

SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 08.05.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/449/2021 in CP(IB) No.492/7/HDB/2019
NAME OF THE COMPANY	KSK Mahanadi Power Company Ltd
NAME OF THE PETITIONER(S)	Power Finance Corporation
NAME OF THE RESPONDENT(S)	KSK Mahanadi Power Company Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/449/2021

Orders pronounced, recorded vide separate sheets. In the result, the application is disposed of.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

I.A.No. 449 of 2021 in
CP (IB) No.492/07/HDB/2019

Between:

Employees Provident Fund Organisation
Regional Office-II, Hyderabad (Madhapur)
3-4-763, Bhavishya Nidhi Bhawan,
Barkatpura,
Hyderabad – 500 027.

....Applicant

And

Mr. Sumit Binani, Resolution Professional of
M/s. KSK Mahanadi Power Company Ltd.,

....Respondent

In the matter of:

Power Finance Corporation Limited,
Urjanidhi, Barakhamba Lane,
Connaught Place,
New Delhi – 110 001.

....Financial Creditor

Vs.

M/s. KSK Mahanadi Power Company Ltd.,
8-2-293/82/A/431/A,
Road No.22, Jubilee Hills,
Hyderabad – 500 033.

....Corporate Debtor

Date of order : 08.05.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels present:

For the Applicant : None appeared.
Counsels on record: Mr. B. Harinath
Rao and Ms. N. Sridevi.

For the RP : Mr. Allwin Godwin, Advocate along with
Advocates Ms. Niranjana Pandian, Mr.
Anoop Rawat, Mr. Aditya Marwah and
Mr. Barathwaz.

Heard on : 22.04.2024

Per : Sanjay Puri, Member (Technical)

ORDER

1. This application is filed by the Applicant under Regulation 12(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 r/w Section 60(5), 87(1)(a) & (c), 88 of IBC 2016 seeking;
 - a. To set aside the rejection letter dated 21.06.2021 and e-mail dated 07.07.2021 issued by the Resolution Professional (RP) Shri Sumit Binani, wherein the claim submitted by the Applicant has been rejected by the RP.
 - b. To allow the claim filed by the Applicant before the RP Shri Sumit Binani, in respect of the recovery of pending Provident Fund dues u/s 7A, 14B and 7Q of the EPF & MP Act 1952.
 - c. To issue a direction to the Corporate Debtor to reveal all the Provident Fund default to RP.

Brief facts of the Application:

2. It is submitted that, the Corporate Debtor (CD) M/s. KSK Mahanadi Power Company Limited (presently under CIRP), is registered under the EPF Act w.e.f. 01.04.2010. The Applicant during the assessment inquiry u/s 7A, found a default of EPF dues of Rs 98,78,09,438 by the CD. Further as per Section 14B and 7Q of EPF Act, EPF dues liability was also computed for Rs 210,60,09,438. Accordingly, the same was informed to CD and RP and the claims filed¹.
3. The RP rejected all the claims submitted by the Applicant vide letter² dated 21.06.2021 and Email³ dated 07.07.2021. Though from November 2016 (since initiation of CIRP), the Representative of the CD was attending the inquiry before the EPFO authority in the matter of EPF compliances, the CD has failed to provide the compliance status and kept EPFO authority in dark about the initiation of CIRP proceedings against CD, which amounts to clear violation of Section 88 of IBC. Due to non-cooperation by the CD and RP during the inquiry for determination of dues u/s 7A and also due to COVID pandemic, the determination of dues was finalized during June 2021, then only the Applicant was submitted the claims to IRP.
4. It is also averred that, the RP has rejected the Provident Fund claims on the ground that “*the EPF dues are not found in the Books of Account of Corporate Debtor*”. In this regard it is averred

¹ Pg 43-63 of the application.

² pg 69-71 of the application.

³ Pg 72-76 of the application.

that, it is a common knowledge that every establishment with a capacity of more than 20 employees working, are covered under the EPF Act.

