employee Provident Fund Organisation (Ministry of Labour and Employment, Government of India), Regional Office, Bhavishya Nidhi Bhawan, Kaloor, Kochi – 682 017;

**...Applicant**

**-Versus-**

1. **EXCEL GLASS LIMITED** (Under Liquidation), Represented by Liquidator, Shri Ravindra Chaturvedi, Udaya Nagarpathirapally P O, Alleppey, Kerala – 688 521;
2. **Shri. RAVINDRA CHATURVEDI**, Liquidator, BKC Centre, 31-E, Laxmi Industrial Estate, New Link Road, Andheri (West), Mumbai – 400 053.

**... Respondents**

**Coram:**

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

**Appearances (through video conferencing)**

For Applicant's : Mr. John Mani V, Advocate

For Respondents : Mr. Akhil Suresh, Advocate  
Mr. Ravindra Chaturvedi,  
Liquidator

**Order reserved on: 06.07.2023  
Order pronounced on: 02.08.2023**

**ORDER**

This application is filed under Section 60(5) (c) of the Insolvency & Bankruptcy Code, 2016 by Regional Provident Fund Commissioner, EPFO,



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH

IA(IBC)/127/KOB/2023 IN IBA/258/CB/2019

*In re M/s. Regional Provident Fund Commissioner (Compliance), Employee Provident Fund Vs. M/s. Excel Glass Limited (Under Liquidation) and another*

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Kochi against the corporate debtor and its Liquidator seeking the following reliefs:

- a. *To set aside the Annexure A10 issued by the 2<sup>nd</sup> Respondent dated 16/08/2022 rejecting the claim of the Applicant*
- b. *To direct the 2<sup>nd</sup> Respondent to pay off the entire claim amount of Rs. 19,06,277/- (Rupees Nineteen Lakhs Six Thousand Two Hundred and Seventy-Seven Only) on first priority from and out of the liquidation assets/estate of the Respondents*
- c. *To direct the 2<sup>nd</sup> Respondent to accept the claim of the Applicant:*
- d. *To direct the Respondents for the payment of cost thereof.*

1. The Corporate Debtor, M/s. Excel Glass Limited (hereinafter referred to as CD) was admitted into CIRP by NCLT Chennai bench *vide* order dated 26.03.2019 and subsequently put to liquidation by this bench *vide* order dated 21.10.2019. Thereby, Mr. Ravindra Chaturvedi, RP was appointed as liquidator. The liquidator made public announcement of liquidation on 24.10.2019 inviting claims to be submitted by 20.11.2019.
2. The applicant states that it is a statutory body and by virtue of section 6, 6A, and 6C of the EPF & MP Act (hereinafter referred to as “EPF Act”) read with EPF and Pension Scheme, the CD is liable to make contributions to the PF without delay and in event of default shall be liable for penal damages. It is stated that the CD committed default in making PF contributions and recovery certificates were issued on 09.09.2015 and 13.05.2020, for damages including interests for period 03/2010 to 09/2011, and 12/1997 to 12/2018 respectively, under section 14B and Section 7Q of EPF Act. It is stated that inquiry proceedings were initiated and summons issued to CD on 22.05.2019 owing to belated remittance of PF contribution for period of 12/1997 to 02/2010 and 01.04.2014 to 31.12.2018. Even though a representative of CD appeared for hearing on 16.07.2019, no reply or cause was shown against the proceedings in



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH

IA(IBC)/127/KOB/2023 IN IBA/258/CB/2019

*In re M/s. Regional Provident Fund Commissioner (Compliance), Employee Provident Fund Vs. M/s. Excel Glass Limited (Under Liquidation) and another*

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consequence, the CD was directed to pay sum of Rs. 9,50,649/- and Rs. 5,93,318/- towards damages and interest to the EPFO.

