NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 419 & 420 of 2026

[Arising out of Order dated 04.02.2026 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court – I), in I.A. No. 3426 of 2025 & I.A. No. 4627 of 2025 in C.P. (IB) No.2205(MB)/2019]

IN THE MATTER OF:

State Bank of India and Ors. **...Appellants**

Versus

Manoj Kumar Das & Ors. **...Respondents**

Present:

For Appellants : **Mr. N. Venkatraman, ASG, Mr. Abhijeet Sinha, Sr. Advocate with Mr. Dhananjay Kumar, Mr. Raunak Dhillon, Ms. Srideepa Bhattacharya, Ms. Isha Malik, Mr. Mehul Kumar, Mr. Anchit Jasuja, Ms. Mitali Jain and Ms. Ilina Rechu, Advocates for SBI.**

For Respondents : **Mr. Pawanshree Agrawal and Ms. Kriti Jain, Ms. Aakriti Goel and Ms. Divya Kamana Sree, Advocates for Workmen.**

Ms. Ronita Bhattacharya and Ms. A Reyna Shruti, Advocates for R-297.

Mr. Raghav Chadha, Mr. Dhiraj Kumar Totla, Mr. Nishant Upadhyay and Ms. Vasudha Jain, Advocates for Liquidator/ Jet Airways.

WITH

Company Appeal (AT) (Insolvency) No. 440 of 2026

[Arising out of Order dated 03.02.2026 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court – I), in I.A. No. 4757 of 2025 in C.P. (IB) No.2205(MB/2019]

IN THE MATTER OF:

Sanjeev Chaddha & Ors. **...Appellants**

Versus

State Bank of India & Ors. **...Respondents**

Present:

For Appellants : Mr. Pawanshree Agrawal and Ms. Kriti Jain, Ms. Aakriti Goel and Ms. Divya Kamana Sree, Advocates.

For Respondents : Mr. Raunak Dhillon, Ms. Isha Malik, Mr. Anchit Jasuja and Ms. Mitali Jain, Advocates for SBI.

Mr. Raghav Chadha, Mr. Dhiraj Kumar Totla, Mr. Nishant Upadhyay and Ms. Vasudha Jain, Advocates for Liquidator/ Jet Airways.

WITH

Company Appeal (AT) (Insolvency) No. 551 of 2026

[Arising out of Order dated 04.02.2026 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court – I), in I.A. No. 3426 of 2025 & I.A. No. 4627 of 2025 in C.P. (IB) No.2205(MB)/2019]

IN THE MATTER OF:

Sanjeev Chaddha & Ors. ...Appellants

Versus

State Bank of India & Ors. ...Respondents

Present:

For Appellants : Mr. Pawanshree Agrawal and Ms. Kriti Jain, Ms. Aakriti Goel and Ms. Divya Kamana Sree, Advocates.

For Respondents : Mr. Raunak Dhillon, Ms. Isha Malik, Mr. Anchit Jasuja and Ms. Mitali Jain, Advocates for SBI.

Mr. Raghav Chadha, Mr. Dhiraj Kumar Totla, Mr. Nishant Upadhyay and Ms. Vasudha Jain, Advocates for Liquidator/ Jet Airways.

J U D G M E N T

ASHOK BHUSHAN, J.

Comp. App. (AT) (Ins.) No.419 – 420/2026 has been filed against the order dated 04.02.2026 passed by the National Company Law Tribunal (NCLT), Mumbai Bench, Court – I (**"adjudicating authority"**) in I.A. No.3426/MB/2025 & I.A. No.4627/MB/2025. Comp. App. (AT) (Ins.)

No.440/2026 has been filed challenging the order dated 03.02.2026 passed by the adjudicating authority in I.A.4757/2025. Adjudicating Authority vide order dated 03.02.2026, disposed of the I.A.4757/2025, directing the liquidator to proceed with the distribution in accordance with the waterfall mechanism under Section 53 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as **"IBC"** or the **"Code"**) while ensuring adequate safeguards to protect the interests of workmen and employee who are claiming priority under I.A.4426/2025 & I.A.4627/2025. Comp. App. (AT) (Ins.) No.551/2026 has been filed by Sanjeev Chadha and 351 workmen of the corporate debtor, Jet Airways challenging the order dated 04.02.2026 passed by the adjudicating authority in I.A.3426/2025, insofar as order directed the recovery certificate dated 16.05.2019 shall be dealt with in accordance with the Section 53 of the Code and refuses to grant exclusion of 1656 days for the purposes of computing the look back of 24 months from the liquidation commencement date.

2. All the above appeals arise from same set of facts and the events, we need to first notice the facts and events giving rise to these appeals:

i. Jet Airways India Limited, the corporate debtor has been in airline operation since 1993. Due to various reasons Jet Airways India Ltd. estopped in operations on 17.04.2019.

ii. State Bank of India (**"SBI"**) filed a Section 7 application being C.P. (IB) No.2205(MB)/2019, which was admitted by order of the adjudicating authority dated 22.06.2019 commencing Corporate Insolvency Resolution Process (**"CIRP"**) against the corporate debtor and

appointing one Mr. Aashish Chhawchharia as an Interim Resolution Professional (**"IRP"**).

iii. A resolution plan submitted by Jalan Fritsch consortium was approved in 17th Committee of Creditors (**"CoC"**) Meeting held on 03.10.2020.

iv. On an application filed by the Resolution Professional (**"RP"**), adjudicating authority approved the resolution plan vide order dated 22.06.2021. Challenging the order dated 22.06.2021, several appeals were filed in this Tribunal. Comp. App. (AT) (Ins.) No.752/2021 was filed by 'Jet Aircraft Maintenance Engineers Welfare Association' Vs. 'Ashish Chhawchharia, Resolution Professional of Jet Airways (India) Ltd. & Ors.'. The above appeal with several other appeals, challenging the same order dated 22.06.2021 were heard by this Tribunal and decided by the judgement and order dated 21.10.2022.

v. The resolution plan as approved the CoC did not provide for payment of entire dues of provident fund and gratuity. The workmen and employees of Jet Airways has filed the Comp. App. 752 of 2021 & 643/2021 and three other appeals.

vi. This Tribunal in the aforesaid judgement dated 21.10.2022 taking into consideration the provisions of Section 36(iv) of the IBC held that workmen and employees were entitled for the entire dues towards provident fund and gratuity. While deciding the above company appeal vide judgement dated 21.10.2022, this Tribunal directed the Successful Resolution Applicant (**"SRA"**) to make payment of unpaid provident fund and gratuity to the workmen till date of insolvency commencement

after deducting amount already paid towards provident fund and gratuity in the resolution plan. The order dated 21.10.2022 was challenged by the SRA before the Hon'ble Supreme Court in Civil Appeal No.407/2023, which came to be dismissed by the Hon'ble Supreme Court on 30.01.2023.

vii. After the approval of the resolution plan by the adjudicating authority, several applications came to be filed before the adjudicating authority by the SRA regarding fulfilment of conditions precedent under the resolution plan, there has been series of litigation between the SRA and the financial creditor which travelled up to this Tribunal and thereafter Hon'ble Supreme Court on several occasions.

viii. Lastly, in **Civil Appeal Nos.5023–5024/2024,** in ***'State Bank of India & Ors.' Vs. 'The Consortium of Mr. Murali Lal Jalan and Mr. Florian Fritsch & Anr.'*** decided on 07.11.2024, Hon'ble Supreme Court held that SRA has failed to implement the resolution plan. Hon'ble Supreme Court invoked its jurisdiction under Article 142 of the Constitution of India and directed the corporate debtor, Jet Airways to be taken in liquidation. NCLT Mumbai was directed to take steps for appointment of liquidator and all other necessary formalities for commencement of liquidation of the corporate debtor. Amount of ₹200 crore already infused by the SRA was forfeited and lenders were further permitted to encash Performance Bank Guarantee (**"PBG"**) of ₹150 crore published by SRA. Appeals were disposed of accordingly.

ix. After the order of the Supreme Court dated 07.11.2024, the adjudicating authority passed an order on 26.11.2024, appointing Mr. Satish Kumar Gupta as a liquidator. Liquidator constituted the Stakeholders Consultation Committee (**"SCC"**) under Insolvency & Bankruptcy Board of India (Liquidation Process), Regulations 2016.

x. On 10.07.2025, Manoj Kumar Das and other 295 workmen of the corporate debtor filed an I.A.3426/MB/2025, seeking a direction for the exclusion of the provident fund and gratuity from the liquidation estate of the corporate debtor, in terms of the Section 36(4)(a)(iii) of the IBC.

xi. On 29.07.2025, a legal notice was issued from the Advocate of All India Jet Airways Officers and Staff Association seeking admission of the claim submitted by the workmen corporate debtor in full and revision of the list of the admitted claim.

xii. On 18.08.2025 in 16th Meeting of the SCC, issue of distribution of sale proceeds from the sale of asset came for consideration. Divergent views were expressed by the erstwhile CoC members and the workmen. SCC decided that legal counsel to provide judicial precedent supporting the view.

xiii. On 13.10.2025 S. Gopalkrishnan filed an I.A. 467/2025, as representative of the workmen and employees in the SCC of the liquidation proceeding praying for direction to the liquidator to ensure payment of the provision fund and statutory dues to the workmen and employees of the corporate debtor in full with divergent penalties and interest before the waterfall distribution.

xiv. SBI filed an I.A.4757/2025, seeking direction against the liquidator, pending hearing and the adjudication of the I.A.3426/2025 and the I.A.4627/2025 to immediately proceed with the distribution of the proceeds from the sale of assets to the corporate debtor as per Section 53 of the IBC. The I.A.4757/2025 filed by the SBI was disposed of by the adjudicating authority on 03.02.2025. In paragraph 17 of the order following was directed:

> *"17. The interests of workmen, employees, and financial creditors must be balanced in a manner that neither prejudices pending claims nor paralyses the liquidation process. In this context, the Tribunal holds that the liquidation process cannot be brought to a standstill merely because issues of priority and exclusion are pending before it. The Liquidator should therefore proceed with distribution strictly in accordance with the waterfall mechanism under Section 53 of the Code, while ensuring adequate safeguards to protect the interests of workmen and employees who are claiming priority in IA 3426 of 2025 and IA 4627 of 2025 which are pending for orders. Accordingly, the liquidator is directed to distribute the proceeds of liquidation, unless there is a restraint on distribution of proceeds from Hon'ble NCLAT or Supreme Court on such distribution."*

xv. On 04.02.2025, adjudicating authority decided the I.A.3426/2025 & I.A.4627/2025. In paragraphs 20 & 21, following order was passed by the adjudicating authority:

> *"20. In view of the above, we pass the following orders:*
>
> *a. the liquidator is liable to pay the provident fund and gratuity dues to the workmen and employees as are payable to them in terms of provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Payment of Gratuity Act, 1972 and such dues shall not form part of the liquidation estate;*
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> *b. the liquidator shall determine and adjudicate the claim under recovery certificate on its merit on*

the basis of judicial principles and provisions of the code;

c. the exclusion of time for determination of liquidation commencement date for the purpose of section 53(1)(b) cannot be allowed by this Tribunal in terms of its inherent powers;

d. The forfeited amount of Rs. 350 crores has been distributed by SBI. It is clarified that the applicant had sought usage of said sum, hence, we refrain from adjudicating whether such appropriation was within the provisions of IBC.

21. In terms of above, ***IA 3426 of 2025*** *in CP (IB) No. 2205 of 2019 is partly allowed and* ***IA 4627 of 2025*** *is allowed. Both the applications are* ***disposed of*** *accordingly."*

xvi. Aggrieved by the order dated 03.02.2026, Comp. App. (AT) (Ins.) No.440/2026 by Sanjeev Chadha and two other workmen and employees have been filed. Aggrieved by the order dated 04.02.2026, Comp. App. (AT) (Ins.) No.419–420/2026 has been filed by the SBI and other seven financial creditors and Comp. App. (AT) (Ins.) No.551/2026 has been filed by Sanjeev Chadha with 251 other workmen challenging the order of the adjudicating authority in I.A.3426/2025, insofar as it refuse some of the prayers made in I.A.3426/2025.

3. All the appeals have been heard together and are being decided by this common judgement.

4. We have heard learned ASG Mr. N. Venkataraman and learned Sr. counsel Mr. Abhijeet Sinha appearing for the appellants – SBI, learned counsel, Mr. Raghav Chadha appearing for the liquidator, learned counsel Mr. Pawanshree Aggarwal appearing for the respondent workmen in Comp. App. (AT) (Ins.) No.419–420/2026 and for appellant in Comp. App. (AT) (Ins.) Nos.440/2026 & 551/2026 as well as Mr. Abhishek Jebaraj and Ms. Ronita

Bhattacharya appearing for Mr. S Gopalkrishnan representative of workman and employees.