5. The RP has not remitted the default EPF dues of Rs 98,78,09,438 for the period from 10/2010 to 03/2015 to the Applicant authority even after his taking charge of the CD, and also has not sought any clarification from the CD about suppression of facts relating to the discrepancies of EPF compliance since April 2015.
6. It is submitted that, despite receiving the communications relating to inquiry u/s 7A, claims and legal clarifications, rule provision etc from the Applicant from time to time, the RP has expressed that, the Applicant has filed the claims beyond the time limit and the claim submitted by the Applicant are not in the prescribed form. Further submitted that, it is a statutory duty of the RP to inform all the statutory authorities about the initiation of CIRP against the CD and invite their claims if any, but at no point of time, neither RP nor CD had intimated to the Applicant about the Orders of this Tribunal and time line for submitting the claims.
7. While the matter stood thus, during the month of March 2021, the Representative of the CD has informed about the initiation of CIRP against the CD and the Resolution Plan was about to be approved. The Applicant after enquiry of the same, submitted its claims/dues on 25.06.2021 to the RP in Form-B. Further, it is averred that, it is equally illegal and arbitrary action on the part of RP to reject the PF claims on the ground of delayed

submission of claims by EPFO authority. It is also a fact that, during the inquiry of determination of dues, the RP himself was actively engaged and attended the inquiry before EPFO and even during such inquiry, the RP has not taken any steps for providing the compliance position to the EPFO authority. Thus, it is clear that, everything is well within the knowledge of RP about the non-compliance by the CD.

8. It is stated that, as per the provision of EPF Act, the Assessment Order passed u/s 7A can only be challenged by way of filing an appeal u/s 7-1 before the *Central Government Industrial Tribunal-cum-Labour Court*. But, in the instant case, the RP himself has assumed the role of Appellate Authority (U/s 7-1) for deciding the matter of EPF liability of CD and also acting as Presiding Officer of CGIT in examining the details of Assessment Order u/s 7A. Thus, the act done by the RP in rejecting the claims of the Applicant herein is totally irrational and illegal on his part and thereby, the RP has acted beyond his authority and is giving undue benefit to the CD by not acknowledging the EPF default committed by the CD.
9. It is further stated that, the Assessment Order u/s 7A of EPF Act for determination of EPF dues is not a violation of Moratorium as per Section 14 of IBC Code, and during the said inquiry, the Recovery Officer of EPFO has not taken any coercive action in accordance with Section 8B to 8G of the Act and Second and Third Schedule of Income tax 1961 and IT Proceeding Rules, 1962.
10. It is submitted that, as per Section 7Q of EPF & MP Act 1952,

the Applicant is empowered to impose interest on the amount due.

“Section 7 Q - The employer shall be liable to pay simple interest at the rate of twelve percent per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment.

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.”

Thus, the Applicant has levied the simple interest @12% per annum on the due amount of Rs 98,78,09,438 from 10/2010 to 15.07.2021 (tentative date proposing that the CD would pay the dues by 15.07.2021 (subject to actual payment whenever the CD pays the due amount) which comes to Rs 111.82 Crores.

11. It is averred that, the Applicant has sent a letter dated 23.06.2021 to CD as well as to RP demanding them to pay the total amount of Rs 309,57,90,886.
12. It is submitted that, the provision under IBC 2016 does not authorise any authority/liquidator/IRP/CoC to waive of the EPF dues belong to the poor workers and labourers, and the Applicant being a statutory organization/authority, it need not file any claim petition before the Resolution Professional/Liquidator. In this regard, ***the NCLT Kochi Bench in I.A/176/KOB/2020, (MA/05/KOB/2020 in TIBA/01/KOB/2019 (Under Sections 35(1)(n) & 60(5) of IBC 2016) vide Order dated 18.02.2021, has held that:***

“It is clear that the contribution, interest and damages payable are statutory dues and not claims which can be submitted to the Liquidator in Form G.

Hence the EPFO need not file Form G before the Liquidator. It is also seen that the EPFO has got first charge over the Assets of the defaulter and its priority of payment over Other debts is as per Section 11 of the EPF &MP Act 1952”.

