

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 840 of 2023 &
I.A. No. 2662, 2856, 2858 of 2023

(Arising out of the Order dated 06.03.2023 passed by the National Company Law Tribunal, Chandigarh Bench, in Company Petition. CP(IB) No. 93/chd/Hry/2018)

Regional P.F. Commissioner,

Employees' Provident Fund Organisation Through
Shri Udaya Gupta, RPFC (Legal) Regional Office,
Sector - 15A Faridabad, Haryana -121007

Email :- ro.faridabad@epfindia.gov.in

...Appellant

Versus

1. Mr. Vipul Garg,

Liquidator Representing through Corporate Debtor
Mis Jai Laxmi Lighting Industries Pvt. Ltd. With its
registered address at, 74, Sector-13, Kamal (Haryana)
Email ID:- vipul_ ca@rediffmail.com

...Respondent No. 1

2. Canara Bank Mid Corporate Branch,

8A, First Floor, Nehru Ground,
Faridabad—(HR)-121001

Mail: cb5059@canarabank.com

And also at –

Canara bank Arm Branch

Novelty Road, Karnal (HR)- 132001.

Mail: cb6290@canarabank.com

...Respondent No. 2

Present

For Appellants:

Mr. Braja Bandhu Pradhan, Advocate

For Respondent:

Mr. Ashwani Sharma, Advocate for R-1

**Mr. PBA Srinivasan, Mr. Barnali Paul &
Mr. Rajshree Dhapola, Advocate for R-2**

J U D G E M E N T

(24.04.2026)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e., Regional P.F. Commissioner, Employees' Provident Fund Organisation Through Shri Udaya Gupta, RPFC (Legal) under Section 61 of the Insolvency and Bankruptcy Code, 2016 (“Code”) against the Impugned Order dated 06.03.2023 passed by National Company Law Tribunal, Chandigarh Bench, Chandigarh, Haryana (“Adjudicating Authority”) in Company Petition (IB) NO. 93/CHD/HRY/2018.

Mr. Vipul Garg, who is the Liquidator of the Corporate Debtor M/s Jai Laxmi Lighting Industries Pvt. Ltd. is the Respondent No.1 herein.

Canara Bank, who is the financial creditor of the Corporate Debtor, is the Respondent No.2 herein.

2. The appellant stated that the Corporate Debtor was covered under the The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act,), with code no. HRFRD12517. The appellant submitted that on 02.04.2019, the EPFO Regional Office, Faridabad filed Form-B claiming Rs. 36,55,290/- before the Resolution Professional toward EPF dues which accrued from 05/2012, well before the CIRP period. The appellant further stated that several letters were thereafter sent to the Resolution Professional requesting payment of PF dues relating to the employees of the corporate debtor.

3. The appellant stated that on 11.11.2021, the Resolution Professional informed the appellant that its share had been calculated pari passu with financial creditors and came to Rs. 6,014/-, which, according to the appellant, is incorrect because the protection under Section 36(4)(a)(iii) of the Code was ignored. The appellant submitted that PF dues cannot be included in the liquidation estate or used for recovery in liquidation. The appellant also stated that on 02.12.2022, it submitted another letter claiming EPF dues as per assessment order for the period 04/2015 to 12/2015 amounting to Rs. 12,63,622/-, but received no response from the Resolution Professional.

4. The appellant submitted that only on 25.03.2023, it received an email from the Resolution Professional enclosing the order dated 06.03.2023 for dissolution of the company, and from that communication it learnt that only the amount of Rs. 6,014/- had been considered from the original claim filed before the IRP.

5. The appellant contended that the Adjudicating Authority failed to appreciate the welfare object of the EPF Act, and the settled legal position that provident fund dues enjoy priority over other debts. The appellant submitted that Section 11 of the EPF Act creates a first charge over the employer's assets for PF-related liabilities, including contributions, damages, interest, and other statutory dues. The appellant further stated that this priority is not displaced by the waterfall mechanism under Section 53 of the Code.

6. The appellant contended that the Adjudicating Authority failed to appreciate that provident fund dues are not to be treated as ordinary liquidation

claims and are to be paid outside the liquidation estate itself. The appellant stated that the Resolution Professional was duty-bound to place the correct position before the Adjudicating Authority rather than present the claim as limited to Rs. 1,42,463/- or Rs. 6,014/-.

7. The Appellant further submitted that Section 36(4)(a)(iii) of the Code, expressly exclude all sums due to any workman or employee from the provident fund, pension fund, and gratuity fund from the liquidation estate. The Appellant stated that such dues cannot be treated as liquidation assets and are not subject to distribution under the waterfall mechanism prescribed under Section 53 of the Code.

8. The Appellant contended that the Adjudicating Authority failed to consider that provident fund dues are excluded from the liquidation estate to enable workmen to realize their lifelong savings, including the employer's contribution. The Appellant emphasized that while the rights of other creditors over the assets of the company are merely property rights, the dues of workmen, particularly provident fund dues, are intrinsically linked to the fundamental right to life under Article 21. The Appellant asserted that equating such dues with other debts would unjustly dilute this inalienable right.