5. Learned ASG Mr. N. Venkataraman in support of the appeal filed by financial creditor challenging the impugned order dated 04.02.2026 submits that impugned order insofar as to direct the liquidator entitled to pay provident fund and gratuity dues outside Section56(1)(b)(i) of the IBC and exclude such dues from liquidation estate in terms of Section 36(4)(a)(iii) of the IBC is not in accordance with the law and deserves to be set aside. It is submitted that exclusion under Section 36(4)(a)(iii) is a contingent upon the existence of the segregated provident fund and gratuity fund, which in the present case, admittedly did not exist. Thus, in absence of fund, the claims/dues of the workmen can only be satisfied in terms of waterfall mechanism under Section 53 of the IBC. Section 36 of the IBC deals entirely with inclusion or exclusion of assets of the corporate debtor as they exist on liquidation commencement date for formation of the liquidation estate for the purposes of distribution. The exclusion envisaged is of the assets that are already existing as on LCD and are belonging to third-party, but are in possession of the corporate debtor. The creation of an asset for the purposes of formation of the liquidation estate is not envisaged and a possession of asset must be seen as on liquidation commencement date only. Common threat across subclauses (i), (ii), (iv) & (v) of Section 36(4)(a) is clear that an asset or a fund which exist on the liquidation commencement date and which belonged to third-party stakeholders is being held with the corporate debtor interest is envisaged to be excluded from the liquidation estate. The term **"fund"** used in Section 36(4)(a) only being an already existing fund belonging

to the workmen/employee as a possession of the corporate debtor. A conjoint reading of Section 36(4)(a)(iii) of the IBC as well as the scheme of Section 36 of the IBC makes it clear that exclusion contemplated therein is asset eccentric and presupposes the existence of identifiable provident fund, pension fund and gratuity fund maintained by the corporate debtor. The direction in the impugned order to the liquidator to pay provident fund and gratuity dues owed to workmen when no segregated asset/fund exist as on LCD could affectively mean that liquidator will be required to undertake sale of asset from the liquidation estate and thereafter utilize the recovery to create a provident fund/gratuity fund which would then utilize towards discharging the provident fund, gratuity dues. In absence of segregated provident fund, pension fund or gratuity fund the workmen claim for such dues mandatorily fall within the definition of workmen dues in terms of the Section 53 of the IBC. The impugned order's direction to the liquidator to pay provident fund and gratuity dues outside the waterfall under Section 53(1) of the IBC, even in absence of segregated fund, in effect grants of super priority to such dues, which is contrary to the effect of the IBC. The impugned order failed to consider the judgement passed by the Hon'ble Supreme Court in ***'Sunil Kumar Jain & Or.' Vs. 'Sundaresh Bhatt & Ors.',*** reported in **[2022) 7 SCC 540]** which clarifies that exclusion of any dues under Section 36(4)(a)(iii) will only be permissible from the fund, if any available. The judgement of this Tribunal dated 21.10.2022 in 'Jet Aircraft Maintenance Engineers Welfare Association' case, where in the context of the ensuring compliance of the resolution plan of the corporate debtor with applicable law in terms of the Section 30(2)(e). The direction of this Tribunal in judgement dated

21.10.2024 were not passed in the context of Section 36(4)(a)(iii) and thus cannot be made applicable to the liquidation proceeding. The reliance of the adjudicating authority on the order of the NCLT Hyderabad Bench in ***'Appala Siva Kumar & Ors.' Vs. 'M/s. Lanco Infra Tech Ltd.'*** in **[I.A. No. 96 of 2019 in C.P. (IB) No. 111/7/HDB/2017],** is clearly distinguishable and not applicable in the facts of the present case.

6. Learned counsel for the financial creditor submitted that other judgements relied by adjudicating authority in other cases of this Tribunal and Hon'ble Supreme Court are clearly distinguishable. The submission that appellant are estopped from raising the submissions that the workmen and employees are not entitled for provident fund and gratuity, since it has contended before the Supreme Court which decided the Civil Appeal on 07.11.2024 that SRA was obliged to pay due to the workman and employees. It is clarified that issue at the time of passing of the judgement by Hon'ble Supreme Court was of non-implementation of the resolution plan and SRA failed to comply with several condition precedents.

7. Learned counsel for the financial creditor also supported the impugned order insofar as it has rejected the prayer of the workmen refusing to exclude the period of 1656 days for computation of 24 months look back period under Section 53(1)(b)(i) of the IBC. It is submitted that IBC does not contemplate the alteration of the look back period or the liquidation commencement date for any reason whatsoever. Grant of any relief to alter 24 months look back period would be contrary to the intent and purpose of Jet Liquidation judgement passed by the Hon'ble Supreme Court. The principal propounded

by the Hon'ble Supreme Court in ***'Arcelormittal India Pvt. Ltd.' Vs. 'Satish Kumar Gupta & Ors.'*** reported in **[(2019) 2 SCC 1]** permitting exclusion of time was in the context of CIRP period and are not applicable in the present case. CIRP in the present case conclude upon the approval of resolution plan on 22.06.2021 and not at the time when Jet Liquidation judgement was passed by the Hon'ble Supreme Court. With regard to Recovery Certificate, adjudicating authority has rightly directed the liquidator to adjudicate the claim under Recovery Certificate on its merit in accordance with the scheme of the Code. It is submitted that Comp. App. (AT) (Ins.) No.440/2026 has become infructuous, since the workmen application has been decided on the very next date that is on 04.02.2026. This Tribunal in company appeal filed by financial creditor has already directed on 10.03.2026 that the amount received in the liquidation process shall be kept in Interest Bearing Account by SBI, the financial creditor, which shall be distributed as per the leave granted by the Court.

8. Learned counsel appearing for the workmen opposing the submission of counsel for the financial creditor contends that entitlement of workmen of provident fund and gratuity which are excluded under Section 36(4)(a)(iii) of the Code has already been settled by the judgement of this Tribunal dated 21.10.2022 passed in Comp. App. (AT) (Ins.) No.752/2021 and other appeals. This Tribunal in the said judgement which was inter-party had held that workmen and employees are entitled for their provident fund and gratuity dues. This Tribunal had also held that the entitlement is not dependent on existence of any separate fund maintained by the corporate debtor. Learned Counsel for the SBI stands to add a condition to the provisions of Section

36(4)(a)(iii), that the exclusion applies only if the separate designated fund is maintained, which is impermissible. The interpretation put by the learned counsel for the financial creditor is contrary to the very intention evinced by the parliament that such dues shall be excluded from the liquidation estate. This Tribunal has already laid down that payment of full provident fund and gratuity in absence of separately maintained fund has already been laid down by this Tribunal in several cases. The judgement of this Tribunal in ***'Jet Aircraft Maintenance Engineers Welfare Association'*** **(supra)** (hereinafter referred to as **"JMEVA"**) fully covers the issues which view has been consistently followed by this Tribunal in subsequent judgement as relied by the respondent. The SBI is estopped from raising the plea that workmen and employees are not entitled for full provident fund and gratuity in view of its own submission before the Hon'ble Supreme Court in its judgement dated 07.11.2024, that SRA failed to make the payment of provident fund and gratuity dues to the workmen and employees. SBI having relied on failure to pay provident fund and gratuity by SRA to workmen and employees and having obtained a liquidation order on said premises it is not open for the SBI to contend that workmen and employees are not entitled for provident fund and gratuity dues. It is submitted that judgement of this Tribunal holding that in the liquidation proceeding, the workmen and employees are entitled for full provident fund and gratuity has been affirmed by the Hon'ble Supreme Court.

9. Learned counsel for the workman has referred and relied on the judgement of the Tribunal in ***'State Bank of India' Vs. 'Moser Baer Karmachari Union & Anr.',*** in **[Comp. App. (AT) (Ins.) No.396/2019],**

which has been affirmed by the Hon'ble Supreme Court. Learned counsel for the respondent further submitted that a contrary view taken by this Tribunal in ***'Savan Godiwala, Liquidator of Lanco Infratech Ltd.' Vs. 'Appala Siva Kumar'*** in **[Comp. App. (AT) (Ins.) No.1229/2019** has been set aside by the Hon'ble Supreme Court vide its judgement dated 07.02.2023 passed in Civil Appeal No.2520/2020, which reaffirms that workmen and employees are entitled for their full provident fund and gratuity. Judgment of the Hon'ble Supreme Court in ***'Sunil Kumar Jain'*** **(supra)** is being misinterpreted by the appellant. This Tribunal in its judgement dated 21.10.2022, in JMEVA's case has already noticed the judgement of the Hon'ble Supreme Court and held that judgment cannot be said to lay down that payment of provision fund and gratuity shall be payable only if any available. The submission that the JMEVA order is limited to CIRP proceeding and cannot be applied to liquidation is erroneous. The basis of the order passed by this Tribunal in JMEVA case was Section 36(4)(a)(iii). The entitlement of workmen to full provident fund and gratuity is clearly applicable in the liquidation proceedings. There are judgements of this Tribunal in liquidation proceeding holding that the workmen and employees are entitled for full provident fund and gratuity.

10. Learned counsel for the workmen in support of prayers made in the application for exclusion of 1656 days contends that it was due to litigation between the SRA and the financial creditor, the CIRP continued for 1986 days. The maximum period of CIRP being 330 days, the period of 1656 days deserves to be excluded. It is submitted that claim of the workmen and employee were admitted in the CIRP process in full, whereas, liquidator in its

list of creditors is showing the admission of claim of the workman and employees as NIL. Taking the view that no dues were payable by workmen and employee, 24 months prior to liquidation commencement date that is 26.11.2024. Putting the interpretation of period of 24 months prior to liquidation commencement date shall cause immense prejudice and hardship to the employees and workmen. The workmen are not praying for any change of the liquidation commencement date, which shall remain as 26.11.2024, whereas, for computing 24 months period backward to liquidation commencement date, the period beyond maximum 330 days need to be excluded. Period more than 330 days was only on account of various litigations, which period need to be excluded for giving a purposeful and meaningful interpretation of 24 months period as occurring in Section 53(1)(b) of the IBC. Workmen are the nerve centre of any company who must be given a priority which was opined by the Joint Parliamentary Committee Report. In event, the prayer of exclusion is rejected, the claim in the liquidation of workmen and employee shall become NIL, which is not in accord with the very purpose and object of the IBC/liquidation. When the same dues of workmen employees are admitted in CIRP process, making the same dues NIL on liquidation commencement date is neither reasonable nor in accordance with the scheme of the IBC. Adjudicating authority committed error in refusing the prayer of the workmen for excluding the period of 1656 days from the CIRP period. With respect to ₹350 crore which has been appropriate by SBI led consortium members of forfeiture of ₹200 crore, which was SRA's first tranche, the amount became an asset of the corporate debtor and not the property of the lenders, hence the said amount was also required to be

included in payment of provident fund and gratuity. Adjudicating authority committed error in not appreciating the prayer of the workmen with regard to amount of ₹350 crore which has been appropriated by SBI lenders. This Tribunal may allow the I.A. No.561/2026 & I.A. No.440/2026 and dismissed the Comp. App. (AT) (Ins.) No.419–420/2026.

11. We have considered the submissions of the counsel for the parties and perused the records.

12. From the submissions of the learned counsel for the parties, following questions arise for consideration in these appeals:

I. Whether exclusion of all sums due to any workman and employee from provident fund, pension fund and gratuity fund from the liquidation estate is contingent on the existence of such provident fund, pension fund and gratuity fund?

II. Whether the direction of the adjudicating authority by the impugned order dated 04.02.2026 directing the liquidator to make payment of provident fund, gratuity fund to the workman and employee is not in accordance with the statutory scheme under Section 36(4)(a)(iii) and Section 53(1)(b) of the IBC?

III. Whether the workman dues including provident fund and gratuity fund in the present case are required to be distributed as per waterfall mechanism under Section 53(1)(b) of the IBC?

IV. Whether the prayers made by the workman in I.A. No.3426/2025 to exclude the period of 1656 days (time spent in litigation in excess of

330 days from computation of liquidation commencement date) has rightly been rejected in the impugned order dated 04.02.2026?

V. Whether workmen were entitled to grant of payer that the Recovery Certificate issued by the Deputy Labour Commissioner for solving dues (January – March, 2019) be honoured and kept out of the liquidation estate?

VI. Whether the workman dues for a period of 24 months preceding the liquidation commencement date in the present case has to be treated as NIL?

Question Nos.(I), (II) & (III)

13. All the above questions being inter-connected are being taken together for consideration. The Order dated 04.02.2026 has been passed by the Adjudicating Authority in IA No.3426 of 2025 and IA No.4627 of 2025 filed by the workmen. The above two IAs were filed by the workmen of the Corporate Debtor after appointment of the liquidator of the Corporate Debtor by order dated 26.11.2024 passed by the Adjudicating Authority in consequence to the order of the Hon'ble Supreme Court dated 07.11.2024. IA No.3426 of 2025 was filed by one Manoj Kumar Das and other 295 workmen on 10.07.2025. In IA No.3426 of 2025, the Applicants, after giving details of sequence of the events including the order passed by this Tribunal dated 21.10.2022 directing Successful Resolution Applicant (SRA) to make payment to the workmen of the provident fund and gratuity, has made following prayers in the application:-

"i. Take the present application on record and into consideration; and

ii. Direct the exclusion of Applicants' statutory dues (Provident Fund and Gratuity) from the liquidation estate, in terms of Section 36(4)(a)(iii) of the Insolvency and Bankruptcy Code, 2016; and

iii. Direct that the Recovery Certificate issued by the Deputy Labour Commissioner for salary dues (January-March 2019) be honoured and kept out of the liquidation estate; and

iv. Direct that 1,656 days (time spent in legal proceedings, in excess of 330 days) be excluded from the computation of the Liquidation Commencement date, and that 20.05.2020 be deemed the effective commencement date of liquidation and not 26.11.2024 for the purpose of determining 24 months' dues under Section 53(1)(b) of the IBC; and

v. Pass such other further orders and directions as may be deemed fit and proper by this Hon'ble Tribunal under the facts and circumstances of the present case."