*The NCLT, Kochi Bench relied on the **Supreme Court judgment in Kushal Ltd vs Regional PF Commissioner-1, and has held in the case of v-con Integrated Solutions Pvt. vs Acharya Techno Solutions P. Ltd** that:*

“EPF Contribution, Penal Damage and Interest payable by corporate debtor under EPF & MP Act 1952, are statutory dues and not the claims which can be submitted to the liquidator.

Thus, it is irrational on the part of RP to observe in his letter dated 21.06.2021 that the claims raised by the Applicant organization is time barred and the said claims are not submitted in proper form.

13. It is further submitted that, the **Hon'ble Supreme Court of India, in the case of Maharashtra State Co-operative Bank vs. Assistant PF Commissioner in Civil Appeal No. 6893 of 2009**, where in held that:

“the Provident Fund dues will include not only the dues under Section 7A but also the dues under Section 14 B and 7Q. The amounts claimed by the Applicant under 7Q and 14B are the dues to be paid by the Corporate Debtor/ Employer /establishment to the Applicant herein and the said amounts to be paid to the Applicant herein are termed as statutory dues but not the claims since as stated above the Applicant organization is established in the interest of the workers/employees of

the respective establishments/companies etc”.

14. It is submitted that, under Section 11(2) of the EPF Act, Provident Fund dues shall be deemed to be the *first charge* on the assets of the establishment.

“Section 11(2) of EPF Act:

“Without prejudice to the provisions of sub-section (1), if any amount is due from an employer [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”

15. It is submitted that, by the above said provision in the EPF and MP Act 1952, it is clear that the Parliament is intended to protect the employees of an establishment etc. and also the said dues cannot be attached by virtue of civil courts decree or what so ever. Also, as per Section 36 of IBC, the Provident fund dues to be paid by the CD, do not form part of Liquidation Estate. In this regard, the ***NCLT Mumbai Bench in the case of Precision Fasteners Ltd. (Through the Liquidator) vs Employees Provident Fund Organisation in MA. No. 576 and 752 of 2018 in Company Petition No 1339 of 2017*** wherein it was *inter alia* clarified and held that:

“EPF dues of the Corporate Debtor do not form part of the Liquidation Estate under Section 36 of the Code and hence, EPF dues have to be paid in priority over all remaining dues without the application of the waterfall mechanism provided under Section 53 of the Code.”

The similar views have also been expressed and confirmed by this ***Hon'ble Appellate Tribunal in respect of the Resolution Process in the case of State Bank of India vs. Moser Baer Karmchhari Union Another CA/AT/(Insolvency) No. 396 of 2019 and in the case of Regional Provident Fund Commissioner, Ahmedabad Ramachandra Choudhary, Company Appeal (AT)(Insolvency) No. 354 of 2019.***

16. It is submitted that, non-payment of Provident Fund dues to EPFO and non-inclusion of Provident Fund dues in Resolution Plan, amounts to violation of Section 36(4)(a)(iii) and Section 30(2)(e) and will render Resolution Plan null and void. It is legal position that, if any approved Resolution Plan contravenes any provisions of law for the time being in existence as per Section 30(2)(e) on examination by the RP, then IRP cannot present the said Resolution Plan before the Committee of Creditors for its approval under Section 30(3). The RP has to satisfy himself that the Resolution Plans received by him confirm the conditions under Section 30(2)(a) to (f).
17. It is further submitted that, as per the laws and provisions of Section 7Q, 10(1), 11 and 14B of EPF Act, no Authorities, Committee of Creditors, Resolution Applicant or the Resolution Professionals are empowered to deduct, reduce or alter the claim for provident fund due to the employees of the CD under resolution. The non-inclusion of the entire claim for Provident fund in the Resolution Plan is inconsistent with Section 30(2) (e) of IBC.
18. It is claimed that, the RP has not communicated about the CD's

undergoing CIRP process except stating that a public announcement was made in the newspaper. Mere giving a public notice is not sufficient, since the Applicant is a statutory organization and all the records pertaining to this Applicant organization will be with the CD. Further the idea behind making public announcement in newspapers is, to keep inform the creditors of the CD whose records are not maintained by the CD, unlike the Applicant herein. Thus, the RP has not acted in good faith and concealed the material information from this Applicant Organization.