9. The Appellant further submitted that the Adjudicating Authority overlooked the provisions of Section 11(2) of the EPF Act, which clearly establish that provident fund dues shall have priority over all other debts. The Appellant stated that such dues are deemed to be the first charge on the assets

of the establishment and must be paid in priority, notwithstanding anything contained in any other law.

10. The Appellant contended that the Adjudicating Authority failed to consider the judgment of the Hon'ble Gujarat High Court in Indian Overseas Bank vs. Employees Provident Fund Organization, wherein it was held that the statutory first charge created under the EPF Act would prevail over other enactments such as the SARFAESI Act. The Appellant emphasized that the said judgment clearly establishes the supremacy of provident fund dues over other secured debts.

11. The Appellant stated that the EPF Act has an overriding effect, and dues relating to provident fund, pension, and gratuity must be paid in priority to all other debts. The Appellant contended that these dues as assets of the workmen, which remain in the custody of the corporate debtor and must be disbursed accordingly before applying the waterfall mechanism under Section 53 of the Code.

12. The Appellant contended that this Appellate Tribunal in Jet Aircraft Maintenance Engineers welfare Association Vs. Ashish Chhawchharia, Resolution Professional for Jet Airways (India)Ltd. &Anr. Company Appeal (AT)(Insolvency) No. 752 of 2021 and Regional P.F. Commissioner vs. Ashish Chhawchharia, Resolution Professional for Jet Airways (India)Ltd. &Anr. In Company Appeal (AT) (Insolvency) No. 987 of 2022 dated 21.10.2022 support the case of the Appellant.

13. The Appellant submitted that this Appellate Tribunal directed that provident fund dues must be paid in full to avoid invalidity of the resolution plan, and the said judgment was upheld by the Hon'ble Supreme Court upon dismissal of the SLP.

14. The Appellant submitted that the EPF Act, is a beneficial welfare legislation aimed at protecting the social security of employees, and the Appellant organization acts as a custodian of the funds of millions of employees. The Appellant contended that the statutory framework under Sections 7A, 7B, 14B, and 7Q of the EPF Act ensures determination, recovery, and protection of such dues, and therefore, the same cannot be compromised or treated at par with other debts.

15. Concluding his arguments, the Appellant requested this Appellate Tribunal to set aside the impugned order and allow the present appeal.

16. Per contra, the Respondent No.1 denied all the averments made by the Appellant as misleading and baseless.

17. The Respondent No.1 stated that, vide order dated 21.02.2019, the Adjudicating Authority passed an order of liquidation against the Corporate Debtor and appointed the present Respondent No.1, Mr. Vipul Garg, as the Liquidator. The Respondent No.1 submitted that upon his appointment as Liquidator, a public announcement was made in accordance with Form B of Schedule II read with Regulation 12(3) of the IBBI (Liquidation Process) Regulations, 2016 on 03.03.2019 calling upon all stakeholders to submit or

update their claims as on the liquidation commencement date. The Respondent No.1 stated that claims were received from various stakeholders, including Financial and Operational Creditors, out of which claims amounting to Rs. 32,40,44,966.32/- were admitted. The Respondent No.1 contended that the Corporate Debtor was not a going concern and its operations had ceased even prior to initiation of CIRP. The Respondent No.1 submitted that a liquidation estate was constituted under Section 36 of the Code, and assets including stock, plant and machinery, and immovable properties such as land and building were realized. The Respondent No.1 stated that a total amount of Rs. 1,70,49,610/- was realized and distributed in accordance with the waterfall mechanism prescribed under Section 53 of the Code.

18. The Respondent No.1 submitted that the Appellant had not filed any claim during the CIRP. The Respondent No.1 contended that only after the liquidation order dated 21.02.2019, the Appellant filed its claim for the first time on 02.04.2019 in Form B claiming Rs.1,42,463/-, Rs. 11,85,552/- based on provisional assessment under Section 7A of the EPF Act, Rs. 15,53,280/- towards penal damages and interest, and an additional Rs. 7,74,095/- in respect of another establishment, namely M/s Laxmi Enterprises.

19. The Respondent No.1 submitted that the Liquidator informed the Appellant that the claim was filed beyond the last date i.e., 23.03.2019 and was also submitted in an incorrect form, namely Form B instead of the prescribed forms for workmen and employees. The Respondent No.1 stated that vide email dated

01.05.2019, the Appellant was requested to rectify the defects, followed by reminders dated 06.05.2019 and subsequent communications. The Respondent No.1 contended that the liability of Rs. 7,74,095/- did not pertain to the Corporate Debtor and could not be admitted. The Respondent No.1 further stated that it was clarified that under Section 33(5) of the Code, no fresh proceedings can be initiated once liquidation has commenced, and accordingly claims based on provisional assessments and consequential penalties could not be entertained. The Respondent No.1 contended that only the principal amount of Rs. 1,42,463/- was admitted as Government dues.

