

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins.) No.455/2023
(IA Nos. 1421 & 1422/2023)

IN THE MATTER OF:

THE REGIONAL PROVIDENT FUND COMMISSIONER-II,

Employees` Provident Fund Organisation

Regional Office,

Represented By Mr.Subramani.P,

Regional Provident Fund Commissioner-II(Legal)

Bhavishya Nidhi Bhavan,

No.1, Lady Doak College Road, Madurai-625002

... APPELLANT

Vs

**M/S.HARSHAVARDHAN COTTON AND SYNTHETIC
MILLS PRIVATE LIMITED**

Represented by its Liquidator Mahalingam Suresh Kumar,

No.27/9, Nivedh Vikas, Pankaja Mills Road,

Puliyankulam, Coimbatore-641045

... RESPONDENT NO. 1

City Union Bank,

94,95(1) Court Street,

Tiruppur-641601

... RESPONDENT NO. 2

Present:

For Appellant : Mr. P.K. Panneer Selvam, Advocate

For Respondents : Ms. M. Pavithra, Advocate, For R1

JUDGMENT
(Hybrid Mode)

[Per: Jatindranath Swain, Member (Technical)]

This appeal arises from the Impugned Order dated 17.11.2023, issued by the National Company Law Tribunal, Division Bench-I, Chennai, in IA(IBC)/116(CHE)/2022 in MA/623/2018 as it was preferred in

CP/104/IB/2018. The said application, IA(IBC)/116 (CHE) /2022, had been filed invoking Section 54 of the I & B Code, 2016, by the Liquidator of the corporate debtor (CD) M/s. Harshavardhan Cotton and Synthetic Private Limited, seeking an order for dissolution of the CD. The said application was allowed by the Ld. Adjudicating Authority, against which the present appeal has been filed.

Brief facts of the case:-

2. The Corporate debtor, M/s Harshavardhan Cotton and Synthetics Pvt. Ltd., is an establishment, which stands covered under the provisions of Employees' Provident Funds & Miscellaneous Provisions Act, 1952, with Code Numbers MD/MDU/41334 and MD/41334-A. The establishment employed 181 workers. On an application that, was instituted by the Operational Creditor, Bhadresh Trading Corporation, the Ld. Adjudicating Authority, directed commencement of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor by an order dated 12.03.2018 in CP/104/IB/CB/2018. During this process, the Hon'ble NCLT declared a moratorium and appointed Mr. Raghuram Mani as the Interim Resolution Professional (IRP). Since no resolution plans were received, the committee of creditors (COC) resolved to liquidate the Corporate Debtor during its 3rd meeting on 14.03.2018 and to file an appropriate application to that effect before the Ld. Adjudicating Authority. Consequently, vide the order dated 03.12.2018, the adjudicating authority allowed the said application and ordered liquidation of the CD.

3. Following his appointment, the Liquidator made a public announcement on 7th December 2018 inviting claims those the creditors and the stakeholders, verified the claims those were received, prepared the list of stakeholders and filed it before the NCLT on 15.02.2019. Further, the Liquidator admitted claims to the tune of ₹16,79,16,396.49 and initiated steps for realising the assets of the CD, so as to enable him to settle such claims. There were no left over immovable/movable assets of the CD as they had already been sold even before the commencement of CIRP. As recorded in the impugned order by NCLT, the only asset that was available with the CD were financial assets in form of receivables, which the Liquidator took steps to realise from various debtors, including the related parties of the CD. In the process, he realised a total sum of Rs. 9,20,57,356.00 in the liquidation account. After this, the Liquidator submitted the Asset memorandum before Ld. NCLT and then proceeded to distribute the amount amongst the stakeholders in accordance with Regulation 42 of the liquidation regulations, 2016, to be read with Section 53(1) of the I & B Code, 2016. After the said distribution, the Liquidator filed the dissolution application before the Ld. NCLT, which was allowed by Ld. NCLT vide the impugned order.

4. The Appellant herein had also submitted a claim of Rs. 6,34,816/- in the shape of Form-C on 01.01.2019, which consisted of payment of interest and damages on account of default in paying the EPF contributions in time, for the period 2007 to 2015. The Liquidator had admitted the said claims in full, under

Section 40(1) I & B Code and communicated the same vide his letter dated 01.02.2019. In the same letter, the Liquidator had also stated that the liquidation proceeds will be distributed as per the provision of Section 53 of the I & B Code, 2016, as and when it is realised from the assets of the CD. The Appellant had insisted through his letter dated 08.01.2020, that priority may be assigned to EPF dues, as they have the first charge over the assets of the establishment as per Section 11(2) of the EPF and MP Act, 1952, and therefore the same may be paid in priority to all other debts. The Liquidator by his letter dated 23.01.2020 informed the Appellant, that the claim of EPFO consists of penal damages and interest, and it has already been included for consideration under Section 53(1)(e) of I & B, Code 2016, for the purpose of distribution of liquidation proceeds.