14. Another IA No.4627 of 2025 was filed by S. Gopalkrishnan, representative of workmen and employees, Stakeholders' Consultation Committee Jet Airways Limited where following prayers were made:-

"a. Direct the Respondent Liquidator to ensure that Provident Fund and Gratuity dues are paid to the workmen and employees of Jet Airways (India) Ltd. in full with statutory damages, penalties and interest, before any waterfall distribution under Section 53 IBC, as these amounts fall outside the liquidation estate and must be paid in full;

b. Direct the Liquidator to ensure that no funds are distributed to any of the SCC members until the Provident Fund and gratuity dues of the workmen and employees are paid in full;

c. Direct the Liquidator to bring on record what use has been attributed to the forfeited funds of Rs. 350 Crore;

d. Pass such other or further orders as this Hon'ble Tribunal may deem fit in the interests of justice."

15. The reply to the applications were filed by the State Bank of India (Financial Creditor) opposing the prayers made in the application. The Adjudicating Authority after hearing both the applications have partly allowed IA No.3426 of 2025 and allowed IA No.4627 of 2025. In paragraphs 20 and 21 of the judgment, following directions have been issued:-

> *"20. In view of the above, we pass the following orders:*
>
> *a. the liquidator is liable to pay the provident fund and gratuity dues to the workmen and employees as are payable to them in terms of provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Payment of Gratuity Act, 1972 and such dues shall not form part of the liquidation estate;*
>
> *b. the liquidator shall determine and adjudicate the claim under recovery certificate on its merit on the basis of judicial principles and provisions of the code;*
>
> *c. the exclusion of time for determination of liquidation commencement date for the purpose of section 53(1)(b) cannot be allowed by this Tribunal in terms of its inherent powers;*
>
> *d. The forfeited amount of Rs. 350 crores has been distributed by SBI. It is clarified that the applicant had sought usage of said sum, hence, we refrain from adjudicating whether such appropriation was within the provisions of IBC.*
>
> *21. In terms of above, IA 3426 of 2025 in CP (IB) No. 2205 of 2019 is partly allowed and IA 4627 of 2025 is allowed. Both the applications are disposed of accordingly."*

16. As noted above, the State Bank of India on behalf of the Financial Creditor has filed Company Appeal (AT) (Insolvency) No.419-420 of 2026 challenging the order dated 04.02.2026 whereas Company Appeal (AT) (Insolvency) No.551 of 2026 has been filed by workmen challenging the order insofar as other prayers in IA No.3426 of 2025 were refused.

17. The principle contention raised by the Financial Creditor in challenging the order dated 04.02.2026 is that the direction for payment from provident fund, pension fund and gratuity fund can be issued to the liquidator only when such funds are in existence on the liquidation commencement date. We have noted the above submission made by Learned Counsel for the Financial Creditor challenging the directions issued by the Adjudicating Authority in paragraph 20(a) of the impugned order dated 04.02.2026 whereas Learned Counsel for the workmen submitted that as per Section 36(4A) (iii), the exclusion from the liquidation estate all sums due to any workman or employee from a provident fund, a pension fund and a gratuity fund is due centric and not asset centric. It is submitted by the workmen that the Parliament never intended that exclusion applies only if separate dedicated fund is maintained. For answering the above questions, we need to notice statutory scheme under the IBC as well as statutory provisions governing the entitlement of workmen to provident fund, gratuity and pension fund. Learned Counsel for the parties having relied on various precedents of this Tribunal as well as the Hon'ble Supreme Court, we need to notice the precedents covering the subject. Section 33 of the IBC deals with 'initiation of liquidation'. Section 34 provides for 'appointment of liquidator'. Section 35 provides for 'powers and duties of liquidator'. Section 35(1)(j) and (m) are as follows:-

> *"**35. Powers and duties of liquidator.** - (1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: -*
>
> *(j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;*

(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator"

18. Section 36 deals with the 'liquidation estate'. Section 36(1) contemplates formation of an estate of the assets mentioned in sub-section (3). Sub-section (3) of Section 36 begins with *expression* subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include as elaborated in sub-sections (3) & (4) of Section 36 which has fallen for consideration and interpretation in the present appeal. Present appeal provides as follows:-

*"**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;

(b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;

(c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;

(d) assets of any Indian or foreign subsidiary of the corporate debtor; or

(e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor."

19. The provision which is relied by the parties in the present appeal is Section 36 (4A) (iii) which reads again:-

> "*"**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 –*
>
> *(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund"*

20. Section 53 of the IBC provides for 'distribution of assets'. The entitlement of workmen to provident fund, gratuity and pension fund is well recognised right under various statutory provisions. The first statute which needs to be noted is the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 which was enacted to provide for the institution of provident funds for employees in factories and other establishments. Section 11 of the 1952 Act provided for priority of payment of contributions over other debts. Section 11 of the 1952 Act provides as follows:-

> *"**11. Priority of payment of contributions over other debts.—** [Where any employer is adjudicated insolvent or, being a company, an order for winding up is made, the amount due—*
>
> *(a) from the employer in relation to 10[an establishment] to which any [Scheme or the Insurance Scheme] applies in respect of any contribution payable*

to the Fund [or, as the case may be, the Insurance Fund], damages recoverable under section 14B, accumulations required to be transferred under sub-section (2) of section 15 or any charges payable by him under any other provision of this Act or of any provision of the [Scheme or the Insurance Scheme]; or

(b) from the employer in relation to an exempted [establishment] in respect of any contribution to [the Provident Fund or any Insurance Fund] (in so far it relates to exempted employees), under the the rules of [the Provident Fund or any Insurance Fund], [any contribution payable by him towards the Family Pension Fund under sub-section (6) of section 17,] damages recoverable under section 14B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified under section 17.

shall, where the liability thereof has accrued before the order of adjudication or winding up is made, be deemed to be included] among the debts which under section 49 of the Presidency-towns Insolvency Act, 1909 (3 of 1909), or under section 61 of the Provincial Insolvency Act, 1920 (5 of 1920), or under 5 [section 530 of the Companies Act, 1956 (1 of 1956)], are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be. 6

[Explanation.—In this sub-section and in section 17, "insurance fund" means any fund established by an employer under any scheme for providing benefits in the nature of life insurance to employees, whether linked to their deposits in provident fund or not, without payment by the employees of any separate contribution or premium in that behalf.]

[(2) Without prejudice to the provisions of sub-section (1), if any amount is due from an employer 8 [whether in respect of the employee's contribution (deducted from the wages of the employee) or the employer's contribution], the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts.]"

21. The Payment of Gratuity Act, 1972 was enacted by the Parliament to provide for a scheme for the payment of gratuity to employees engaged in

factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith. Section 4 dealt with payment of gratuity. Section 4(1) of the Act provides as follows:-

> *"**4. Payment of Gratuity.**- (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-*
>
> *(a) on his superannuation, or*
>
> *(b) on his retirement or resignation,*
>
> *(c) on his death or disablement due to accident or disease:*
>
> *Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:*
>
> *Provided further that in case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is minor, the share of such minor, shall be deposited with the Controlling Authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority].*
>
> *Explanation.- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement."*

22. The Companies Act, 1956 as well as Companies Act, 2013 both dealt with workmen dues including provident fund and gratuity. Section 529 provided for 'application of insolvency rules in winding up of insolvent companies'. Section 529(3)(b) dealt with 'workmen's dues'. Section 529(3)(b)(iv) provided as follows:-

> *"**529. APPLICATION OF INSOLVENCY RULES IN WINDING UP OF INSOLVENT COMPANIES**- (3) For*

the purposes of this section, section 529A and section 530, - (b) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely :

(iv) all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company"

23. Section 529A provided for 'overriding preferential payments' which were required to be paid in priority to all other debts. Section 529A is as follows:-

*"**529A. OVERRIDING PREFERENTIAL PAYMENTS**- (1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company –*

(a) workmen's dues ; and

(b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 pari passu with such dues, shall be paid in priority to all other debts.

(2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions."

24. Explanation (b) to Section 529 (3)(b) defines 'workmen's dues' in following words:-

*"**529. APPLICATION OF INSOLVENCY RULES IN WINDING UP OF INSOLVENT COMPANIES**- (3) For the purposes of this section, section 529A and section 530, -*

(b) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely "

25. Explanation (b)(iv) reads as follows:-

*""**529. APPLICATION OF INSOLVENCY RULES IN WINDING UP OF INSOLVENT COMPANIES**- (3) For the purposes of this section, section 529A and section 530, -*

> *(b) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely :*
>
> *(iv) all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company"*

26. Workmen's dues in the definition both under Companies Act, 1956 and Companies Act, 2013 included all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company. Section 36(4) while defining 'liquidation estate' has excluded all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund. Two clear differentiations in the earlier statutory scheme and the scheme as delineated in IBC are apparent. They are:-

i. There is clear exclusion of all sums due to any workman and employee from the provident fund, the pension fund and the gratuity fund which was earlier part of the common pool of workmen dues as defined in the Companies Act, 1956 and Companies Act, 2013.

ii. In the definition of workmen's dues' occurring in Section 326 explanation (b)(iv) which was also the expression "maintained by the company' is no longer continuing in Section 36(4)(a)(iii).

27. As noted above, the submission which has been pressed by the Counsel for the Financial Creditor is that whatever the assets are in existence on the liquidation commencement date i.e. payment of provident fund, pension fund and gratuity fund is contingent upon existence of provident fund, pension fund and gratuity on the liquidation commencement date. Submission of the

Financial Creditor is that in event, no asset as provident fund, pension fund and gratuity fund is in existence on liquidation commencement date, there is no obligation of liquidator or the corporate debtor to make any payment towards provident fund, pension fund and gratuity.

28. The entitlement of gratuity and provident fund has been held to be statutory right of the workman and employee. The Hon'ble Supreme Court in "***Jaswant Singh Gill v. Bharat Coking Coal Ltd.*, (2007) 1 SCC 663"** while dealing with gratuity held that payment of gratuity is not a charity but a statutory right provided in favour of the employee. In paragraphs 15 and 16 of the judgment, following was laid down:-

> *"**15.** In Balbir Kaur v. Steel Authority of India Ltd. [(2000) 6 SCC 493 : 2000 SCC (L&S) 767] this Court opined: (SCC p. 502, para 14)*
>
> *"As regards the provisions of the Payment of Gratuity Act, 1972 (as amended from time to time) it is no longer in the realm of charity but a statutory right provided in favour of the employee."*
>
> ***16.** Interpreting Section 4(1) of the Act, it was held: (SCC p. 503, para 15)*
>
> *"We shall come back to the deposit of the provident fund but as regards the gratuity amount, be it noted that there is a mandate of the statute that gratuity is to be paid to the employee on his retirement or to his dependants in the event of his early death — the introduction of the Family Pension Scheme by which the employee is compelled to deposit the gratuity amount, as a matter of fact runs counter to this beneficial piece of legislation (Act of 1972). The statutory mandate is unequivocal and unambiguous in nature and runs to the effect that the gratuity is payable to the heirs of the nominees of the employees concerned but by the introduction of the Family Pension Scheme, this mandate stands violated and as such the same cannot but be termed to be illegal in nature. We do find some substance in the contention as raised, a mandatory statutory obligation cannot be trifled with by adaptation of a method which runs*

counter to the statute. It does not take long to appreciate the purpose for which this particular Family Pension Scheme has been introduced by deposit of the provident fund and the gratuity amount and we are not expressing any opinion in regard thereto but the fact remains that statutory obligation cannot be left high and dry on the whims of the employer irrespective of the factum of the employer being an authority within the meaning of Article 12 or not."

29. We need to notice another judgment of the Hon'ble Supreme Court in ***"State of Jharkhand v. Jitendra Kumar Srivastava- (2013) 12 SCC 210"*** where dealing with gratuity and pension fund, the Hon'ble Supreme Court has held that an employee earns these benefits by dint of his long, continuous, faithful and unblemished service. In paragraph 8 of the judgment, the Hon'ble Supreme Court laid down following:-

*"**8.** It is an accepted position that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. Conceptually it is so lucidly described in D.S. Nakara v. Union of India [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] by D.A. Desai, J. who spoke for the Bench, in his inimitable style, in the following words: (SCC pp. 319-20, paras 18-20)*

"18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will

or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar [(1971) 2 SCC 330 : 1971 Supp SCR 634] wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh [(1976) 2 SCC 1 : 1976 SCC (L&S) 172 : (1976) 2 LLJ 377] ."