20. The Respondent No.1 submitted that the Appellant was duly informed that the list of stakeholders had been finalized and filed before the Adjudicating Authority, on 07.05.2019. The Respondent No.1 stated that subsequent communications dated 07.01.2020, 28.09.2021, 27.10.2021 and 29.10.2021 reiterated that only the admitted amount would be considered and no further liability could be imposed. The Respondent No.1 contended that the Appellant was advised to seek appropriate directions from the Adjudicating Authority, if aggrieved.

21. The Respondent No.1 submitted that vide email dated 11.11.2021, the Appellant was informed that its share under Section 53 had been calculated at Rs. 6,014/- on a pari passu basis with the Financial Creditor, and the same was remitted via cheque dated 08.11.2021. The Respondent No.1 stated that the said

amount was duly realized and acknowledged by the Appellant, which is evident from the email communication dated 21.12.2021.

22. The Respondent No.1 submitted that despite the completion of distribution, the Appellant again filed a claim on 02.12.2022. The Respondent No.1 stated that the Liquidator responded vide letter dated 25.12.2022 stating that the final liquidation report had already been filed on 23.02.2022 and no assets remained for further distribution. The Respondent No.1 contended that the Corporate Debtor stood dissolved vide order dated 06.03.2023 and the Liquidator had been discharged from his duties.

23. The Respondent No.1 submitted that reliance is placed on the judgment of the Hon'ble Madras High Court in *Czarnikow Group Ltd. vs. Commissioner of Customs (Preventive) (2023) ibclaw.in 565 HC*, wherein it was held that a creditor's right to participate in distribution arises only upon submission of a claim, and failure to do so disentitles such creditor from claiming any share in the liquidation proceeds. The Respondent No.1 further contended that reliance is also placed on the judgment of this Appellate Tribunal in *Parameshwara Udpa R.P. vs. Assistant PF Commissioner, Company Appeal (AT)(CH) No. 231* of 2021 dated 23.09.2022, wherein it was clarified that the exclusion under Section 36(4)(a)(iii) of the Code applies only where a separate provident fund is maintained under Section 16A of the EPF Act.

24. The Respondent No.1 submitted that the inquiry proceedings initiated by the Appellant under Sections 7A, 7Q and 14B of the EPF Act on 28.03.2019

were initiated after the commencement of liquidation on 21.02.2019 and are therefore hit by Section 33(5) of the Code. The Respondent No.1 contended that such proceedings are void ab initio and any claim arising therefrom is not maintainable.

25. The Respondent No.1 submitted that Section 36(4)(a)(iii) of the Code protects only the amounts due to workmen or employees where a separate fund is maintained, and since no such fund exists in the present case, the assets form part of the liquidation estate and must be distributed in accordance with Section 53. The Respondent No.1 contended that interest and damages under Sections 7Q and 14B of the EPF Act are payable to the statutory authority and fall within the category of Government dues under Section 53(1)(e)(i) of the Code, and hence cannot be excluded from the liquidation estate.

26. The Respondent No.1 submitted that the Appellant failed to file its claim in the prescribed forms under Regulation 19, i.e., Form E or Form F, and instead filed the claim in Form B, rendering the claim procedurally defective. The Respondent No.1 contended that such non-compliance warrants rejection of the claim.

27. The Respondent No.1 submitted that the Appellant failed to avail the statutory remedy under Section 42 of the Code by not challenging the decision of the Liquidator before the Adjudicating Authority within the prescribed period of 14 days. The Respondent No.1 contended that such failure clearly

demonstrates lack of diligence and disentitles the Appellant from raising the present claims at this belated stage.

28. Per contra, the Respondent No.2 denied all the averments made by the Appellant as misleading and baseless.

29. The Respondent No. 2 submitted that it is a financial creditor of the Corporate Debtor. The Respondent No. 2 stated that the CIRP was initiated upon a petition filed by an operational creditor and was admitted by the Adjudicating Authority on 26.04.2018, whereby moratorium was declared. The Respondent No. 2 further stated that subsequently, liquidation of the Corporate Debtor was ordered on 21.02.2019 and a Liquidator was appointed. The Respondent No. 2 submitted that the Liquidator duly made a public announcement inviting claims from stakeholders and proceeded in accordance with the applicable regulations. The Respondent No. 2 stated that claims were received and verified, and claims amounting to Rs. 32,40,44,966/- were admitted.

30. The Respondent No. 2 contended that the Corporate Debtor was not a going concern and had ceased operations even prior to the initiation of CIRP. It is submitted that the liquidation estate was duly formed under Section 36 of the Code, and assets including stock, plant, machinery, land and building were sold, realizing a total amount of Rs. 1,70,49,610/-. The Respondent No. 2 stated that the liquidation proceeds were distributed strictly in accordance with the waterfall mechanism under Section 53 of the Code after adjusting CIRP and liquidation costs. The Respondent No. 2 highlighted that it had claimed Rs.