5. The Appellant through his letter dated 27.10.2020 informed the Liquidator, that as per Section 36(4)(a)(iii) of the code, PF dues shall not form the liquidation estate and is bound to be treated as third-party assets in the hands of the Liquidator and therefore the PF dues may be released before initiating the process of distribution of the proceeds in accordance with the waterfall mechanism prescribed under Section 53 of the code. To this, the Liquidator replied on 02.11.2020, thereby contending that only PF contribution of the employee and of the employer are to be treated as the sum due to the workmen / employees from the provident fund, pension fund and gratuity fund and consequently, as third-party assets in the hands of the Liquidator as per provision of Section 36(4)(a)(iii)

of the Code and that the claim of the Appellant towards penal damages and interest have been categorised and placed under Section 53(1)(e) of the code and same would be paid depending upon the realisation of the assets of the CD, as per the provisions of the code. The Appellant EPFO sent another detailed letter to the Liquidator on 19.11.2020, contending that the question of according priority to the PF dues, including interest and penal damages payable on it, is the ratio that has been already settled by Hon'ble Apex Court in the matter of *Maharashtra State cooperative bank Limited Vs. Kannad Sahakari Sakhar Karkhana Ltd and others*, as decided in *SLP no. 14772-14773/2010* and Hon'ble High Court of Madras too, in the matters of *EPF Commissioner V. Official Liquidator of M/s. ESSKAY Pharmaceutical Ltd* and also in *CA/899/12 in CP/230/2001* in the matter of *Murugan Mills(P) limited*, where Hon'ble Supreme Court has held that priority is to be given to EPF dues, and that EPF dues will include within itself not only the amount assessed under Section 7A but also interest under Section 7Q and damages contemplated under Section 14B of the EPF Act. To this, the Liquidator replied on 28.11.2020 that the said judgements pertains to a period prior to enactment of I & B Code 2016 and that, as the Liquidator, is strictly bound to follow the provisions of the Code, which will prevail over any other conflicting laws or instruments in force, including case laws by virtue of the implications of Section 238 of the code. Stating the same, he reiterated his position that he has categorised the claim of EPFO (which consisted of penal

damages and interest) as govt. dues under Section 53(1)(e) of the code and will pay the same, depending on the realisation of the assets.

6. Accordingly, the Liquidator proceeded to categorise the claim of EPFO to the tune of Rs.6,34,816/- as government dues instead of treating it as a third-party asset and placed the same under Section 53(1)(e) of the code. He went on to realize a total of Rs. 9,20,57,356/- from various stakeholders and related parties towards the liquidation estate and distributed the same in accordance with the provisions of Section 53(1). In the process, EPFO, i.e., the Appellant, got nil amount.

7. Thereafter, the Liquidator, on completion of the distribution of liquidation estate among the creditors and stakeholders, filed the application IA/116/2022 before NCLT praying for the dissolution of the Corporate Debtor. NCLT, after observing that since no applications are pending for avoidance, preferential, undervalued, or fraudulent transactions and that the final report & the compliance certificate in the shape of Form-H have been filed, which indicated that the corporate debtor has been completely liquidated, passed the impugned order ordering dissolution of the corporate debtor on 17.11.2023. The Liquidator intimated the same to the Appellant through his letter dated 22.11.2023, enclosing a copy of the impugned order. Aggrieved by the said order, which dissolved the CD, without settling his claim, the Appellant herein has preferred the instant appeal.

Appellant's submissions:

8. It is the case of the Appellant that the Liquidator has incorrectly concluded that only the contribution of the workmen, and the contribution of the employer towards PF will be covered by the provisions of Section 36(4)(a)(iii) of the Code and that the interest computed under 7Q and damages computed under 14B of EPF Act are in the nature of government dues and will come under Section 53(1)(e) instead of Section 36(4)(a)(iii). The Appellant has submitted that, the Liquidator has erred in law by placing the claim of the Appellant under Section 53(1)(e) of the code, in complete disregard of the settled position of law regarding distribution of assets of the CD under liquidation which has been laid down by Hon'ble Supreme Court in its judgement dated 02.05.2023 in the matter of ***Moser Baer Karamchari Union vs. Union of India and Others*** reported in ***(2023)238CompCas 458(SC)***.