19. In view of the above said facts and circumstances, the Letter dated 21.06.2021 and E-mail dated 07.07.2021 sent by the RP to the Applicant Organization is, illegal, arbitrary and contrary to the social security enactment of Provident Fund Act and against the provision of IBC and the same is aimed to usurp with the amounts of workers and employees. Hence, the Applicant is constrained to file this application, seeking to set aside the Letter dated 21.06.2021 sent by the RP and to direct the RP to acknowledge and accept the claims filled by EPFO and to pay the dues to the Applicant herein forthwith.
20. It is also submitted that, as the resolution process is still pending, the condonation of delay will not hamper the process and no prejudice, harm or loss would be cause to any stake holders, if the reliefs sought herein are granted in favour of the Applicant herein in view of the paramount interest of the workers, and if the reliefs sought are not granted, the Applicant would suffer irreparable loss more particularly it would lead to

serious consequences to the families of the employees/workers who worked/working in the CD's establishment and have contributed their part of hard earned bread and butter.

Respondent's Reply:

21. The Respondent submitted that, the CIRP was initiated against the CD by this Tribunal vide Order dated 03.10.2019. Subsequently, a public announcement was issued, wherein the last date for submission of claims by the creditors of the CD was provided as 17.10.2019. Pursuant to receipt of the claims from the creditors of the CD, the IRP had collated and verified the claims and prepared a list of creditors of the CD and Committee of Creditors (CoC) was also formed. The Respondent, upon receipt of subsequent claims and verifying the same, the revised list of creditors was also regularly uploaded on the website of the CD as well as intimated to this Tribunal.
22. It is claimed that, as per Regulation 12 of the CIRP Regulations, a 90 days period is provided to the creditors of the CD, who fails in submitting the claims within the prescribed date. Whereas, the Applicant herein being an operational creditor of the CD as per Section 5(20) of the Code, can only submit its claim in Form-B under Regulation 7 of the CIRP Regulations, but the Applicant filed its claim in Form-F on 19.04.2021 as per Regulation 9A of the CIRP Regulations at a belated stage, along with the documents for a total liability of Rs 19,72,010 of the CD for the following reasons:
 - (i) For assessment under Section 7A of the EPF Act, wherein the inquiry for the same was pending (with

a copy of the summons attached);

- (ii) For penal damages and interest under Section 14B and 7Q for the belated remittances made by the establishment from April 2010 to November 2020 as on 05.03.2021, an amount of Rs 97,450; and
- iii) For short remittances as on 12.03.2021 an amount of Rs 18,74,560.

23. Thereafter, the Applicant vide an email dated 21.06.2021 communicated to the Respondent that an Assessment Order had been passed by the Authority under Section 7A of the EPF Act for a total liability amount of Rs 98,78,09,438, and a request was also sought to treat the said email as a claim under the provisions of the Code. It was also informed by the Applicant that, the Applicant would file separate claims for the CD's liability under Sections 14B and 7Q of the EPF Act. The Respondent on 21.06.2021 provided a detailed reply requesting the Applicant to file his claim in Form-B of the CIRP Regulations. It was informed to the Respondent that, the CD was undergoing moratorium under Section 14 of the Code and therefore the Assessment Order⁴ cannot be enforced in accordance with Section 14(1)(a) of the Code.

24. Subsequently, the Applicant filed its claim in Form-B on 25.06.2021 to the Respondent. It is pertinent to note that the claims of the Applicant only pertain to the Assessment Order and consequent alleged defaults of the CD under the EPF Act, which form part of the pre-CIRP dues of the CD. Upon perusal

⁴ Pg 13 of the counter.

of the documents submitted by the Applicant to substantiate its claim along with the records of CD, the Respondent observed that there were no pending dues to be paid by the CD to the Applicant for the period from October 2010 to March 2015 as were being claimed by the Applicant, and the same was informed to the Applicant vide an email dated 07.07.20021. The Respondent also attached the Provident Fund Challans for the amounts already deposited by the CD for the said period for perusal of the Applicant, and specifically requested for the following information from the Applicant:

- (i) Details regarding whether the outstanding provident fund deposits are related to the contractual employees or the on-payroll employees of the Corporate Debtor;
- (ii) In the event the dues are in relation to the contractual employees of the Corporate Debtor, then details regarding how the liability as per the FPF Act deposits with the Corporate Debtor; and
- (iii) Employee-wise outstanding amount for the chains submitted by the Applicant.