29,57,51,882/- and was distributed Rs. 1,23,96,821/-, being 4.2% of the total realization.

31. The Respondent No. 2 submitted that the final report and compliance certificate were duly filed before the Adjudicating Authority, certifying that the liquidation process was conducted in accordance with the provisions of the Code. The Respondent No. 2 contended that the Corporate Debtor stood dissolved vide order dated 06.03.2023 and that the Respondent Bank was directed to pursue avoidance applications under Sections 43 and 66 of the Code.

32. The Respondent No. 2 submitted that it does not dispute the valuation of liquidation assets or the distribution made by the Liquidator. The Respondent No. 2 stated that the liquidation process was conducted in compliance with Sections 36 and 53 of the Code, and there was no violation of any statutory provisions, including Section 11 of the EPF Act. The Respondent No. 2 submitted that EPFO dues are statutory dues and fall within the ambit of Section 53(1)(e) of the Code, and despite this, the Liquidator treated such dues at par with secured creditors, thereby placing them higher in the waterfall.

33. The Respondent No. 2 contended that the Appellant failed to file its claim during the CIRP and only submitted its claim after commencement of liquidation. The Respondent No. 2 stated that the claim was filed in Form-B and included amounts based on provisional assessment, damages and interest, out of which only Rs. 1,42,463/- was admitted as government dues.

34. The Respondent No. 2 contended that Section 36(4)(a)(iii) of the Code is inapplicable in the absence of a separately maintained provident fund, and reliance was placed on the judgment in *Parameshwara Udpa RP vs Assistant PF Commissioner, Company Appeal (AT) (CH) No.231 of 2021* wherein it was held that in the absence of a separate provident fund account, claims must be dealt with under Section 53.

35. The Respondent No. 2 contended that the Appellant initiated proceedings under Sections 7A, 7Q and 14B of the EPF Act during the liquidation period, which is in violation of Section 33(5) of the Code, rendering such proceedings void ab initio. The Respondent No. 2 stated that no misrepresentation has been made by the Resolution Professional or Liquidator, and that the Appellant was repeatedly informed about the status of its claim and the requirement to rectify deficiencies. The Respondent No. 2 submitted that the additional claims raised by the Appellant based on provisional assessments and penal liabilities could not be admitted during liquidation.

36. Concluding his arguments, the Respondent No.2 requested this Appellate Tribunal to dismiss the present appeal.

Findings

37. It is noted that the Corporate Debtor was admitted into the CIRP vide order dated 26/04/2018 and was subsequently ordered to be liquidated vide order dated 21/02/2019, whereby Respondent No. 1 was appointed as the Liquidator pursuant to which thereto, the Liquidator issued a public announcement inviting claims from all stakeholders in terms of the applicable IBBI Regulations, including the Appellant and the Respondent No.2. The Respondent No.2, being a secured financial creditor of the Corporate Debtor, duly filed its claim, which was admitted to the extent of Rs. 29,57,51,882/-.

38. We note that the impugned order in Company Petition (IB) NO. 93/Chd/Hry/2018 was passed after consideration of the Final Report submitted by the Liquidator that the liquidation process was duly conducted and no assets remained for distribution, and ordered dissolution of the Corporate Debtor, M/s Jai Laxmi Lighting Industries Pvt Ltd.

39. We take into consideration that the Appellant filed its claim which reads as under:

**SCHEDULE
FORM B**

ANNEXURE R-2

PROOF OF CLAIM by OPERATIONAL CREDITORS EXCEPT WORKMEN AND EMPLOYEES (Under Regulation 7 of the Insolvency and Bankrupt Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016)

To. 02.04.2019

Sh. Vipul Garg (IP)
179, Sector-21, Panchkula
(Haryana) 134112

From
From Regional Provident Fund Commission
EPFO, Regional Provident Fund Office,
Sector-15A, Faridabad
Subject: Submission of proof of claim.
Madam/Sir,

Regional Provident Fund Commissioner, EPFO, Regional Provident Fund Office, Sector-15A, Faridabad, hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of M/s- Jai Laxmi Lighting Industries Private Limited, Plot No.89 to 91 DLF, Phase -1, Faridabad-121002 (FIR) The details for the same are set out below:

PARTICULARS	
1.	NAME OF OPERATIONAL CREDITOR Regional Provident fund commissioner, Regional Provident Fund Office Sector-15a, Faridabad
2.	IDENTIFICATION NUMBER 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)
3.	ADDRESS AND EMAIL ADDRESS OF OPERATIONAL CREDITOR FOR CORRESPONDENCE REGIONAL PROVIDENT FUND OFFICE, EPFO, SECTOR-15 A, FARIDABAD-121008, EMAIL:- RO.FBD@EPFINDIA.GOV.IN PHONE NO. 0129-2288068
4.	TOTAL AMOUNT OF CLAIM (INCLUDING ANY INTEREST AS AT THE INSOLVENCY COMMENCEMENT DATE) 1.Rs.1,42,463/- (INCLUDING COST CHARGE OF Rs.3650/-) + 2.Rs.11,85,552/- + 3.Rs.15,53,280/- + 4.Rs.7,74,0951* = Rs.36,55,290/- (RECOVERY PENDING FROM EMPLOYER SH. GYANINDER SADANA IN RESPECT OF OTHER ESTABLISHMENT M/S- LAXMI ENTERPRISES, PLOT NO. 90-91, NEW DLF INDL, FARIDABAD BEARING P.F CODE NO. HR/FBD/13508 IN OWNERSHIP OF SH.GYANINDER SADANA.
5.	DETAILS OF DOCUMENTS BY 1.calculation sheet of penal damages and

True copy

TRUE COPY

	REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED	Interest (COMPUTER GENERATED SHEET) 2.PROVISIONAL ASSESSMENT UNDER SECTION 7A BY ENFORCEMENT OFFICER. 3.PENAL DAMAGE AND INTEREST ON ABOVE PROVISIONAL ASSESSMENT. 4.ORDER EIDER 7A DATED 08.09.2016 is RESPECT OF M/S-LAXMI ENTERPRISES
6.	DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OR ORDER OF SUIT OR ORDER OF SUIT OR ORDER OF SUIT OR ARBITRATION PROCEEDINGS.	1. INQUIRY UNDER SECTION 7A OF EPF & MP ACT, 1952 ONGOING AGAINST THE ESTABLISHMENT. 2. RECOVERY PROCEEDING UNDER SECTION 813 TO 80 ONGOING AGAINST ESTABLISHMENT /5- LAXMI ENTERPRISES, PLOT NO, 90-91, NEW DLF INDL, FARIDABAD HERRING PS CODE NO. HR/FBD/13508
7.	DETAILS OF HOW AND WHEN DEBT INCURRED	PENAL DAMAGES AND MEREST UNDER SECTION 14B & 7Q FOR LATE PATMENT OF PF DUES FOR PERIOD FROM 04/2014 To 11/2016. 2. NOT DEPOSING THE DUES OF ALL FIVE ACCOUNT OF EPFO FOR ream 04/2015 TO 15/2015 3. PENAL DAMAGES AND INTEREST UNDER SECTION 14B & 7Q FOR LATE PAYMENT OF PF DUES FOR PERIOD FROM 04/2015 TO 15/2015. 4. NOT DEPOSING THE DUES OF ALL FIVE ACCOUNT OF EPFO FOR PERIOD 05.2012 TO 06.2014 IN RESPECT OF M/S-LAXMI ENTERPRISES
8.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE DEBTOR AND THE CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM	NO
9.	DETAILS OF ANY RETENTION OF TITLE ARRANGEMENTS IN RESPECT OF GOODS OR PROPERTIES TO WHICH THE CLAIM REFERS	NO
10.	DETAILS OF THE BANK ACCOUNT TO WHICH THE AMOUNT OF THE CLAIM OR ANY PART THEREOF CAN BE TRANSFERRED PURSUANT TO A RESOLUTION PLAN	A/C Name :- Employee's Provident fund A/C No. 11081539014 Branch :- Main Branch, NIT, Faridabad IFSC Code :- SBIN0000734
11.	LIST OF DOCUMENTS ATTACHED TO THIS PROOF OF CLAIM IN ORDER TO PROVE THE EXISTENCE AND NON-PAYMENT OF CLAIM DUE TO THE	1. CALCULATION SHEET OF DAMAGES AND INTEREST UNDER SECTION 14B & 7Q OF EPF AND MP ACT, FOR PERIOD 04/2014 TO 11/2016.

	OPERATIONAL CREDITOR	2. PROVISIONAL ASSESSMENT LETTER OF ENFORCEMENT OFFICER. 3. CALCULATION SHEET OF PENAL DAMAGES MD INTEREST ON ABOVE PROVISIONAL ASSESSMENT. 4. ORDER UNDER SECTION 7A OF BE AND MP ALT 1952 08.09.2016 IN RESPECT M/S. LAXMI ENTERPRISES
12.	Signature of operational creditor or person authorised to act on his behalf [Please enclose the authority if this is being submitted on behalf of an operational creditor]	
13.	Name in BLOCK LETTERS — INDRAJ SINGH.	
	Position with Of in relation to creditor — RECOVERY OFFICER, REGIONAL OFFICE, FARIDABAD	
	Address of person signing — Regional Provident Fund Office, 1 st Floor, Sector-15A Faridabad.	
	*PAN number, passport, AADHAAR Card, or the identity card issued by the Election Commission of India	