9. He has further submitted that the issue; of whether the PF dues is expressly excluded from the assets of the CD as per the provisions of Section 36(4)(a)(iii) of the I & B Code, 2016, has already been dealt with by this Appellate Tribunal in its judgement dated 19.08.2019 in the matter of ***SBI versus Moser Baer Karamchari Union and another in company Appeal (AT)(Ins) No. 396/2019*** and it has been expressly declared therein that all sums due to workmen and employees from provident fund, the pension fund and the gratuity fund cannot be included in the liquidation estate for the purpose of distribution of assets under

Section 53(1) of the code. He has been contended that the said order has attained finality with the dismissal of the appeal filed by SBI in Civil Appeal No. 258/2020 against the said order before the Hon'ble Apex Court. He has further placed reliance on yet another judgment dated 02.11.2022 that was rendered by this Appellate Tribunal in the matter of *Assam Tea Employees Provident Fund Organization Vs. Madhur Agrawal, RP of Hail Tea Limited and Others in Company appeal (AT)(Ins) No. 262/2022* to assert that, any amount due from the employer under Section 11(2) of EPF Act also covers the amount that has been determined under Section 14B and that the provident fund dues are not subject to distribution under Section 53(1) of the code and that they are liable to be paid in full in view of the judgement of *Hon'ble Supreme Court in Maharashtra State Cooperative Bank Limited Vs. Assistant PF Commissioner and Others*. The Appellant has also relied upon the judgement of *Hon'ble Supreme Court dated 19.04.2022 in Civil Appeal No. 5910/2020 in the matter of Sunil Kumar Jain and others Vs. Sundaresh Bhatt*, which declares that the concerned workmen/employees shall be entitled to the provident fund, gratuity fund, and the pension fund which are specifically kept out of liquidation estate and as per Section 36(4) of the code, they are not to be used for recovery in the liquidation. Finally, the Appellant has cited the decision rendered by this Appellate Tribunal in the matter of *Anuj Bajpai Vs. Regional PF Commissioner, Coimbatore* to support his argument that Section 53(1) cannot be made applicable to the dues coming under provident fund, pension fund, and gratuity fund and that the PF

dues should have been paid before commencing distribution of liquidation proceeds under Section 53(1) of the I & B Code, 2016.

10. The Appellant has further contended that the financial creditor, the City Union Bank, has been the beneficiary of distribution of the assets of the CD and therefore it has to return the amount equivalent to his claim in view of specific provision under Regulation 43 of IBBI (liquidation process) regulations 2016. Accordingly, it was prayed that the impugned order of Ld. NCLT maybe set aside and the Respondent may be directed to re-distribute the claim amount of ₹6,34,816/- due to EPFO on first priority from and out of the liquidation assets of the CD.

Case of the Respondent

11. On the contrary, the Respondent/Liquidator has submitted that, it had discharged its duties as contemplated under the code including publication of the notice, inviting claims, verification and admission of the claims, preparation of the list of stakeholders, preparing and completing the audit of the books of accounts for the entire period, appreciation, and preparation of the asset memorandum, realization of ₹9,20,57,356/- in the liquidation account from various customers, including related parties, distribution of the same to the stakeholders as per the intention of Section 53 of the code, and preparation of the final report containing the details of liquidation of the assets and that the

Liquidator had filed the application in IA No. 116/2022 seeking for an order of dissolution of the CD, which was allowed by Ld. NCLT by the impugned order.

12. He has contended that the amount realised by him, will have to be treated as part of the liquidation estate, which will have to be distributed under Section 53 of the code because of the non-obstante clause attached to it and therefore, he has not violated any of the provision of the code. He has further contended that, the true meaning of Section 36(4)(a)(iii) will be that if there are any funds of the corporate debtor that are specifically segregated or classified as provident fund, pension fund, and gratuity fund, the same shall not be used for settling the dues of other creditors in terms of Section 53 of the I & B Code, 2016, and that the same cannot be interpreted to mean that the dues payable towards provident fund, pension, and gratuity shall be paid from the liquidation estate in priority over other classes of creditors or at par with secured financial creditors. He has stated that since the corporate debtor did not have a separate account/fund to pay pension, provident fund and gratuity, no amount could be set apart and kept outside of the liquidation estate as per the provisions of Section 36(4)(a)(iii) of the code. He has relied upon the observations made in paragraph 25.2 of the judgment of the Hon'ble Supreme Court, in the matter of **Sunil Kumar Jain Vs. Sundaresh Bhatt (supra)** to support his argument that since there are no such dedicated fund, no amount could have been set apart to pay the provident fund dues in priority before commencing distribution of the proceeds of liquidation

among the stakeholders / claimants as per the provisions of Section 53 of the Code. Accordingly, he has submitted that the prayer of the Appellant is in contravention to the provisions of Section 53 of the code and therefore it is liable to be dismissed as baseless.