3. Meanwhile on 02.07.2019, the applicant received notice of CIRP, and thereafter applicant submitted the Annexure A5, CIRP claim in Form B for an amount of Rs. 19,05,030/- based on aforesaid recovery certificates for damages and interests under EPF Act. It is stated that the liquidator/erstwhile RP has not rejected the claim so far. Further, it is stated that the enforcement officer under EPF Act, conducted an inspection on 24.01.2020 and reported *vide* Annexure A8 that the CD has not remitted PF dues for period of January 2019 to December 2019. It is stated that the liquidator has filed the list of stakeholders which includes claims from workmen to the tune of Rs.5,44,59,509/- which was taken on record by this Tribunal on 10.08.2020.
4. The applicant states that the EPFO on 13.10.2020 determined the dues under section 7A of EPF Act to the tune of Rs.900/- for period of January 2019 to December 2019. It is stated that the liquidator had appeared in the VC hearing did not raise any dispute and the sum of Rs. 900/- was paid by the liquidator on 20.02.2022. It is stated that the liquidator has disregarded the previous claims of the EPFO and in response to recovery measures, he had replied *vide* Annexure A10 that the CD is under liquidation and all the claims were already received and processed and list filed before this Tribunal and further that the claim of EPFO has not been received. The applicant states that the contention of liquidator is incorrect and claim of EPFO is submitted *vide* Annexure A5 to the liquidator. It is stated that the applicant further issued letters to liquidator on 22.08.2022 and 16.12.2022 claiming amount of Rs.19,06,277/- including earlier claim in Annexure A5 also stating that the dues need to be settled as the same falls outside the purview of liquidation estate as per section 36(4)(iii). The applicant states that as per section 36(4)(iii) the amount due to workmen or employee from PF and gratuity fund falls outside liquidation estate and is to be settled from the assets of CD before distribution of assets to stakeholders under



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH

IA(IBC)/127/KOB/2023 IN IBA/258/CB/2019

*In re M/s. Regional Provident Fund Commissioner (Compliance), Exployee Provident Fund Vs. M/s. Excel Glass Limited (Under Liquidation) and another*

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section 53 IBC. The applicant states that in spite of raising the claim *vide* Annexure A5 and correspondence letters, the liquidator failed to reject the same. It is contended that the applicant submitted the claim on time and only *vide* Annexure A10 letter the liquidator informed the position of claims. It is further stated that the liquidator despite participating in the proceedings of EPFO and being served show cause notice before liquidation proceedings failed to follow the statutory provisions of EPF Act. It is further stated that the EPFO has first charge over assets of CD/ liquidation estate as per section 11 of EPF Act. The applicant also attacks the conduct of the liquidator by invoking section 17 and 18 IBC, which state the duties of IRP and his responsibility to comply with all laws in force. It is stated that the liquidator/RP was duty bound to check and settle the claims of EPFO under law and failed to comply the same.

5. On respondent side, it is stated that the application is not maintainable. R2 states that the applicant EPFO has not filed their claim after initiation of liquidation as liquidation makes fresh cause of action which requires the claimant to file claim again once filed during CIRP or not. The only claim filed by the EPFO was Annexure A5 claim in Form B on 14.08.2019 was during the CIRP. Thereafter the liquidation order was passed on 21.10.2019 and a public announcement in newspapers were made on 24.10.2019. It is stated that the liquidator *vide* Annexure A10 has not rejected or accepted the claim of the applicant as he has not filed any valid claims in liquidation. Even if it assumed that Annexure A10 communication issued on 16.08.2022 is a rejection of claim in liquidation, the same had to be appealed before this Tribunal within 14 days as per section 42 of IBC or in this instant case by condoning a delay of 196 days.
6. It is further contended by the liquidator that the claim which is impugned arises out of the order dated 30.07.2019 under section 14B of EPF Act which was passed during the moratorium period in CIRP and also without giving opportunity to CD to defend. It is further stated that the applicant having participated in CIRP should have submitted his claim in liquidation. The



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH

IA(IBC)/127/KOB/2023 IN IBA/258/CB/2019

*In re M/s. Regional Provident Fund Commissioner (Compliance), Employee Provident Fund Vs. M/s. Excel Glass Limited (Under Liquidation) and another*

liquidator state that the stand taken by the applicant that the sum of Rs. 9,50,649 and Rs. 5,93,318 being damages and interest under section 14b and 7q of EPF Act cannot be regarded as coming under section 36(4)(iii) of the IBC, i.e outside purview of liquidation estate. It is stated that the exclusion in the section is provided for sums due to any workmen or employee from the PF, Pension and Gratuity Fund and the said claim of EPFO cannot be regarded as sum due to workmen or employee but only in nature of penalty and damages charged by EPFO due to delay in remittance of PF dues and shall in no way go into the accounts of workmen or employees. The liquidator states that the benefit under this section is for employees/workmen and cannot be passed to EPFO which is a statutory body. It is hence contended that the sum dues payable to PF, pension or gratuity out of liquidation proceeds shall not be exempted as per section 36(4) and the same cannot be settled as outside the liquidation estate. The liquidator further state that the amount to be excluded from the liquidation estate are only those amounts which company retains in a separate account for purpose of PF contributions from the employer/employee under section 16A of EPF Act.

7. Finally, with regard to applicant's contention that the EPFO dues are to be settled in priority to other debts, it is stated that the IBC as per section 238 has overriding effect over EPF Act and the provisions of EPF Act cannot be given weightage. It is further stated by the liquidator that he had in fact paid the dues assessed for period January 2019 to December 2019 i.e., Rs.900/- to EPFO on 23.03.2021 despite same being adjudicated during moratorium period only to buy peace. It is stated that the EPFO were aware of the liquidation proceedings and had communicated the fact that the liquidation claims were not received *vide* Annexure R-2(a)(Colly) communications on various dates.