It is thus a 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 300-A of the Constitution of India."

30. We have already noticed the statutory scheme for payment of workmen dues in case of insolvency/ winding up of the company that workmen dues have priority in payment over all debts. Learned Counsel for the Financial Creditor submitted that under the Companies Act, 1956 and Companies Act, 2013 workmen dues including statutory dues were entitled to absolute super priority as evident from provisions noted above i.e. Sections 529, 529A and 530 of the Companies Act, 1956 and Section 326 of the Companies Act, 2013 and submission of the Counsel for the Financial Creditor is that IBC led to an intentional departure in the treatment of statutory dues under the waterfall mechanism. Submission of the Financial Creditor is that the entire distribution of workmen dues including provident fund, gratuity fund etc. are now to be dealt with as per waterfall mechanism under Section 53.

31. When we look into the statutory scheme under the IBC, it is clear that payment to dues of the workmen or employee from provident fund, gratuity fund and pension fund has been consciously kept out of waterfall mechanism under Section 53A. In the liquidation estate which is to be used for distribution under Section 53A, all sums due to any workmen and employees from the provident fund, gratuity fund and pension fund has been excluded and the intendment is clear that all sums due to any workmen and employee from provident fund, pension fund and gratuity fund are not to be dealt with in waterfall mechanism under Section 53A. The submission of the Counsel for the Financial Creditor that all sums due to the workmen from the provident fund, pension fund and gratuity fund has to be dealt under Section 53A cannot be accepted. The submission which has been much pressed by the Counsel for the Financial Creditor is that existence of payment to the workmen and employees all sums due from provident fund, pension fund and gratuity fund is contingent upon existence of such fund on the liquidation commencement date. The legislative scheme as reflected from various statutory provisions indicate that statutory right of the workmen to receive dues from provident fund, pension fund and gratuity fund are an accepted right and in the earlier statutory regime as reflected, in priority under the Companies Act, 2013, the said dues were given a priority in payment from all other debt. Can the submission be accepted that under the IBC, the right of workmen and priority to receive dues from provident fund, pension fund and gratuity fund has been given go by and it only depend on existence of provident fund, gratuity fund and pension fund on the liquidation commencement date. The purpose of excluding all sums due to the workmen

from provident fund, gratuity fund, pension fund is clear and categorical that the said dues of the workmen has to be discharged without undertaking any distribution under Section 53A by the liquidator. We, thus, are not persuaded to accept the submission of the Counsel for the Financial Creditor that the entitlement of workmen to receive all dues from provident fund, pension fund and gratuity find is contingent only on existence of such fund on the liquidation commencement date. To accept the above submission is to clearly disregard the entitlement of workmen and employees to receive payment of provident fund, pension fund and gratuity fund and to washout the obligation of the Corporate Debtor on the premise that those funds are not segregated and available on the date of liquidation commencement date. The said interpretation does not carry out purpose and intent of the provision of the IBC and clearly negate the right and entitlement of the workmen and employees to their provident fund, gratuity fund and pension fund which they have earned due to their continuous service rendered to Corporate Debtor.

32. It is relevant to notice that the Corporate Debtor was making deductions towards its workmen, employees and the Resolution Professional has admitted in the CIRP preceding that amount towards provident fund of the workmen and employees were deposited till February, 2019. We may refer to the judgment of this Tribunal dated 21.10.2022 in ***"Jet Aircraft Maintenance Engineers Welfare Association Vs Ashish Chhawchharia Resolution Professional of Jet Airways (India) Ltd. & Ors.- Company Appeal (AT) (Insolvency) No.752 of 2021"*** along with other appeals where this Tribunal has noted in paragraph 69 of the judgment the statement of the Resolution Professional that no amount towards provident fund to the

workmen and employees were deposited after February, 2019. In paragraph 69 of the judgment, following has been observed:-

> *"69. The present is a case where resolution plan has been approved; present is not a case of liquidation. Under the provisions of 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 25.07.2022 that no amount towards provident fund of the workmen and employees were deposited after February, 2019. Insolvency commencement date being 20.06.2019, 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 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 upto 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."*

33. We also need to notice Audited Financial Statements of the Corporate Debtor as on 31.03.2019 which is brought on record as Annexure A-4 of the Company Appeal (AT) (Insolvency) No.551 of 2026. In the Independent Auditors' Report, details pertaining to 'provision for employee benefits' have

been captured. Under Note 22 under the heading 'provision for employee benefits' gratuity amount of Rs.18310 has been captured. Note 22 is to the following effect:-

*"**NOTE 22: PROVISIONS***

Particulars	***As at 31 March 2019***	***As at 31 March 2018***
Provision for employee benefits (Refer NOTE 40)	***18,310***	*17,429*
Gratuity	*5,322*	*5,800*
Compensated Absences		
Others		
Redelivery Provision (Refer Note below)	*20,950*	*18,981*
	44,582	***42,210***

34. Further under Note 27 again gratuity has been captured to the following effect:-

*"**NOTE 27: PROVISIONS***

Particulars	***As at 31 March 2019***	***As at 31 March 2018***
Provision for employee benefits (Refer NOTE 40)	***1,253***	*1,135*
Gratuity	*2,022*	*2,304*
Compensated Absences		

35. Under Note 31 'employee benefit expense' has noticed the 'contribution to provident fund and other funds', which is as follows:-

*"**NOTE 31: EMPLOYEE BENEFIT EXPENSE***

Particulars	***2018-19***	***2017-18***
Salaries and wages	*2,96,831*	*2,80,135*
Contribution to provident and other funds	*7,796*	*7,635*
	2,773	*2,523*
Provision for gratuity	*23*	*2,047*

Provision for compensated absences	*6,062*	*7,195*
Staff welfare expenses		
	313,485	***299,535***

36. Note 40 deals with 'employee benefits' which noticed as follows:-

"**NOTE 40: EMPLOYEE BENEFITS**

The Company contributes to the following post-employment defined benefit plans in India

I. Defined Contribution Plans

The Company makes contributions towards provident fund to a defined contribution retirement benefit plan for qualifying employees. Under the plan, the Company is required to contribute a specified percentage of payroll cost to the appropriate government authorities.

Expenses recognised for defined contribution plans are summarised below:

Particulars	***2018-19***	***2017-18***
Contribution to Provident Fund	*4,960*	*4,674*
Contribution to F.P.F.	*1,858*	*1,940*
Contribution to EDU	*110*	*110*
Contribution to Employees' State Insurance Scheme	*233*	*267*
Total	***7,161***	***6,991***

37. The financial statement of the Corporate Debtor as on 31.03.2019 i.e. immediately before Corporate Debtor was taken under the CIRP w.e.f. 20.06.2019. The Corporate Debtor's financial statements were duly reflecting liabilities towards gratuity, provident fund and other employee benefits. The entitlement of workmen and employees to receive gratuity and provident fund is thus, clearly reflected from the financial statements. To accept the submission of the counsel for the Financial Creditor that since only on liquidation commencement date, no funds were in existence with the

Corporate Debtor as the employees and workmen shall lose their entitlement to receive benefits from provident fund, pension fund and gratuity fund is to negate the rights of workmen and employees against the statutory scheme. Learned Counsel for the workmen is right in his submission that the expression used in Section 36(4)(a)(iii) that all sums due to any workmen or employee from provident fund, gratuity fund and pension fund are due centric and not asset centric. Thus, the mere fact that on the liquidation commencement date in designated fund sums is not available, the workmen, employees shall lose their rights to receive the payment is clearly contrary to the entire legislative scheme under the IBC. Learned Counsel for the workmen is also right in their submission that the issue is no longer *res integra* and is fully covered by the judgment of this Tribunal and the Hon'ble Supreme Court.

38. We now proceed to notice the various judgments of this Tribunal and the Hon'ble Supreme Court on the very issue which has come up for consideration in the present appeal. We need to first notice the judgment of this Tribunal delivered in the CIRP proceeding of the Corporate Debtor- Jet Airways Limited itself which judgment was delivered between the parties which was delivered in the CIRP process of the Corporate Debtor. Reliance has been placed on the judgment dated 21.10.2022 of this Tribunal passed in ***"Jet Aircraft Maintenance Engineers Welfare Association Vs Ashish Chhawchharia"*** (supra) with other Appeals. In the above judgment, the Appellants who were workmen and employees of the Corporate Debtor has filed the Appeal in this Tribunal challenging the approval of the Resolution Plan which did not provide for payment of full amount of provident fund,

gratuity and pension fund. Reliance was placed by the workmen, employees on Section 36(4)(a)(iii) of the IBC and relying the said provision was contended that workmen and employees were entitled for payment. One of the questions which was framed in the above case was as to Whether the workmen and employees are entitled to receive the payment of provident fund, gratuity and other retirement benefits in full since they are not part of the liquidation estate under Section 36(4)(b)(iii) of the Code. Question no. (II) noticed the provision of Section 36(4)(a)(iii) and the Report of the Bankruptcy Law Reforms Committee, November, 2015 and Report of the Joint Committee on The Insolvency and Bankruptcy Code, 2015 - April, 2016. In paragraphs 42 to 47, following was observed:-

> *"42. A great emphasis has been laid down by learned counsel for the appellant on workmen/employees entitlement to payment of provident fund, gratuity and other retirement benefits in full. The submission is supported by provisions of Section 36 Sub-section (4) of the Code. Section 36 deals with liquidation estate. Section 36(1) provides as follows: -*
>
> *"36. Liquidation Estate. - (1) For the purposes*
>
> *of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor."*
>
> *43. Section 36(4) provides that the assets which shall not include in the*
>
> *liquidation estate. Section 36(4)(a) is as follows:-*
>
> *"36(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;*

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

44. Section 36(4) contains an injunction "the following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation". We, in the present case, are concerned with clause (iii) of sub-section 4(a) which is "all sums due to any workman/employee from the provident fund, pension fund or the gratuity fund".

45. A plain reading of the above provision indicate that what is excluded from the liquidation estate are sums due to any workman or employee from the provident fund, pension fund and gratuity fund. Thus, sums due to any workman from the above funds are excluded from the liquidation estate. Legislative intent is clear that any sums due to any workman from aforesaid fund are excluded and cannot be used for recovery in the liquidation. The object is that sums due to any workman and employee from the aforesaid funds should not be used for recovery in liquidation for dues of other creditors since those dues are exclusive to workmen and employees.

46. Learned counsel for the Appellant has relied on "Report of the Bankruptcy Law Reforms Committee, November, 2015". He has referred to Para 5.5.5. The Committee opined that assets held by the entity in trust, such as employee pension must be kept out of the liquidation process. The submission of the Appellant is that when the sums due to the workmen from provident fund, gratuity fund and pension fund are excluded from the liquidation estate, the sums due to any workmen towards provident fund, gratuity fund and pension fund should be paid in full and waterfall mechanism provided under Section 53(1)(b) should not be made applicable for computing such claims of the workmen and employees.

47. Learned counsel for the Appellant has also relied on "Report of the Joint Committee on The Insolvency and Bankruptcy Code, 2015 -April, 2016", where in para 27 following has been stated which is reflected in Section 36(4). Para 27 is as follows:-

"27. Exclusion of provident fund, pension fund and the gratuity fund from the liquidation estate assets and estate of bankrupt - Clause 36(4) and 155(2)

The representative of EPFO during the course of deliberations stated that the priority of payment of debts under the Code is changed and EPF dues in the Bill have been placed on a lower priority and the Eleventh Schedule of the Code proposes that Section 326 and 327 shall not be applicable in the event of liquidation under the Code. By this the provisions of Section 11 of the EPF and MP Act are rendered null and void. The representative drew the attention of the Committee to the Supreme Court Judgment whereby it was held that the EPF dues shall get priority over all other debts including secured creditors.

Similarly, PFRDA in the memorandum has stated that the investment for old age security/pension should be given higher priority in case of liquidation of assets of bankrupt entities in line with the priority given to the dues of employees. Further, as most of the subscribers under NPS regulated by PFRDA are from Government sector and the NPS Life (Scheme for Economically Weaker Section), where the share of the contribution is from the Government funds also, higher priority should be given to the dues to pension fund investments to the bankrupt entities.

The Committee after in depth examination are of the view that provident fund, pension fund and the gratuity fund provide the social safety net to the workmen and employees and hence need to be secured in the event of liquidation of a company or bankruptcy of partnership firm. The Committee, therefore, feel that all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund should not be included in the liquidation estate assets and estate of the bankrupt.

In view of the above the Committee decide that the Clause 36(4)(a)(iii) may be substituted by the following:

'all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund'

Similarly, the following new sub-Clause 155(2)(d) may be added after Clause 155(2)(c).

'all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund.'

Clause 155(2)(c) may accordingly be renumbered 155(2)(d)."