25. However, despite receipt of the above email dated 07.07.2021, the Applicant did not provide any response or further documents to substantiate its claim, but rather filed the present Application on 19.07.2021.

26. Pursuant to the Assessment Order being passed, the Respondent filed a Review Application⁵ under Section 7B(1) of the EPF Act before the Regional P.F. Commissioner-II, Regional

⁵ Pg 55 of the counter.

Office, Hyderabad (Review Authority) on 03.08.2021. Thereafter, the Review Authority had issued a letter dated 24.04.2021 to the Respondent, wherein it was stated that further proceedings in the Review Application shall take place on 30.08.2021. Accordingly, the Respondent had sought time for submission of documents during the hearing on 30.08.2021. However, pursuant to the hearing held on 30.08.2021, the Review Authority on 22.09.2021 rejected⁶ the Review Application on the grounds that the Review Application does not fulfil the conditions as prescribed under Section 7B(1) of the EPF Act.

27. While so, in accordance with Regulation 10 of the CIRP Regulations, the Respondent further requested the Applicant vide email dated 07.09.2021 for the following details:

- Details regarding the claims of the Applicant in order to determine whether the same are in relation to the provident fund of the direct/on-payroll employees of the Corporate Debtor or the employees of the independent contractor of the Corporate Debtor, and
- Details in relation to the month wise break up of short remittances by the Corporate Debtor.

28. In response to the above email vide Clarification Letter⁷ dated 28.09.2021, the Applicant has provided the month-wise details of the short remittances of the CD with regard to the EPF Act to the Respondent. Thereafter, the Respondent has preferred an Appeal⁸ on 25.10.2021 under Section 7-I of the EPF Act against the Order for further adjudication by the Central Government

⁶ Pg 78-84 of the counter.

⁷ Pg 91 of the counter.

⁸ Pg 130-149 of the counter.

Industrial Tribunal-cum-Labour Court constituted under Section 7-H of the EPF Act. However, the Appeal has not been taken up, as no hearings have transpired until date.

29. It is averred that, as per Regulation 7(2) and Regulation 10 of the CIRP Regulations, the Respondent is duty bound to collate and verify the claims submitted to him, to ensure that there is an existence of debt based on the proof of submission of the documents, and the RP of the CD may call for evidence/clarifications as he deems fit form a creditor for substantiating the whole or part of its claim. Therefore, the emails dated 21.06.2021 and 07.07.2021 sent by the Respondent to the Applicant, calling for sufficient clarifications from the Applicant were in accordance with the Regulation 10 of the Code.
30. It is claimed that, the present application is premature since the Respondent had never rejected the claim of the Applicant, but merely requested the Applicant for supporting documents to complete the verification of the claims submitted by the Applicant. Further submitted that, the claims of the Applicant are disputed and proceedings are pending before the relevant Statutory Authority, therefore at best, the RP can only collate the same as a contingent claim.
31. Therefore, the Respondent submits that, since the claims of the Applicant have still not been rejected by the Respondent and given that the Appeal is currently pending, the Respondent can at best collate the claim of the Applicant as a contingent claim in the list of creditors and the Information Memorandum for the

same to be considered by any Prospective Resolution Applicant of the CD. Moreover, since the present claims of the Applicant were submitted at a belated stage, any admission of the said claims is subject to an order of this Adjudicating Authority. With the above submissions, the Respondent prays this Tribunal to dismiss the present Application.