**8. The points for consideration are:**

(1) Whether Annexure A10 letter dated 16.08.2022 can be construed as a claim rejection order of the 2<sup>nd</sup> respondent?



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH

IA(IBC)/127/KOB/2023 IN IBA/258/CB/2019

*In re M/s. Regional Provident Fund Commissioner (Compliance), Employee Provident Fund Vs. M/s. Excel Glass Limited (Under Liquidation) and another*

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- (2) Whether the Recovery certificates Annexures A3 & A4 dated 30.07.2019 are valid in law?
- (3) Whether the claim amount of Rs.19,05,030/-Claimed in Annexure A5 is to be excluded from the liquidation estate under section 36(4)(a)(iii) of IBC 2016?
9. **Point No.1:** The corporate debtor was admitted into CIRP on 26.03.2019, the second respondent was appointed as IRP then as RP. The applicant filed its claim on 20.08.2019 (Annexure A5) subsequently liquidation order was passed against the 1<sup>st</sup> respondent/corporate debtor on 21.10.2019, the second respondent was appointed as liquidator, claims were invited by the liquidator but no claim was submitted by the applicant after the order of liquidation. Rule 16 IBBI of (Liquidation process) Regulation 2016, makes it clear that even if the claim is filed during the CIRP period, the same shall be updated but admittedly no claim is filed by the applicant after the order of liquidation or updated the claim submitted during CIRP period.
10. On the applicant side relies upon Annexure A5 this is the claim submitted by the applicant during the CIRP period. Thus, it is made clear no claim has been presented by the applicant during the liquidation proceeding and the applicant also taken a stand that there is no need to file any claim, if this is the stand of the applicant then the question of rejection of claim does not arise at all. Annexure A10 is the letter dated 16.08.2022 addressed by the second respondent to applicant informing that no claim of EPFO was received, in the letter the second respondent given the details of the liquidation order and claims received by him and approval of list by this Authority. The applicant also has not filed this application under section 42 of IBC 2016, the specific provision available in IBC 2016 to prefer an appeal against the rejection of claim order, but this application is filed under the residuary provision of section 60(5) of IBC 2016. In the scenario the contention of the applicant that Annexure A10 is a rejection order, the same shall be set aside is unsustainable.



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH

IA(IBC)/127/KOB/2023 IN IBA/258/CB/2019

*In re M/s. Regional Provident Fund Commissioner (Compliance), Employee Provident Fund Vs. M/s. Excel Glass Limited (Under Liquidation) and another*

11. **Point No.2:** The applicant claims a sum of Rs.19,05,030/- under Annexure 5 on the basis of three recovery certificate as follows:
- (i) Recovery certificate dated 09.09.2015 for a sum of Rs.4,11,063/- (Rs.1,57,588/- under section 7Q and a sum of Rs.2,53,475/- under section 14B of EPF Act 1952) /-
  - (ii) Recovery certificate dated 30.07.2019 under section 14B of EPF Act 1952 for a sum of Rs.9,50,649/-
  - (iii) Recovery certificate dated 30.07.2019 under section 7Q of EPF Act 1952 for a sum of Rs.5,93,318/-
12. The first respondent corporate debtor was admitted into CIRP on 26.03.2019, the moratorium was declared and came into effect on the same day under section 14 of IBC 2016. Under section 14(1)(a) of IBC 2016 institution or continuation of proceeding against the corporate debtor by any authority is prohibited. In this case, the applicant initiated the proceeding under section 14B and 7Q of EPF Act 1952 after the corporate debtor admitted into CIRP, the fact that the corporate debtor was admitted into CIRP was informed to the applicant by the second respondent in his letter dated 02.07.2019 forwarding the copy of the CIRP order. The applicant even after the receipt of the CIRP order, continued the proceeding and passed the order on 24.07.2019 and issued Recovery certificates dated 30.07.2019. The Apex court in **Sundaresh Bhatt Liquidator of ABG shipyard vs Central Board of Indirect Taxes and Customs 2022 Live Law (SC) 715**. observed as follows:

*44. Therefore this Court 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.*



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH

IA(IBC)/127/KOB/2023 IN IBA/258/CB/2019

*In re M/s. Regional Provident Fund Commissioner (Compliance), Employee Provident Fund Vs. M/s. Excel Glass Limited (Under Liquidation) and another*