39. This Tribunal after considering various precedents cited held that workmen entitled for payment of full amount of provident fund, pension fund and gratuity. In paragraphs 71 and 72(i), following was held:-

> *"71. In view of the aforesaid discussion, we arrive at following conclusions:*
>
> *(i) The workmen and employees are entitled for payment of full amount of provident fund and gratuity till the date of commencement of the insolvency which amount is to be paid by the Successful Resolution Applicant consequent to approval of the Resolution Plan in addition to the 24 months workmen dues as the workmen is entitled to under Section 53(1)(b) of the Code. It is made clear that in addition to part amount of provident fund and gratuity as proposed in Resolution Plan to workmen, Successful Resolution Applicant is obliged to make payment of balance unpaid amount of provident fund and gratuity to workmen and employees.*
>
> *72. Our answer to Question II and III is as follows:*
>
> *(i) The workmen and employees are entitled to receive the amount of provident fund and gratuity in full since they are not part of the liquidation estate under Section 36(4)(b)(iii).*
>
> *(ii) The workmen are entitled to receive their dues from the Corporate Debtor for period of 24 months as per provision of Section 53(1)(b) at least to minimum liquidation value envisaged under Section 32(2)(b) read with Section 53(1)."*

40. Learned Counsel for the Financial Creditor sought to distinguish the above judgment on the ground that the above judgment was delivered by this Tribunal in respect to the CIRP process of the Corporate Debtor whereas in the present Appeal the challenge arises out of liquidation proceeding. It is submitted that this Tribunal held that SRA was liable to pay the full amount of provident fund, pension fund and gratuity in compliance of provision of Section 30(2)(b) and (e) whereas in the liquidation proceedings distribution has to be made as per Section 53 of the IBC. We are not persuaded to accept

the above submission. When in the CIRP process of the Corporate Debtor it was held that the workmen and employees are entitled to receive payment of provident fund, gratuity fund and pension fund relying on Section 36(4)(a)(iii). Reliance on said provision cannot be disregarded when right of the workmen and employees have to be considered in the liquidation proceeding. Thus, that distinction sought to be maintained by the Learned Counsel for the Financial Creditor does not commend us. The submission of the Appellant that judgment of this Tribunal dated 21.10.2022 is not applicable cannot be accepted. This Tribunal in the CIRP process of the Corporate Debtor itself having upheld the entitlement of the workmen/employees to receive full amount of gratuity fund, provident fund and pension fund which order has also been affirmed by the Hon'ble Supreme Court vide judgment dated 31.01.2023 in Civil Appeal No.407 of 2023, it is not open for the Financial Creditor to submit that there is no entitlement of workmen, employees to received full provident fund, pension fund and gratuity fund.

41. Learned Counsel for the workmen has also relied on judgment of this Tribunal in ***"State Bank of India vs. Moser Baer Karamchari Union & Anr- Company Appeal (AT) (Insolvency) No.396 of 2019"*** which was judgment delivered by this Tribunal in the liquidation proceeding of the Corporate Debtor- Moser Baer. In the above case, in the liquidation proceeding commenced on 20.09.2018, Adjudicating Authority in CA No.19(PB) of 2019 passed an order that provident fund dues, pension fund dues and gratuity fund dues cannot be part of Section 53 of the IBC. The State Bank of India as secured creditor has challenged the said order before this Tribunal. This Tribunal after considering all relevant provisions including

Section 36(4)(a)(iii) as well as Section 53 held that all sums due to workmen and employees from the provident fund, pension fund and gratuity fund do not form part of the liquidation estate and distribution of the said does not arise under Section 53(1). In paragraphs 16, 17 and 18, following was held:-

> *"16. In terms of sub-section (4) (a) (iii) of Section 36, as all sums due to any workman or employees from the provident fund, the pension fund and the gratuity fund, do not form part of the liquidation estate/ liquidation assets of the 'Corporate Debtor', the question of distribution of the provident fund or the pension fund or the gratuity fund in order of priority and within such period as prescribed under Section 53(1), does not arise.*
>
> *17. The 'workmen's dues' is mentioned in clause (b) (i) of Section 53(1), which are the dues for the period of twenty-four months preceding the liquidation commencement date.*
>
> *18. In view of the aforesaid specific provisions, the Explanation (iii) below Section 53, for the purpose of meaning of 'workmen's dues', the Appellant cannot derive the meaning as assigned to it in Section 326 of the Companies Act, 2013, including the Explanation below it."*

42. The order of the Adjudicating Authority was upheld. In paragraphs 24 and 25, following was held:-

> *"24. Once the liquidation estate/ assets of the 'Corporate Debtor' under Section 36(1) read with Section 36 (3), do not include all sum due to any workman and employees from the provident fund, the pension fund and the gratuity fund, for the purpose of distribution of assets under Section 53, the provident fund, the pension fund and the gratuity fund cannot be included.*
>
> *25. The Adjudicating Authority having come to such finding that the aforesaid funds i.e., the provident fund, the pension fund and the gratuity fund do not come within the meaning of 'liquidation estate' for the purpose of distribution of assets under Section 53, we find no ground to interfere with the impugned order dated 19th March, 2019.*

The appeal is accordingly, dismissed. No costs."

43. The State Bank of India filed an appeal against the said judgment before the Hon'ble Supreme Court being Civil Appeal No.258 of 2020- ***"State Bank of India vs. Moser Baer Karamachari Union and Anr.- 2023 SCC OnLine SC 140"*** which Civil Appeal was dismissed by the Hon'ble Supreme Court by judgment and order dated 07.02.2023.

44. Another judgment which dealing with Section 36(4)(a)(iii) need to be noticed is judgment of NCLT Hyderabad Bench which came in Appeal before this Tribunal as well as before the Hon'ble Supreme Court. All three judgments are relevant for the present controversy. NCLT Hyderabad in CP IB) No.111/7/HDB/2017 had allowed the application filed by ex-employee of the Corporate Debtor seeking a direction to the liquidator to treat the gratuity dues of the applicant on the highest priority by not treating it as part of the liquidation estate. Paragraph 1 of the order of the NCLT noticed the facts which are as follows:-

> *"1. The Present Application is filed by the ex-employees of the Corporate Debtor seeking for direction to the liquidator to treat the gratuity dues of the Applicants as highest priority, by not treating it as part of the liquidation estate of the Corporate Debtor."*

45. Adjudicating Authority after hearing both the parties and considering the provision of Payment of Gratuity Act relied on the judgment of NCLT Principal Bench in ***"Alchemist Asset Reconstruction Company Ltd. vs. Moser Baer India Limited"*** and the judgment of this Appellate Tribunal held that the liquidator has to make arrangement for the payment of gratuity. It was further held that the liquidator cannot avoid the liability to pay gratuity

to the employees on the ground that Corporate Debtor did not maintain separate funds. In paragraphs 11 and 12 of the judgment following was directed:-

> *"11. The Liquidator cannot avoid the liability to pay gratuity to the employees on the ground that Corporate Debtor did not maintain separate funds. Even if there is no fund maintained the Liquidator has to provide sufficient provision for payment of gratuity to the Applicants according to their eligibility. However, Liquidator has made it clear that payment of gratuity is not treated as Liquidation Estate. Therefore, the only direction which can be given to the Liquidator is to make necessary arrangements for payments of gratuity to the Applicants. According to their eligibility and it should be given priority. With these observations, the Application is disposed of.*
>
> *12. In the result, Application is allowed directing the Liquidator to make necessary arrangements for payment of gratuity to the Applicants according to their eligibility and the amount payable shall not be treated as Liquidation Estate and payment to be made accordingly."*

46. The above judgment of the NCLT Hyderabad was challenged in Company Appeal (AT) (Insolvency) No.1229 of 2019- ***"Savan Godiwala vs. Apalla Siva Kumar- (2020) SCC OnLine NCLAT 191"***. This Tribunal accepted the contention that in case where no fund is created by company, liquidator cannot be directed to make payment of gratuity. This Tribunal also noticed all relevant provisions as well as all relevant judgments of this Tribunal in ***Moser Baer Karamachari Union and Anr.*** (supra). The direction of the NCLT Hyderabad that the liquidator to make the payment of gratuity was set aside. It was held that when Corporate Debtor did not maintain separate fund, no direction could have been issued. The order of Adjudicating Authority was set aside. It was useful to notice paragraphs 17 to 23 of the judgment which is as follows:-

*"**17.** Based on the judgment of this Appellate Tribunal in case of the State Bank of India v. Moser Baer Karamchari Union, 2019 SCC OnLine NCLAT 447, it is clear that in terms of sub-Section (4)(a)(iii) of Section 36 all sums due to any workman or employees from the Provident Fund, Pension Fund and the Gratuity Fund, do not form part of the liquidation estate/liquidation assets of the 'Corporate Debtor'. Therefore, the question of distribution of Provident Fund or the Pension Fund or the Gratuity Fund in order to priority, and within such period as prescribed under Section 53(1), does not arise. It is further held in the above case that 53(1)(b)(i) of the I&B Code, regarding distribution of assets, relating to workmen's dues is confined to a period of 24 months, preceding the liquidation commencement date. This question has already been decided that Gratuity Fund does not form the part of the liquidation asset.*

***18.** Therefore, the question of distribution of the Gratuity Fund in order of priority, provided under Section 53(1) of the Code does not arise. However, the Adjudicating Authority has given direction to the Liquidator that, "the Liquidator cannot avoid the liability to pay Gratuity to the employees, on the ground, that 'Corporate Debtor' did not maintain separate funds, even if, there is no fund maintained, the Liquidator has to provide sufficient provision for payment of Gratuity to the Applicants according to their eligibility".*

***19.** It is pertinent to mention that the Annual Report of 2016-17 of the 'Corporate Debtor' shows that there was the provision of Gratuity for the employees and 9.77 crores were proposed for payment of Gratuity in the Financial Year ending 2017 and 11.53 Crore was proposed for Gratuity payment to the employee in the financial ending year 2016.*

***20.** It is stated that in para 40 of the Annual Report that "the Company has a defined benefit Gratuity plan. Every employee, who has completed 5 years or more, gets a Gratuity on departure, i.e. 15 days salary for each completed year of service, subject to a maximum of Rs. 0.15 crores. **The plan for the same is unfunded**."*

***21.** It is further noticed in the report that "In respect of defined contribution plan (Provident Fund), an amount of Rs. 6.72 (31st March, 2016 and Rs. 6.85 crores have*

been recognised as expenditure in the statement of Profit and loss."

22. *The annual cash flow statement for the ending 31st March, 2017 show that Gratuity Fund was proposed. However, it is noticed that no such fund was created. In the circumstances, the Liquidator should not have been directed to make provision for the payment of gratuity to the workmen as per their entitlement.*

23. *Therefore, this Appellate Tribunal is of the considered opinion that the Adjudicating Authority erred in directing the Liquidator to make provision for payment of Gratuity to workers, as per their entitlement. Thus, Appeal is allowed and the impugned direction to 'Liquidator' to make provision for payment of Gratuity, without their being a separate fund in this regard, is set aside."*

47. The above judgment of this Tribunal dated 11.02.2020 in ***"Savan Godiwala"*** (supra) was challenged before the Hon'ble Supreme Court in Civil Appeal No.2520 of 2020. The Hon'ble Supreme Court vide its judgment dated 07.02.2023, set aside the order of this Tribunal and the order of the NCLT Hyderabad was restored. The Hon'ble Supreme Court relied judgment of the same date in Civil Appeal No.2520 of 2020 which was Appeal filed by the State Bank of India challenging the order of this Tribunal has dismissed the Appeal. The order of the Hon'ble Supreme Court dated 07.02.2023 is as follows:-

*"**CIVIL APPEAL No. 2520 OF 2020***

By order of even date passed in Civil Appeal No.258 of 2020, we have dismissed the appeal, thereby affirming the judgment and order dated 19th August, 2019 passed by the National Company Law Appellate Tribunal ("NCLAT" for short) in Company Appeal No.396 of 2019.

The order impugned in the present appeal passed by the learned NCLAT is in ignorance of its earlier order dated 19th August, 2019 which is affirmed by us in Civil Appeal No.258 of 2020.

> *In that view of the matter, this appeal deserves to be allowed. The impugned order passed by the learned NCLAT is quashed and set aside, and the order passed by the National Company Law Tribunal is restored."*

48. The judgment of this Tribunal in ***"Savan Godiwala"*** (supra) taking the view that gratuity funds are not available, no direction could be issued to liquidator to make provision for gratuity has been set aside and the order of NCLT directing the liquidator to make the payment of gratuity having been restored. The law stand well settled that the entitlement of workmen and employees to receive gratuity fund, provident fund and pension fund cannot be negated on the pretext that no separate funds were maintained by the Corporate Debtor for the purpose.