DECLARATION

1, RECOVERY ORPIO *NAL PROVIDENT FUND OFFICE, EPFO, SECTOR-15 A, FARIDADAD-121008, hereby declare follows: -

M/s- Jai Laxmi Lighting Industries Private Limited. The corporate debtor was at the insolvency commencement date being the 21st days of March 2019 actually indebted to EPFO in the sum of Rs. 1,42,4631- including cost charge of RS. 3650/- + Rs. 11,85,552, + Rs. 15,53,280 + 4.RS.7,74,095 = Rs. 36,55,290/- (RECOVERY PENDING FROM EMPLOYER SE, GYANINDER SADANA M/S- LAXMI ENTERPRISES, PLOT NO. 90-91, NEW PLY INDL O. NR/FBN13508 IN OWNERSHIP OF SH.GYANINDER SADANA.

2. In respect of EPFO claim of the said sum or any part thereof, I have relied on the documents specified below (1) Calculation sheet of penal damages and interest (Computer Generated sheet) 2. Provisional assessment under section 7A by enforcement officer (3) penal damages and interest on above provisional assessment (4) order under 7A dated 08.09.2016 in respect of M/s Laxmi Lighting Industries

3. The said documents are true, valid and genuine to the best of my knowledge; information and belief and no material facts have been concealed therefrom.

4. In respect of the said sum or any part thereof, neither I nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following:

DATE 02.04.2019
Place Faridabad

Sd/-
Signature of the claimant

VERIFICATION

I, Recovery Officer, EPFO, Sector-114, Faridabad the claimant hereinabove, do hereby verify that I. contents of this proof of claim are true and correct to my knowledge and belief and no material fact has been concealed therefrom.

Verified at on 2nd day of April 2019.

Sd/-
(Signature of the claimant)

Note: In the case of company or limited liability partnership, the declaration and be made by the director/manager/secretary and in the case of other entities, an officer authorized for the purpose by the entity

True copy
B

TRUE COPY

40. The Liquidator, after verification, admitted the claim of EPFO of Rs. 1,42,463/- and distributed a sum of Rs. 6,014/-. It is relevant to take into consideration that the total amount realized during liquidation was Rs. 1,70,49,610/-, and distribution was made as per the waterfall mechanism under Section 53 of the Code, wherein both the Appellant and the Respondent No.2 received approximately 4.2% of their admitted claims. In this connection we reproduce Para 6 of the Impugned Order including table which reads as under:

“6.It is further submitted that the liquidator had successfully completed the liquidation of the corporate debtor and thereafter distributed the proceeds from the sale of the assets of the corporate debtor to the stakeholders after adjusting the CIRP cost/liquidation cost. The details of distribution to stakeholders under Section 53 of IBC, 2016 are as under”

Sr.No.	Stakeholders U/s 53	Amount Claimed	Amount Admitted	Amount Distributed	%age
1.	CIRP Cost	1860684	1860684	1860684	100%
2.	Liquidation cost	2786091	2786091	2786091	100%
3.	EPFO (Govt./Workmen Dues)	142463	142463	6014	4.20%
4.	Canara Bank	295751882	295751882	12396821	4.20%
Total				17049610	

(Emphasis supplied)

41. It is the case of the Appellant is that in terms of Section 36(4)(a)(iii) of the Code the Provident Fund dues cannot be taken in Liquidation Estate. The relevant provision is reproduced hereinbelow:

“Section 36: Liquidation estate.....

(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation:—

(a) assets owned by a third party which are in possession of the corporate debtor, including—

(i) assets held in trust for any third party;

(ii) bailment contracts;

(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;

(iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and

(v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;

(Emphasis supplied)

42. We note that Section 36(4)(a)(iii) of the Code states that all sums due to any workman or employee from the provident fund, the pension, and the gratuity fund shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation. Section 53(1) of the Code further states that the proceeds from the sale of the liquidation assets shall be distributed according to the order of priority and within such period and in such manner as may be specified under the aforementioned section. Assets which are not

included in the liquidation estate, cannot come under the purview of Section 53 (1), which is the case with PF, Gratuity and Pension Funds.

43. In this connection both the Respondent No.1 and No.2 submitted that the aforesaid provision excludes provident fund dues from the liquidation estate only where such amounts are maintained as a separate and identifiable corpus or statutory fund and both the Respondent No.1 and No.2 highlighted that in the present case, no such separate provident fund account or trust has been maintained by the Corporate Debtor, in the absence of which the Appellant cannot seek exclusion of its dues from the liquidation estate, and the claim has rightly been dealt by the Adjudicating Authority with in accordance with the provisions of the Code.

44. This position was examined by this Appellate Tribunal in the case of Parameshwara Udpa, RP vs. Assistant PF Commissioner, Company Appeal (AT) (CH) No. 23 of 2021 decided on 23/09/2022 (2023) 236 Comp Cas 198.

The relevant finding of this Appellate Tribunal reads as under:

"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 professional' has to deal with the 'claims', if any, on this account, in terms of section 53 of the I and B Code, 2016, if warranted and provided as per 'law'."