---

13. In the supra citation the Apex court observed that the customs authorities under the Customs Act during the period of moratorium can only take steps to determine the tax, interest, fine or any penalty which is due. However, the authority cannot transgress such boundary and proceed to initiate a recovery in violation of section 14 or 33(5) of IBC, 2016. The above citation squarely applicable to this case.
14. The applicant knowingly flouted the moratorium order and proceeded with the proceedings under sections 7Q and 14B of the Employees provident funds and Miscellaneous Provisions Act 1952, thus committed an offence punishable under section 74(2) of IBC, 2016. This section is criminal in nature falls under Chapter VII under the heading Offences and Penalties, under section 236 (1) of IBC, 2016 special court alone have jurisdiction. Further under section 236 (2) of IBC, 2016 cognizance of the offence can be taken only on the compliant of IBBI or Central Government. Hence the 2<sup>nd</sup> respondent is granted liberty to approach the IBBI to proceed against the applicant's erred officials in this regard.
15. For the reasons stated above it is declared that the recovery certificates dated 30.07.2019 are invalid and Void ab initio.
16. **Point No.3:** On the applicant side submitted that the applicant need not file any claim request because the amount payable to the workmen and employee is excluded from the liquidation estate as provided under section 36(4)(a)(iii) of IBC 2016. As already held that the claim in respect of recovery certificates dated 30.07.2019 are void, in respect of claim in pursuance of the recovery certificate dated 09.09.2015 no claim has been filed. In respect of applicability of section 36(4)(a)(iii) of IBC 2016 is concern it is applicable only if the separate fund kept under section 16A of EPF Act 1952, this position is clarified by NCLAT in *Parameshwara Udpa R.P. Vs. Assistant PF Commissioner Company Appeal (AT)(CH) N0.231 of 2021 dated 23.09.2022* held as follows:



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH

IA(IBC)/127/KOB/2023 IN IBA/258/CB/2019

*In re M/s. Regional Provident Fund Commissioner (Compliance), Employee Provident Fund Vs. M/s. Excel Glass Limited (Under Liquidation) and another*

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*Therefore, taking benefit of the ratio of above discussions in 'Godiwala Case', this 'Tribunal' answers the aforesaid issue in the negative. Therefore, the 'Resolution Professional' is not duty bound to make adequate provisions for 'Provident Fund' when the 'Corporate Debtor' did not have separate 'Provident Fund Account'. It is again reiterated that the 'Resolution Company Appeal (AT) (CH) (Ins) No. 231 of 2021 21 of 22 Professional' has to deal with the 'Claims', if any, on this 'account', in terms of Section 53 of the I & B Code 2016, if warranted, and provided as per 'Law'.*

17. The amount payable to the workmen or employee has protection under section 36(4)(a)(iii) of IBC 2016, but the same cannot be extended to the interest and damages covered under sections 7Q and 14B of the Employees Provident Funds and Miscellaneous Provisions Act 1952, The applicant here claims a sum of Rs.19,05,030/- towards penalty and damages under sections 7Q and 14B of EPF Act 1952 these are the amount payable to the applicant department/organization, will not be paid to the workmen or employees hence this interest and damages comes under Government dues as defined under section 53 (1) (e) (i) of IBC 2016. The NCLT-Bengaluru in **Shri Addanki Haresh Liquidator vs Recovery Officer, Employees Provident Fund organization**, I.A.No.232 of 2022 in C.P.(IB) No.320/BB/2019 dated 20.07.2023, **(2023) ibclaw.in 385** held that the damages levied by Respondent Organization under Section 14B of the EPF & MP Act 1952 which are dues of Government and will be paid in order of priority under Section 53 of IBC, 2016. In our case entire claim amount of Rs.19,05,030/- is covered under sections 7Q & 14B of the Employees Provident Funds and Miscellaneous Provisions Act 1952, payable to the organization hence section 36(4)(a)(iii) of IBC 2016 is not applicable, the same cannot be excluded from the liquidation estate.



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH

IA(IBC)/127/KOB/2023 IN IBA/258/CB/2019

*In re M/s. Regional Provident Fund Commissioner (Compliance), Employee Provident Fund Vs. M/s. Excel Glass Limited (Under Liquidation) and another*

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18. In view of the answers arrived to the points, in consequence, this application is **Dismissed.**
19. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.
20. Let the certified copy of the order be issued upon compliance with requisite formalities.
21. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD  
Date: 2023.08.02 14:41:18 +05'30'

**Satya Ranjan Prasad**  
**Member (Technical)**

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN RAJ  
Date: 2023.08.02 15:51:38 +05'30'

**P. Mohan Raj**  
**Member (Judicial)**

Signed on this the 2<sup>nd</sup> day of August, 2023.

*Rohit/Supriya\_P.S*