49. Learned Counsel for the workmen has also relied another judgment of this Tribunal in ***"Truvisory Insolvency Professionals Pvt. Ltd. vs. Employees' Provident Fund Organisation and Ors.- 2024 SCC OnLine NCLAT 2801"*** which was a case where order passed by the NCLAT directing the Resolution Professional to set aside amounts corresponding to the provident fund contributions of the employees of the Corporate Debtor from the funds available in the attached bank accounts was challenged. In the above case, subsequently the order of liquidation was also passed on 09.11.2023. This Tribunal in the above case has categorically held 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 Corporate Debtor. In paragraphs 29 and 30 of the judgment, following was laid down:-

> *"**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, the 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."*

50. Learned Counsel for the Financial Creditor has placed much reliance on judgment of the Hon'ble Supreme Court in ***"Sunil Kumar Jain v. Sundaresh Bhatt*, (2022) 7 SCC 540"**. It is submitted by the Financial Creditor that in the above judgment the Hon'ble Supreme Court has held that a payment to workmen and employees is to be made only 'if any available'. Learned Counsel for the workmen in reference to the judgment of the Hon'ble Supreme Court in *Sunil Kumar Jain's* case arose in the context of claim of the employees and workmen regarding their salary for the period involving CIRP process. Learned Counsel for the workmen has referred to the judgment of this Tribunal in Company Appeal (AT) (Insolvency) No.605 of 2019- ***"Sunil Kumar Jain & Ors. Vs Mr. Sundaresh Bhatt & Ors."*** where this Tribunal noticed the following fact in paragraph 1 of the judgment:-

> *"This Appeal has been preferred by the Appellant-workmen against part of the order dated 25th April, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahemdabad, whereby, no relief has been granted to the Appellants with regard to their claim relating to*

salary, which they claimed for the period involving 'Corporate Insolvency Resolution Process' and the prior period."

51. This Tribunal dismissed the Appeal and while dismissing the Appeal in paragraphs 4, 5 and 6, following was observed:-

"4. On hearing Counsel for the Appellants and the Counsel for the Liquidator, we find that an order of liquidation has already been passed. This apart, the disputed question of fact, as to whether the Appellants have actually worked during the 'Corporate Insolvency Resolution Process' or the earlier period, cannot be dealt with by the Adjudicating Authority till such information could have been obtained from the 'Resolution Professional' or claim is decided by the Liquidator.

5. In view of the aforesaid fact, we are not inclined to interfere with the impugned order dated 25th April, 2019, but allow the Appellants-all 272 workmen and employees to file individual claims before the Liquidator, who after going through the record and taking into consideration the pleadings made by workmen/ employees will determine the claim. If claim of one or other workmen/ employee is rejected, it will be open to them to move before the Adjudicating Authority, who may decide the same in accordance with law.

6. So far as, the Gratuity and Provident Funds are concerned, it is sufficient to say that the same cannot be treated to be the asset of the 'Corporate Debtor'. They are to be disbursed among the employees/ workmen who are entitled for the same. The Appeal stands disposed of with aforesaid observation. No cost."

52. Learned Counsel for the workmen has also submitted that in paragraph 6 of the judgment of this Tribunal in ***"Sunil Kumar Jain & Ors. Vs Mr. Sundaresh Bhatt & Ors."*** (supra) has held so far as, the Gratuity and Provident Funds are concerned, they cannot be treated to be the asset of the 'Corporate Debtor'.

53. Learned Counsel for the Financial Creditor submits that the Hon'ble Suoreme Court in the above case has considered all relevant provisions. The Hon'ble Supreme Court has also noticed Section 36(4)(a)(iii) and held that the dues on account of provident fund, pension fund and gratuity, they are governed by Section 36(4)(a)(iii) and Section 53 shall have no application with respect to provident fund, pension fund and gratuity. Paragraph 24 of the judgment of ***"Sunil Kumar Jain v. Sundaresh Bhatt*, (2022) 7 SCC 540"** (supra) has laid down following:-

> *"**24.** Now so far as the dues of the workmen/employees on account of provident fund, gratuity and pension are concerned, they shall be governed by Section 36(4) IBC. Section 36(4)(iii) IBC specifically excludes "all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund", from the ambit of "liquidation estate assets". Therefore, Section 53(1) IBC shall not be applicable to such dues, which are to be treated outside the liquidation process and liquidation estate assets under the IB Code. Thus, Section 36(4) IBC has clearly given outright protection to workmen's dues under provident fund, gratuity fund and pension fund which are not to be treated as liquidation estate assets and the Liquidator shall have no claim over such dues. Therefore, the workmen/employees concerned shall be entitled to provident fund, gratuity fund and pension fund from such funds which are specifically kept out of liquidation estate assets and as per Section 36(4) IBC, they are not to be used for recovery in the liquidation."*

54. The above proposition laid down in the Hon'ble Supreme Court in ***"Sunil Kumar Jain v. Sundaresh Bhatt*, (2022) 7 SCC 540"** clearly support the submission of the workmen. Reliance has been placed by the Financial Creditor on paragraph 25(ii). After judgment of *Sunil Kumar Jain* where expression 'if any available' has been used, we need to notice paragraphs 25.1 and 25.2 which are as follows:-

> *"**25.1.** That the wages/salaries of the workmen/employees of the corporate debtor for the period during CIRP can be included in the CIRP costs provided it is established and proved that the interim resolution professional/resolution professional managed the operations of the corporate debtor as a going concern during the CIRP and that the workmen/employees concerned of the corporate debtor actually worked during the CIRP and in such an eventuality, the wages/salaries of those workmen/employees who actually worked during the CIRP period when the resolution professional managed the operations of the corporate debtor as a going concern, shall be paid treating it and/or considering it as part of CIRP costs and the same shall be payable in full first as per Section 53(1)(a) IBC.*
>
> ***25.2.** Considering Section 36(4) IBC and when the provident fund, gratuity fund and pension fund are kept out of the liquidation estate assets, the share of the workmen's dues shall be kept outside the liquidation process and the workmen/employees concerned shall have to be paid the same out of such provident fund, gratuity fund and pension fund, if any, available and the Liquidator shall not have any claim over such funds."*

55. The use of expression 'if any available' in paragraph 25.2 cannot be read to mean that the entitlement of provident fund, pension fund and gratuity fund is depended only when the said provident fund, gratuity fund and pension fund are available. The fact in Sundaresh Bhatt's case has been noticed in paragraphs 1 to 4 which are as follows:-

> *"Feeling aggrieved and dissatisfied with the impugned order dated 31-5-2019 [Sunil Kumar Jain v. Sundaresh Bhatt, 2019 SCC OnLine NCLAT 259] passed by the National Company Law Appellate Tribunal, New Delhi (hereinafter referred to as "the Appellate Tribunal") in Company Appeal (AT) (Insolvency) No. 605 of 2019, by which the Appellate Tribunal has dismissed the said appeal preferred by the appellants herein — workmen/employees of M/s ABG Shipyard Ltd. (hereinafter referred to as "the corporate debtor"), working at Dahej and Mumbai, which was filed against the order passed by the National Company Law Tribunal, Ahmedabad Bench,*

Ahmedabad (hereinafter referred to as "the adjudicating authority") dated 25-4-2019 [Sunil Kumar Jain v. Sundaresh Bhatt, 2019 SCC OnLine NCLT 9931] not granting any relief to them with regard to their claim relating to salary, which they claimed for the period involving "corporate insolvency resolution process" (hereinafter referred to as "CIRP") and the prior period, original applicants — workers/employees have preferred the present appeal.

2. *That the corporate debtor was a private sector ship building yard with its manufacturing activities at Dahej Yard and Surat Yard in Gujarat and having its corporate office at Mumbai. That prior to the initiation of CIRP, the corporate debtor had 562 workmen and 93 employees at Dahej; 291 workmen and 99 employees at Surat and 101 employees at its Mumbai Head Office. The appellants herein are the 272 employees and workmen employed at Mumbai Head Office and Dahej Yard of the corporate debtor. None of the 201 employees and workmen at Surat Yard are the appellants herein.*

3. *Vide its order dated 1-8-2017 [ICICI Bank Ltd. v. ABG Shipyard Ltd., 2017 SCC OnLine NCLT 554] , the adjudicating authority admitted an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the IB Code") and the CIRP was initiated. The adjudicating authority also appointed the interim resolution professional of the corporate debtor who was thereafter confirmed as the resolution professional (for short "RP") by the Committee of Creditors (for short "CoC") of the corporate debtor on 7-9-2017. First meeting of the CoC was held on 4-9-2017.*

3.1. *On 23-10-2017, Company Application No. 348 of 2017 was filed before the adjudicating authority, praying inter alia to direct the resolution professional to make payment to the employees and the workmen. On 9-3-2018, the appellants herein filed Company Application No. 78 of 2018 in Company Application No. 348 of 2017 before the adjudicating authority, praying inter alia to direct the RP to utilise the amount of Rs 9,75,33,236 to be received from the Indian Coast Guard solely for employees/workmen.*

3.2. *Vide order dated 25-4-2018 [Sunil Kumar Jain v. ABG Shipyard Ltd., 2018 SCC OnLine NCLT 14366] passed in Company Application No. 78 of 2018, the adjudicating authority directed the RP to deposit Rs*

2,75,00,000 in the Registry of the adjudicating authority, subject to the outcome of Company Application No. 348 of 2017. In the meantime, in the 4th meeting of the CoC held on 8-12-2017, the issue with respect to the payment of salaries/wages of the employees/workers respectively was discussed in view of the directions passed by the adjudicating authority vide its order dated 1-12-2017 [Sunil Kumar Jain v. ABG Shipyard Ltd., 2017 SCC OnLine NCLT 20216] . However, the issue was not resolved and thereafter the appellants herein filed the aforesaid IA No. 78 of 2018 in which the adjudicating authority directed to deposit Rs 2.75 crores out of the total amount of Rs 9,75,33,236 with the Registry of NCLT towards disbursement of the outstanding salaries/wages to the appellants, subject to the final outcome of IA No. 348 of 2017 and the adjudicating authority accordingly disposed of Company Application No. 78 of 2018.

3.3. *It appears that thereafter since no agreed resolution plan could be adopted of the corporate debtor, the RP filed IA No. 113 of 2019 before the adjudicating authority praying for an order of liquidation of corporate debtor. The adjudicating authority by order dated 25-4-2019 [Sunil Kumar Jain v. Sundaresh Bhatt, 2019 SCC OnLine NCLT 9931] , after deciding various other applications including the application of the appellants being Company Application No. 348 of 2017 passed an order of liquidation of the corporate debtor and appointed Respondent 1 herein as liquidator of the corporate debtor. While passing the order of liquidation, the adjudicating authority also disposed of Company Application No. 348 of 2017 in view of the order passed in Company Application No. 78 of 2018 by which the adjudicating authority earlier directed to deposit Rs 2.75 crores towards the dues of the appellants which as such was subject to the final outcome of Company Application No. 348 of 2017. Therefore, as such, the adjudicating authority while disposing of Company Application No. 348 of 2017 did not grant the relief claimed by the appellants — 272 workers/employees working at Dahej Yard and Mumbai Head Office for their claim relating to salary for the period involving CIRP and the prior period.*

4. *Feeling aggrieved and dissatisfied with the order passed by the adjudicating authority, not granting the relief to the appellants herein with regard to their claim*

relating to salary/wages, which they claimed for the period involving CIRP and prior period, the appellant workmen/employees working at Dahej Yard and Mumbai Head Office preferred Company Appeal No. 605 of 2019 before the Appellate Tribunal. By the impugned order [Sunil Kumar Jain v. Sundaresh Bhatt, 2019 SCC OnLine NCLAT 259] , the Appellate Tribunal has disposed of the said appeal declining to interfere with the order passed by the adjudicating authority, however, allowed the appellants — 272 workmen/employees to file their individual claims before the liquidator, who after going through the record and taking into consideration the pleadings made by the workmen/employees will determine the claim. The Appellate Tribunal has also further observed that if claim of one or other workmen/employee is rejected, it will be open to them to move before the adjudicating authority, which may decide the same in accordance with law. The Appellate Tribunal has also observed that so far as the gratuity and provident funds are concerned, the same cannot be treated to be the asset of the corporate debtor and they are to be disbursed amongst the employees/workmen who are entitled for the same."

56. In paragraph 6.11, the submission of the Appellant has been noticed that the amount of Rs.2.75 Crore were earmarked and kept apart towards dues of the workmen and employees. Paragraph 6.11 is as follows:-

*"**6.11.** It is submitted that Rs 2.75 crores are earmarked and kept apart towards the dues of the workmen/employees. It is submitted that therefore the said sum of Rs 2.75 crores which is deposited for the benefit of the workmen/employees is liable to be disbursed in terms of Section 53(1)(a) read with Section 5(13)(c) IBC. It is submitted that the amount in the sum of Rs 16.8 crores (approximately) payable towards the provident fund, gratuity and pension in terms of Section 36(4) to all the employees and workmen of the corporate debtor including the appellants and therefore is required to be paid in priority over the disbursement to be made under Sections 53(1)(b) and (c)."*

57. The use of expression 'if any available' in paragraph 25.2 was in the facts of the said case. The present is a case where it is not the case of the liquidator that there are no fund available with the liquidator for payment of

gratuity, provident fund and pension fund. Thus, the use of expression 'if any, available' in paragraph 25.2 wherein the facts of the said case cannot be read to mean that the Hon'ble Supreme Court has laid down that unless the provident fund, pension fund and gratuity fund is available on the date of commencement of the liquidation only then the workmen are entitled to receive amount towards provident fund, pension fund and gratuity fund. We, thus, are of the view that the judgment of the Hon'ble Supreme Court cannot come to any aid of the Appellant in the facts of the present case. Further, it is not comprehendible that when this Tribunal in the CIRP of the Corporate Debtor has already held vide its judgment dated 21.10.2022 which has been affirmed by the Hon'ble Supreme Court that workmen and employees are entitled for full payment of gratuity fund, provident fund and pension fund, they shall lose their rights to receive gratuity fund, provident fund and pension fund only due to the fact that liquidation has been ordered and no segregated funds for the aforesaid amount is available with the Corporate Debtor.