“In the present case There was no specific fund towards ‘Provident Fund’.... The “Corporate Debtor ’has not created any specific fund for the purpose of 'provident fund' ... therefore the direction to the resolution professional to make adequate provisions ... is not correct.”

(Emphasis supplied)

It was held by a two members bench in the instant case that during CIRP, the resolution professional was not obligated to make provisions for PF dues when the corporate debtor had not maintained a designated PF account, and any claims towards PF dues must be made before the resolution professional and dealt with under the waterfall mechanism under the Code. However, subsequently a three members bench of this Tribunal in the matter of ‘Mr. Anuj Bajpai vs Employees Provident Fund Organisation (EPFO) and Ors. [Comp. App. (AT) (Ins.) No. 1141 of 2023] has decided to that all dues of EPFO do not fall within the purview of liquidation estate.

45. We also refer to the Judgment of this Appellate Tribunal in the case of C.G. Vijyalaskshmi and Ors. vs Kumar Rajan, RP, Hindustan Newsprint Limited and Ors. [Company Appeal (AT) (CH) (Ins.) No. 29 of 2021]. The relevant paras 14,15 of the judgement reads as under:

“14. Section 36(4) provides that the following shall not be included in the Liquidation Estate Assets and shall not be used for recovery in the Liquidation’. In the instant case, clause (iii) of sub-section 4(a) is relevant which is all sums

due to any Workmen/Employee from the 'Provident Fund'.
'Pension Fund' or the 'Gratuity Fund'.

15. Hence, sums due to any Workmen from the above funds are excluded from the "Liquidation Estate". Legislative intent is clear that any 'sums' due to any Workmen from aforesaid 'fund' are excluded and cannot be used for "recovery' in the Liquidation. 22. **Having regard to the ratio laid down by this Tribunal in 'Jet Aircraft' (Supra) and the Order having been upheld by the Hon'ble Supreme Court in Civil Appeal No. 407 of 2023 the question whether there was 'fund' maintained by the Corporate Debtor or not pales into insignificance."**

(Emphasis supplied)

The aforesaid decision clearly upholds principles that the provision for dues of PF, Pension and Gratuity of employees has to be made by the Liquidator irrespective of the fact whether separate funds are available for the same with the Corporate Debtor. The claims in this regard need to be settled out of available funds of the Corporate Debtor.

46. We take into consideration the finding of the Hon'ble Supreme Court of India in the case of State of Jharkhand and Ors. vs Jitendra Kumar Srivastava and Ors. /MANU/SC/0801/2013/. The relevant paras 7 & 8 of the judgment reads as under:

"7. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service.

8. It is the hard-earned benefit, which accrues to an employee and is in the nature of property. This right to property cannot be taken away without the due process of law as per the provisions of Article 300A of the Constitution of India.”

(Emphasis Supplied)

47. The issue of similar nature was extensively discussed and decided by this Tribunal in the Jet Aircraft Maintenance Engineering Welfare Association V. Ashish Chhawchharia, RP of Jet Airways India Ltd. in CP (IB) No. 2205/B/2019 and this Appellate Tribunal held that:

“68. The judgment of Hon’ble Supreme Court as relied by learned counsel for the Respondent also in Para 53 clearly held that Section 53(1) of the Code shall not be applicable to such sums, which are to be treated outside the liquidation process and liquidation estate assets under the Code. Direction issued by Hon’ble Supreme Court in Para 54(i) was with regard to wages and salary of the workmen/employees of the Corporate Debtor during the CIRP period and under direction (ii) at Para 54, Hon’ble Supreme Court directed in reference to Section 36(4) of the Code that provident fund, gratuity fund and pension fund are kept out of the liquidation estate assets and the share of the workmen dues shall be kept outside the liquidation process. Learned counsel for the Respondent has relied on words “if any, available” occurring in direction (ii). The above words cannot be read to mean that the workmen and employees are not entitled for provident

fund, gratuity fund and pension fund if not available with the Liquidator.”

69. The present is a case where resolution plan has been approved; present is not a case of liquidation. Under the provisions of the 1952 Act, the corporate debtor is statutorily obliged to deposit the provident fund of the workmen and employees with the EPFO. It has been clearly stated in the additional affidavit of the resolution professional dated July 25, 2022 that no amount towards provident fund of the workmen and employees were deposited after February, 2019. Insolvency commencement date being June 20, 2019, the corporate debtor was obliged to deposit the contribution towards provident fund with EPFO. The claim of provident fund till the insolvency commencement date, of the workmen and employees was to be accepted and successful resolution applicant was liable to make payment of provident fund till the date of initiation of the CIRP and statutory obligation of the corporate debtor was liable to be discharged by the successful resolution applicant. From the affidavit of resolution professional it is clear that resolution professional in the claim which has been admitted of the workmen for 24 months, the provident fund and gratuity amount was also included. The workmen have received payments with regard to provident fund and gratuity in part under the resolution plan subject to the liquidation value of the workmen. We, thus, are satisfied that workmen are entitled for issuing appropriate direction to successful resolution applicant to make payment of the workmen of the provident fund and gratuity dues up to the date of insolvency commencement date

less the amount already received under the resolution plan towards provident fund and gratuity. The corporate debtor having not deposited the statutory dues with the EPFO, the said statutory liability has to be discharged by the successful resolution applicant.....