The Decision:

32. From the records before us, it is seen that the majority of the claim of the Applicant arose from an assessment order passed by the Regional Provident Fund Commissioner on 21.06.2021. Through this assessment order a demand of Rs 98,78,09,438 was raised on the CD for the dues pertaining to period of October 2010 to March 2015. This demand was raised under section 7A read with sections 6 and 8A of the EPF Act after completion of an inquiry that was being conducted since November 2015.
33. Added to this demand was another sum of Rs 98,78,09,438 by way of penalty (of sum not exceeding the amount of arrears i.e. Rs 98,78,09,438) under section 14B of the EPF Act. Additionally, a sum of Rs 111,82,00,000 has been charged as interest @12% on the arrear amount of Rs 98,78,09,438 under section 7Q of the EPF Act. There were other demands of Rs 18,74,560 for short remittance, Rs 41,996 as penalty and Rs 55,454 on account of interest thereon. A consolidated claim of Rs 309,57,90,886 was submitted⁹ by the Applicant with regard to these demands to the RP vide Form-B dated 25.06.2021. The

⁹ Page 59 to 63 of the Application

total demand/claim of the Applicant is summarised as follows:

Demand arising from Assessment Order dated 21.06.2021	EPF Dues Payable	98,78,09,438
	Penalty	98,78,09,438
	Interest	111,82,00,000
	Total	3,09,38,18,876
Other Demands	Short payment	18,74,560
	Penalty	41,996
	Interest	55,454
	Total	19,72,010
	Grand Total	3,09,57,90,886

34. So far as the claim of Rs 19,72,010 is concerned, it was submitted by the Applicant earlier also on 19.04.2021, but through Form-F, whereas it should have been in Form-B, as per the Respondent RP.
35. Against the Assessment order dated 21.06.2021, based which the claim of Rs 309,38,18,876 has been made, the Respondent RP has preferred an appeal before Central Government Industrial Tribunal cum Labour Court constituted under section 7H of the EPF Act, where the matter remains pending.
36. According to the Respondent RP, the claim of the Applicant has not been rejected. He has undertaken to collate the claim of the Applicant as contingent claim in the list of creditors and in the Information Memorandum, for the same to be considered by any prospective Resolution Applicant. Since the Applicant's claim was made belatedly, the Respondent has sought order of this Tribunal for admission of the same.
37. Here it is useful to reproduce from the order of Hon'ble NCLAT

in **SK Constructions Vs. EPF Organisation & Anr**¹⁰ where the following decision of the Adjudicating Authority was recently upheld:

Since the EPF dues are not a part of the assets of the Corporate Debtor and are merely in possession of Corporate Debtor, we are of the view that the Applicant was not required to file his claim. Rather, the Resolution Professional was duty bound to release the dues of the Applicant. The EPF dues are to be given priority over all the other creditors during Liquidation. We thereby direct the Respondent/ Resolution Professional to consider the claim of the Applicant.

Further, since the Resolution Plan has already been approved by the CoC, the Resolution Professional should take steps to apprise the Successful Resolution Applicant (SRA) about the claim of the Applicant to enable the SRA to make amends in the Resolution Plan to provide for the claim of the Applicant. In the alternative, the SRA may file an additional affidavit undertaking to settle the claim of the Applicant.”

38. In an earlier case of **Jet Aircraft Maintenance Engineers Welfare Association**¹¹ also the NCLAT had similarly held, that:

In view of the aforesaid discussion, we arrive at following conclusions 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

¹⁰ CA (AT) (Ins) No. 910 of 2023 & I.A. No. 3093 of 2023 Order dated 25.07.2023: **(2023) ibclaw.in 471 NCLAT.**

¹¹ Jet Aircraft Maintenance Engineers Welfare Association v. Ashish Chhawchharia & Ors. CA(AT) (Ins) Nos. 752 of 2022 Decided on 21-Oct-22: **(2022) ibclaw.in 861 NCLAT.**

balance unpaid amount of provident fund and gratuity to workmen and employees.”

These conclusions of Hon’ble NCLAT have also been upheld by Hon’ble Supreme Court¹².

39. Keeping in view the above judicial pronouncements, the RP is directed to include the claim of the Applicant as contingent claim in the list of creditors and also disclose the same in the Information Memorandum, if not done so already. The claim of the EPF authorities can be taken into account by the prospective Resolution Applicants, while submitting resolution plan for the CD.

The Application is disposed of with these remarks.

Sd/-

**(SANJAY PURI)
MEMBER (TECHNICAL)**

Sd/-

**(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)**

VL

¹² Order dated 30.01.2023 in CA No. 423, 465-469 of 2023