58. In view of the above discussions, we answer Question Nos.(I), (II) and (III) in following manner:-

I. Exclusion of all sums due to any workman and employee from provident fund, pension fund and gratuity fund from the liquidation estate is not contingent on existence of such provident fund, pension fund and gratuity fund on the liquidation commencement date.

II. The direction of the Adjudicating Authority by order dated 04.02.2026 directing the liquidator to make payment of provident fund, pension

fund and gratuity fund to the workman and employee is accordance with the statutory scheme under Section 36(4)(a)(iii) and Section 53(1)(b) of the IBC.

III. The dues of provident fund, pension fund and gratuity fund of the workman and employees are not required to be distributed as per waterfall mechanism under Section 53(1)(b) of the IBC.

Question No.(IV)

58. The above question relates to prayer (iv) as made in IA No.3426 of 2025 filed by Manoj Kumar Das & Ors. Prayer (iv) of the application is as follows:

> "*iv. Direct that 1,656 days (time spent in legal proceedings, in excess of 330 days) be excluded from the computation of the Liquidation Commencement date, and that 20.05.2020 be deemed the effective commencement date of liquidation and not 26.11.2024 for the purpose of determining 24 months' dues under Section 53(1)(b) of the IBC;"*

59. The Applicants- workmen in the application in support of the prayers made, following pleadings in paragraphs 18 and 19 of the application:-

> *"18. That the Hon'ble Supreme Court in Arcelormittal India Pvt. Ltd. v. Satish Kumar Gupta and Ors., 2018 SCC OnLine SC 1733, has held that although the outer limit of 330 days for completion of the Corporate Insolvency Resolution Process is mandatory, the time spent in bona fide legal proceedings may be excluded from this period, especially where the resolution plan is ultimately upheld by an appellate authority.*
>
> *19.That in the present case, it is respectfully submitted that a period of 1,656 days, in excess of 330 days, representing time lost due to prolonged litigation between the financial creditors and the IRP, may be excluded for the limited purpose of computing the 24-month lookback period under Section 53(1)(b) of the Code. Such exclusion is essential to ensure the correct determination of workmen's dues preceding the*

liquidation commencement date. If this period is not excluded, it would have the unjust consequence of artificially reflecting 'zero' dues for workmen in the final stakeholder list—solely due to the passage of time caused by prolonged litigation beyond the statutory CIRP limit. It is further submitted that such an outcome would defeat the very object of Section 53(1)(b), which is designed to safeguard the interests of workmen and ensure equitable treatment during liquidation. A copy of the workmen creditors' list, which reflects the current position, is annexed herewith and marked as Annexure A2."

60. The above application filed by the workmen was replied by the liquidator as well as the State Bank of India, the Financial Creditor. Liquidator in his reply to the application has only noticed the prayer of the applicants without making any comment. In paragraph 8 of the reply, following was pleaded by the liquidator:-

"8. It is the case of the Applicants that since 1,656 days were lost in prolonged litigation involving implementation of the resolution plan approved by this Hon'ble Tribunal on June 22, 2021, the same must be excluded for the limited purpose of computing the 24-month lookback period under Section 53(1)(b) of the Code."

61. The State Bank of India has also filed reply to the application. The State Bank of India in reply to the application has pleaded that there is no provision in the Code for exclusion of any time period for the purpose of calculation of liquidation commencement date. It was further pleaded that judgment of ***Arcelormittal India Private Limited v. Satish Kumar Gupta & Ors. [2018 SCC OnLine SC 1733]*** is not applicable. In paragraph 36 and 37.1, following was pleaded by the State Bank of India:-

"36.With reference to paragraphs 17 to 19 of the Application, the Applicants have submitted that a period of 1656 days in excess of 330 days representing time lost due to prolonged litigation between the

financial creditors and interim resolution professional may be excluded for the limited purpose of calculating the 24 (twenty four) months lookback period under Section 53(l)(b) of the Code.

37.1 say that there is no provision in the Code for exclusion of any time period for the purpose of calculation of liquidation commencement date. Reference is drawn to Section 5(17) of the Code, which defines liquidation commencement date as "the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be". There is no scope for any kind of exclusion of any time period for the computation of the liquidation commencement date for any single class of creditors."

62. Workmen has filed Company Appeal (AT) (Insolvency) No.551 of 2026 by which prayer (iv) made in the application IA No.3426 of 2025 has been rejected. Learned Counsel for the workmen in support of his submission that Company Appeal (AT) (Insolvency) No.551 of 2026 submitted that a period of 330 days is provided for completion of CIRP as per Section 12 of the IBC. Any period beyond 330 days in the CIRP need to be excluded since the period was lost into various litigations including litigation between SRA and Financial Creditor- State Bank of India. CIRP in fact, has run for 1976 days pushing the liquidation commencement dated to 26.11.2024. As per Section 53(1)(b) of the IBC, workmen's dues for the period of twenty-four months preceding the liquidation commencement date rank equally with debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52. Section 53(1)(b) is as follows:-

*"**53. Distribution of assets.** - (1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely: -*

(b) the following debts which shall rank equally between and among the following:

(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;"

63. It is submitted that Section 12 of the IBC as initially has enacted provided that the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process. Section 12(2) also contemplated extension beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of sixty-six per cent. of the voting shares. 2nd proviso to Section 12 was added by IBC (Amendment) Act 2019. Section 12 as amended by IBC (Amendment) Act 2019 is as follows:-

*"**12. Time-limit for completion of insolvency resolution process.** - (1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.*

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 1 [sixty-six] per cent. of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and

eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once:

[Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.]"

64. The provision of Section 12 as amended by Amendment Act, 2019 came to be applicable after initiation of CIRP against the Corporate Debtor on 20.06.2019. Provision of Section 53(1)(b) when enacted contemplated that workmen dues for a period of 24 months preceding the liquidation commencement date was to rank equally with debts owed to a secured creditor. The cap of period of 24 months regarding workmen dues has its own object and purpose. When a liquidation commences against the Corporate Debtor for distribution of liquidation estate, waterfall mechanism is provided in Section 53 and dues of the workmen 24 months preceding the liquidation commencement date has been given priority which rank equally debt owed to a secured creditor and rest of the debt of workmen is to fall under Section 53(1)(f). The application was filed by the workmen seeking exclusion of period 1656 days which was after expiry of 330 days from the commencement of the CIRP. As noted above, CIRP continued for 1976 days. Exclusion was sought

since due to various litigations including filing of different application before the Adjudicating Authority and filing of appeal in this Tribunal and appeal in the Hon'ble Supreme Court, CIRP prolonged for 1976 days. The present is a case where liquidation commencement date is 26.11.2024 on which date Adjudicating Authority passed an order of liquidation and appointed liquidator in consequence of the order of the Hon'ble Supreme Court dated 07.11.2024 as noted above. Learned Counsel for the workmen are not praying for any change in the date of liquidation commencement which has to remain as 26.11.2024 on which date Adjudicating Authority directed for a liquidation and which date is as per the definition in Section 5(17) of the IBC which is as follows:-

> *"**5. Definitions. –** (17) "liquidation commencement date" means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be"*

65. Liquidation commencement date being fixed date i.e. 24.11.2024, the period of exclusion of 1656 days has been sought which period was lost in different litigations. We have already noted the pleadings of the workmen where exclusion is sought after given 330 days i.e. maximum period provided for CIRP as per Section 12 noted above. Learned Counsel for the workmen has relied on judgment of the Hon'ble Supreme Court in ***"ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta*, (2019) 2 SCC 1"** where Hon'ble Supreme Court had occasion to consider the provision of Section 12 of the IBC and has held that period lost in litigation can very well be excluded from the period spent in CIRP. In paragraph 86 of the judgment, following has been observed:-

*"**86.** Given the fact that both the NCLT and NCLAT are to decide matters arising under the Code as soon as possible, we cannot shut our eyes to the fact that a large volume of litigation has now to be handled by both the aforesaid Tribunals. What happens in a case where the NCLT or the NCLAT decide a matter arising out of Section 31 of the Code beyond the time-limit of 180 days or the extended time-limit of 270 days? Actus curiae neminem gravabit — the act of the court shall harm no man — is a maxim firmly rooted in our jurisprudence (see Jang Singh v. Brij Lal [Jang Singh v. Brij Lal, (1964) 2 SCR 145 : AIR 1966 SC 1631] , SCR at p. 149 and A.R. Antulay v. R.S. Nayak [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372 : 1988 Supp (1) SCR 1] , SCR at p. 71). It is also true that the time taken by a Tribunal should not set at naught the time-limits within which the corporate insolvency resolution process must take place. However, we cannot forget that the consequence of the chopper falling is corporate death. The only reasonable construction of the Code is the balance to be maintained between timely completion of the corporate insolvency resolution process, and the corporate debtor otherwise being put into liquidation. We must not forget that the corporate debtor consists of several employees and workmen whose daily bread is dependent on the outcome of the corporate insolvency resolution process. If there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible. [Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, states that the liquidator may also sell the corporate debtor as a going concern.] A reasonable and balanced construction of this statute would therefore lead to the result that, where a resolution plan is upheld by the appellate authority, either by way of allowing or dismissing an appeal before it, the period of time taken in litigation ought to be excluded. This is not to say that the NCLT and NCLAT will be tardy in decision-making. This is only to say that in the event of the NCLT, or the NCLAT, or this Court taking time to decide an application beyond the period of 270 days, the time taken in legal proceedings to decide the matter cannot possibly be excluded, as otherwise a good resolution plan may have to be shelved, resulting in corporate death, and the consequent displacement of employees and workers."*

66. A most pertinent observation made by the Hon'ble Supreme Court in the above paragraph "*we must not forget that the corporate debtor consists of several employees and workmen whose daily bread is dependent on the outcome of the corporate insolvency resolution process".* The Hon'ble Supreme Court in the above paragraph has also observed "*we cannot shut our eyes to the fact that a large volume of litigation has now to be handled by both the aforesaid Tribunals".* The actus curiae neminem gravabit — the act of the court shall harm no man has been relied. In the CIRP of the Corporate Debtor itself there has been order passed by the Adjudicating Authority, this Tribunal as well as the Hon'ble Supreme Court excluding several length of period by different orders. As noted above, the cap of workmen dues for 24 months prior to liquidation commencement date has purpose and object. In event, more than 24 months period prior to liquidation commencement date is consumed in different litigations, the workmen cannot be made to suffer by the various litigations in the CIRP process so as to make their entitlement of dues 24 months prior to commencement of liquidation commencement date as liberty or nil. The object of the IBC was to protect dues of workmen for 24 months prior to liquidation commencement date and to give it priority ranking equally with secured creditor debt. Learned Counsel for the Financial Creditor has placed reliance on the judgment of the Hon'ble Supreme Court in "***Rajratha Naranbhai Mills Co. Ltd. v. Sales Tax Officer, Petlad*, (1991) 3 SCC 283".** In the above case, the Hon'ble Supreme Court had occasion to consider the provisions of Section 531(1)(a) of the Companies Act, 1956. Relevant provision which came for consideration has been noticed in paragraphs 1 and 2 of the judgment which is as follows:-

" What is the ambit of the State's claim to priority in relation to revenues, taxes, cesses and rates, due from a company in liquidation, is the question which stands posed in this appeal by certificate, granted by the High Court of Gujarat, in O.J. Appeal No. 2 of 1975. The question arises on the frame of Section 530(1)(a) of the Companies Act, 1956, as it stood at the relevant time, which is set out below:

> *"530. Preferential payments.— (1) In a winding up, there shall be paid in priority to all other debts—*
>
> > *(a) all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (c) of sub-section (8), and having become due and payable within the twelve months next before that date;"*

2. *And sub-section (8)(c) of Section 530 says:*

> *"530.(8)(c) the expression 'the relevant date' means*
>
> > *(i) in the case of a company ordered to be wound-up compulsorily, the date of appointment (or first appointment) of a provisional liquidator, or if no such appointment was made, the date of the winding-up order, unless in either case the company had commenced to be wound up voluntarily before that date; and*
> >
> > *(ii) in any case where sub-clause (i) does not apply, the date of the passing of the resolution for the voluntary winding up of the company."*

The appellant-company was ordered to be wound up by an order of court made on June 26, 1967. The liquidator after obtaining directions of the court invited the creditors of the company to prove their debts or claims and simultaneously to establish any title they may have to priority under Section 530. Pursuant to this invitation the Sales Tax Officer, Petlad submitted a comprehensive claim in the sum of Rs 70,945.60 as the amount of sales tax plus penalty payable by the company and claimed priority for the whole amount. The liquidator rejected the claim for priority in its entirety, but admitted claim to the tune of Rs 42,143.63

payable as debt pari passu with other unsecured creditors of the company."