134. In result, the appeal(s) are decided in following manner:

(I) The appeal(s) of workmen and employees being Company Appeal (AT) (Insolvency) Nos. 643, 752, 801, 915 of 2021 and 771 of 2022 are partly allowed with following directions:

(a) Successful resolution applicant is directed to make payment of unpaid provident fund to the workmen till date of insolvency commencement, after deducting the amount already paid towards provident fund in the resolution plan to the workmen.

(b) The workmen are also entitled to payment of their gratuity dues as on insolvency commencement date, after adjusting any amount towards gratuity paid under the resolution plan. It is made clear that entitlement of those employees and workmen, who were demerged into AGSL shall not be there, since demerger has not been treated as termination of their services.

(c) The employees are also entitled to the payment of their full provident fund, unpaid up to the date of insolvency commencement date. It is made clear that full payment of provident fund would be of that unpaid part of provident fund, which has not been deposited by the corporate debtor in the EPFO.

(d) Employees shall also be entitled for the gratuity, which fell due up to insolvency commencement date.

(e) The rest of the prayers of the workmen and employees are denied.

(f) The Chairman of the Monitoring Committee, erstwhile resolution professional is directed to compute the payments to be made to workmen and employees within one month from today and communicate the same to the successful resolution applicant to take steps for payment.....

(Emphasis supplied)

The aforesaid decision of this Tribunal has been upheld by Hon'ble Supreme Court headed by Hon'ble CJI in the case of 'Jalan Fritsch Consortium v. Regional Provident Fund Commissioner & Anr. (Civil Appeal No 407 of 2023 with Civil Appeal Nos 465-469 of 2023).

48. We would also refer to yet another judgement of this Appellate Tribunal in case of Truvisory Insolvency Professionals Pvt. Ltd. (IPE) vs Employees' Provident Fund Organisation and Anrs. Company Appeal (AT) (INS) No. 580 of 2023 where it was clearly held that:

“29. It is clear from the discussion above that even if no separate fund is available for provident fund, gratuity fund and pension fund they have to be paid out of existing funds of the CD.

30. The decision of this Tribunal in the aforesaid matter means that in the case of Provident Fund, the employees contribution, employers contribution, interest if any to be paid by the employer in case of delay in payment and damages as provided in Sections 11 and Section 7A, 7Q, 14B and 15 (2) of Employees Provident Funds and Miscellaneous

Provision Act, 1952 [Act 19 of 1952] are covered under the provisions of Section 36(4)(a)(iii) of the Code and are not part of the liquidation estate and hence are not subject to distribution under Section 53 (1) of the code. The aforesaid decision of the Tribunal was a case of CIRP and its resolution and the payment for PF dues had to be made by successful resolution applicant. However, the ratio is equally applicable in case of liquidation as the principles relating to components of PF dues not forming part of the liquidation estate has been decided in this case.”

(Emphasis supplied)

49. We appreciate the arguments of the Appellant that the EPF Act is a welfare legislation, and belong to legitimate dues payable to the employees. The Appellant has submitted upon Form-B dated 02/04/2019 to claim an amount of Rs. 36,55,290 and said claim is based on provisional assessment, penal damages, interest, and other ancillary components.

50. Incidentally, we note that the Appellant has included outstanding provident fund dues from Sh. Gyaninder Sadana, M/s Laxmi Enterprises, of Rs.7,74,095 other than the Corporate Debtor indicating that the liability is not exclusively attributable to the Corporate Debtor, and belong to M/s Laxmi which is a separate and distinct entity and cannot be equated to the Corporate Debtor, i.e., M/s Jai Laxmi Lighting Industries Pvt. Ltd. Both entities are separate legal persons having distinct assets and liabilities.

51. We are conscious of the fact that the Corporate Debtor stands dissolved vide order dated 06.03.2023 of the Adjudicating Authority and vide the same order the Liquidator has been discharged from his duty and responsibilities as Liquidator of the Corporate Debtor. However, the correct law need to be made applicable.

52. In view of detailed analysis including judicial pronouncements by Hon'ble Supreme Court of India as well as this Appellate Tribunal, we find merit in the contentions of the Appellant. The Appeal succeeds. Impugned Order is set aside. The Adjudicating Authority is required to examine the issues fresh, in accordance with law. All the parties are directed to appear before the Adjudicating Authority on **12.05.2026**.

53. No order as to cost. I.A., if any stand closed.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

Sim