67. After considering the submission of the parties, the Hon'ble Supreme Court held that the claim priority must be appropriated to the period within 12 months next before the relevant date and their liability for payment must be founded during that period and no other. In Paragraph 13 of the judgment, the Hon'ble Supreme Court has laid down following:-

> *"**13.** Both benches of the High Court, with due respect, gave to the provision a very wide and varied interpretation and that too on literality and grammaticals seemingly overlooking the legal philosophy which permeates the provision, the same being that the debts due and payable, so as to claim priority, must be appropriated to the period within 12 months next before the relevant date and their liability for payment must be founded during that period and no other. To put it in simpler words, the State has a priority over debts, liability and obligation of which was born within the time frame of those twelve months and as such due and becoming due and payable within those twelve months next before the relevant date, ascertainable if necessary later, if not already ascertained. We are in respectful agreement with the interpretation put by the Court of Appeal to Section 264 of the English Companies Act in Airedale Garage case [(1932) 2 Comp Cas 570 : 1933 Ch D 64 (CA)] , analogous as it is to the provision in hand, warranting the same interpretation; more so when any other interpretation would lead to the results feared by the Company Law Committee extracted above. In such view of the matter, we need not elaborately comment, discuss or demolish, sentence by sentence, the reasoning given by the Single Bench as also the Division Bench of the High Court towards interpreting the provision. The words 'having become due and payable within 12 months next before the relevant date' need be understood to mean putting a restriction or cordoning off the amount for which priority is claimable and not in respect of each and every debt on account of taxes, rates and cesses etc. which may be outstanding at that time and payable. And further that such priority is in respect only of debts those of which become due and payable because the liability to those*

is rooted, founded and belonging to that period of twelve months prior to the relevant date and none other; both the conditions existing."

68. There can be no dispute to the proposition as laid down by the Hon'ble Supreme Court in the above case when statute i.e. Section 530(1) which came for consideration. Liability for payment for period of 12 months next before the relevant days, the said priority has to confined to the liability occurring during the said period and the Corporate Debtor cannot be saddled with any liability which was beyond 12 months period as contemplated in Section 531(a) of the Companies Act. The present is not a case where workmen are claiming any priority their workmen dues beyond 24 months as provided in Section 53(1)(b) of the IBC. The claim is that for computing the 24 months period of the dues of the workmen, the period which was consumed in various litigations in the CIRP period need to be excluded. As noted above, the total period spent in CIRP being 1956 days and after excluding the maximum period of CIRP i.e. 330 days, the period has been made for exclusion of 1656 days. It is not the case of either the liquidation or the Financial Creditor that period was not lost in the litigation and the CIRP period prolonged for 1956 days. The exclusion and extension of CIRP period is a well known concept. Exclusion of time taken in the litigation for completion of a process for which timeline is fixed has been recognized by the Court to give so as to timeline can be adhered and purpose and object before fixing timeline can be adhered. Workmen dues of 24 months' period prior to liquidation commencement date have been kept for a purpose and object. When we compute the 24 months' period prior to liquidation commencement date without considering the exclusion as prayed for workmen dues which are contemplated in Section

53(1)(b) have to be treated as zero. Learned Counsel for the workmen submitted that the liquidator in subsequent list of creditors has although admitted the claim of workmen but entitlement under Section 53(1)(b) is shown as zero.

69. With respect to exclusion of time, Adjudicating Authority in paragraphs 16 and 17 of the impugned order dated 04.02.2026 has considered a submission. In paragraphs 16, 17 and 18 of the impugned order, following has been observed:-

> *"16. As regards prayer for exclusion of the time for determination of liquidation commencement date, it is noted that the applicant is seeking such exclusion on account of time spent in legal proceedings, in excess of 330 days. We find no provision in the code contemplating for such exclusion. The Liquidation commencement date is defined under Section 5(17) of the Code, to mean "the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be". The applicant has sought such exclusion on ground of correct determination of workmen's dues preceding the liquidation commencement date in terms of Section 53(l)(b) of the Code. It is noted that the resolution plan was approved in this case on 22.6.2021 and the liquidation order was passed on 26.11.2024 in view of failure of the SRA to implement the approved resolution plan.*
>
> *17. The scope of inherent powers of the sub-ordinate courts was explained by Hon'ble Supreme Court in case of GLAS Trust Company LLC v. BYJU Raveendran and Ors., (2024) ibc:law.in 275 SC. wherein it was held that:*
>
> *"70. When a procedure has been prescribed for a particular purpose exhaustively, no power shall be exercised otherwise than in the manner prescribed by the said provisions. In such cases, the court must be circumspect in invoking its 'inherent powers' to deviate from the prescribed procedure. If such deviation is made, the court must justify why this was necessmy to "prevent the abuse of the process of the Court".*

71. The need to be circumspect while invoking "inherent powers", when there is an exhaustive legal framework is amplified in the context of a legislation like the IBC. In Ebix Singapore (P) Ltd. vs. Educomp Solutions Ltd. (Co C), 49 a two-judge bench of this Court, speaking through one of us (DY Chandrachud, J), affirmed this position and observed as follows:

"Any claim seeking an exercise of the adjudicating authority's residuary powers under Section 60(5)(c) IBC, NCLT's inherent powers under Rule 11 of the NCLT Rules or even the powers of this Court under Article 142 of the Constitution must be closely scrutinized for broader compliance with the insolvency framework and its underlying objective. The adjudicating mechanisms which have been specifically created by the statute, have a narrowly defined role in the process and must be circumspect in granting reliefs that may run counter to the timeliness and predictability that is central to the IBC. Any judicial creation of a procedural or substantive remedy that is not envisaged by the statute would not only violate the principle of separation of powers, but also run the risk of altering the delicate coordination that is designed by the IBC framework and have grave implications on the outcome of the CIRP, the economy of the country and the lives of the workers and other allied parties who are statutorily bound by the impact of a resolution or liquidation of a Corporate Debtor."

18. Section 5(17) defines the liquidation commencement date and does not provide for any circumstances in which such date can be altered. Further, there is no provision permitting this tribunal to grant any relief on equitable considerations also. Hence, we do not find any' reason to allow the exclusion as prayed by the applicant."

70. Adjudicating Authority in paragraph 16 has observed that Section 5(17) defines 'liquidation commencement date' which does not provide any circumstance in which such date can be altered. It was further observed that there is no provision permitting this Tribunal to grant any relief fir equitable consideration also. Both the above reasons given by the Adjudicating

Authority for not considering the prayer exclusion is erroneous. Present is not a case where workmen are praying for change of liquidation commencement date. Liquidation commencement date which is 26.11.2024 is statutorily fixed and cannot be changed. Present is also not a case for granting any relief on equitable consideration. The exclusion of time which was lost in the litigation is an accepted proposition. Adjudicating Authority, this Tribunal and the Hon'ble Supreme Court in several cases has directed for exclusion of time.

71. We are of the view that the Adjudicating Authority has not correctly considered the prayer made by the workmen for exclusion of time i.e. 1656 days which was lost in litigation. We, thus, are of the view that the prayer (iv) as made in the application IA No.3426 of 2025 deserves to be allowed. We accordingly direct exclusion of 1656 days from the CIRP period. 24 months before liquidation commencement dated need to be computed accordingly. Liquidator to compute the workmen dues falling within 24 months period prior to liquidation commencement dated i.e. prior to 26.11.2024. Liquidator to take all consequential action. We answer Question No.(IV) in following words:-

"Prayer made by the workmen in IA No.3426 of 2025 to exclude the period of 1656 days (time spent in litigation) need to be excluded from the CIRP period and the Adjudicating Authority committed error in not accepting the above prayer."

Question No.(V)

72. One of the prayers made in the IA No.3426 of 2025 i.e. prayer (iii) was to the following effect:-

> "*iii. Direct that the Recovery Certificate issued by the Deputy Labour Commissioner for salary dues (January-March 2019) be honoured and kept out of the liquidation estate;"*

73. Prayer of the workmen was that Recovery Certificate issued by the Deputy Labour Commissioner dated 16.05.2019 be honoured and kept out of the liquidation estate. According to own case of the workmen, the Recovery Certificate dated 16.05.2019 is computation of their salary dues for the month of January to March 2019. Recovery Certificate only has quantified the amount but the amount relate to salary for January to March 2019. Any claim arising from Recovery Certificate is also covered with under the expression dues of workmen as contemplated under Section 53(1)(b). There is no question of keeping the said amount covered by Recovery Certificate out of the liquidation estate. The materials on record indicate that liquidator has already accepted the unpaid dues from January to March 2019 which dues have been admitted. We, thus, are of the view that the prayer (iii) made in the IA No.3426 of 2025 was not liable to be granted and the said dues were also to be dealt with as per waterfall mechanism under Section 53(1)(b). Question No.(V) is thus answered in following words:-

"Workmen were not entitled to Recovery Certificate issued by the Deputy Labour Commissioner for salary dues of January to March 2019 to be kept out of the liquidation estate."

Question No.(VI)

74. While considering the Question No.(IV), we have already held that the workmen were entitled for exclusion of period 1656 days of the CIRP period. CIRP admittedly commenced on 20.06.2019. The liquidation commencement

dated i.e. 26.11.2024 is the date which is statutorily fixed in view of the definition under Section 5(17) of the IBC read with the order dated 26.11.2024 passed by the Adjudicating Authority appointing the liquidator. After exclusion of 1656 days, the liquidator has to compute the workmen dues fallen within 24 months prior to liquidation commencement date. The liquidator has to take consequential action while determining the workmen dues 24 months preceding to 26.11.2024 by granting exclusion of 1656 days. Consequently, the workmen dues cannot be held to be nil within the meaning of Section 53(1)(b). We answer Question No.(VI) in following words:-

"Workman dues for the period of 24 months preceding the liquidation commencement dated (26.11.2024) cannot be treated as nil."

75. In view of the foregoing discussions and our conclusions, we are of the view that the direction issued by the Adjudicating Authority in paragraph 20A are in accordance with law. Company Appeal (AT) (Insolvency) No.419-420 of 2026 deserves to be dismissed. In Company Appeal (AT) (Insolvency) No.551 of 2026, workmen are entitled only for the relief (iv) in the IA No.3426 of 2025. Adjudicating Authority has not committed error in refusing prayer (iii) in IA No.3426 of 2025. Company Appeal (AT) (Insolvency) No.551 of 2026 thus deserves to be partly allowed only to the extent as indicated above.

76. Company Appeal (AT) (Insolvency) No.440 of 2026 had been filed by the workmen challenging the order dated 03.02.2026 passed in IA No.4757 of 2025 filed by the Financial Creditor by which order Adjudicating Authority directed liquidator to proceed with the distribution strictly under waterfall

mechanism under Section 53. In paragraph 17 of the judgment, following has been directed:-

> *"17. The interests of workmen, employees, and financial creditors must be balanced in a manner that neither prejudices pending claims nor paralyses the liquidation process. In this context, the Tribunal holds that the liquidation process cannot be brought to a standstill merely because issues of priority and exclusion are pending before it. The Liquidator should therefore proceed with distribution strictly in accordance with the waterfall mechanism under Section 53 of the Code, while ensuring adequate safeguards to protect the interests of workmen and employees who are claiming priority in IA 3426 of 2025 and IA 4627 of 2025 which are pending for orders. Accordingly, the liquidator is directed to distribute the proceeds of liquidation, unless there is a restraint on distribution of proceeds from Hon'ble NCLAT or Supreme Court on such distribution."*

77. On very next date, Adjudicating Authority has passed order on 04.02.2026 in IA No.3426 of 2025 and IA No.4627 of 2025. The appeal against the order dated 04.02.2026 are being decided by this judgment. Company Appeal (AT) (Insolvency) No.440 of 2026 has become infructuous and no orders are necessary in Company Appeal (AT) (Insolvency) No.440 of 2026. The order dated 03.02.2026 passed in application filed by the State Bank of India has to give way to subsequent order dated 04.02.2026 and is upheld and modified by this judgment. In result, all the appeals are decided in following manner:-

I. Company Appeal (AT) (Insolvency) No.419-420 of 2026 filed by the State Bank of India and other Financial Creditors are dismissed. Direction issued by the Adjudicating Authority in paragraph 20A of the order dated 04.02.2026 passed in IA No.3426 of 2025 and IA No.4627 of 2025 is upheld.

II. Company Appeal (AT) (Insolvency) No.551 of 2026 is partly allowed. Prayer (iv) as contained in IA No.3426 of 2025 is to the following effect:-

"Direct that 1,656 days (time spent in legal proceedings, in excess of 330 days) be excluded from the computation of the Liquidation Commencement date, and that 20.05.2020 be deemed the effective commencement date of liquidation and not 26.11.2024 for the purpose of determining 24 months' dues under Section 53(1)(b) of the IBC" which prayer is allowed.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

30th June, 2026

anjali/himanshu