13. We have heard the arguments extended by the respective counsels and gone through the submissions and records submitted by both the parties. The wider issues to be decided are threefold;

- a) Whether, in the event of process of settlement of claims during liquidation, Section 36(4)(a)(iii) will take precedence over Section 53 of the I & B Code, 2016.
- b) Whether ‘all sums due to any workmen or employee from the provident fund, the pension fund and the gratuity fund’ as described in Section 36(4)(a)(iii) of the Code, will also include interest under Section 7Q and damages under Section 14B as determined under the relevant provisions of EPF Act and claimed by EPFO as due from the CD?
- c) Whether the sums as described above will have to be held in a dedicated fund in the CD so as qualify to be a third-party asset to remain outside the liquidation estate?

14. The first issue has already been conclusively decided by a series of judgements pronounced by Supreme Court and NCLAT. Supreme Court in its

judgement dated 02.05.2023 in the matter of Moser Baer Karamchari union versus Union of India and Others reported in (2023)238CompCas458(SC) categorically has held that in case of liquidation of a company under the I & B Code, 2016, the distribution of the assets shall have to be done as per Section 53 of the I & B Code, 2016, subject to Section 36(4) of the I & B Code, 2016. The relevant paragraph is extracted below.

"18 In case of the liquidation of a company under the IBC, the distribution of the assets shall have to be made as per Section 53 of the IBC subject to Section 36(4) of the IBC, in case of liquidation of company under IBC.

.... 8. For the purpose of the present decision, we are not interpreting Sub-clause (iii) to Clause (a) of SubSection (4) to Section 36 of the Code as this is an issue of some debate and pending consideration in other matters. The legal effect of exclusion is that, the amount of sums due to any workmen or employee from the provident fund, the pension fund or the gratuity fund cannot be made subject matter of reduction or dilution even in a rehabilitation or revival plan. They are excluded from the waterfall mechanism and would not be used in recovery on liquidation, and they cannot be shared "

The implications of the above ratio as propounded are very clear; that is, Section 36(4) of the I & B Code, 2016, will take precedence over Section 53, as far as the distribution of assets of the liquidation estate is concerned. Intuitively too it also, this makes eminent sense. First, the Liquidator will identify the assets of the CD and take charge of them, then he will exclude assets that falls under Section 36(4) of the I & B Code, 2016, including third-party assets falling under Section

36(4)(a) and thereafter, form the liquidation estate which he then proceeds to realise and distribute among the stakeholders as per the formula prescribed under Section 53 of the code. Thus, it is clear that distribution under Section 53 of the I & B Code, 2016, will have to be done subject to Section 36(4) of the code.

15. The second issue of, whether amount determined under Section 7Q and 14B of the EPF Act, will come within the meaning of 'all sums due to workmen/employee from Provident fund' has also been settled by a series of judgements of this Appellate Tribunal. The Appellant has referred to the judgement dated 10.07.2024 that was rendered in the matters of Anuj Bajpai vs. Employee Provident Fund organisations (2024) to support his contention that the provident fund dues will fall within the meaning of Section 36(4)(a)(iii) of the I & B Code, 2016, will consist of not only the amount determined under Section 7A, but also the amounts to be determined under Section 7Q and Section 14B as well. The relevant paragraphs of the said judgement is extracted below:-

"...51.The Hon'ble Supreme Court laid down that there is no reason to give restrictive meaning of expression ..any amount due from the employer,, and to confine to only amount determined under Section 7A of the EPF Act, The Hon'ble supreme Court further held that interest payable.by the employee under Section 7Q and the damages levied under Section; 148 of the EPF Act will also be covered as dues from the employers for the purpose of Section 11(2) of the EPF Act.

52. we note that in the present appeal the amount which has been claimed by the employer are covered under Section 7A,

7Q and 14B of the EPF Act and therefore are fully governed by the judgement Maharashtra state Cooperative Bank (Supra).

53. In view of this clear judgement of the Hon'ble Supreme Court of India the contention of the Appellant are not tenable and stand rejected.

54. we also note that the Hon'ble supreme court of India in Sunil Kumar Jain v, Sundaresh Bhatt [(2022) 7 SCC 540] held that the dues of the gratuity and pension shall be governed by Section 36(4) of the Code. It is reiterated that Section 36(4)(ii) of the code 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) of the code cannot be made applicable to such dues, which are to be treated outside the liquidation estate assets under the code. Section 36(4) of the code has clearly gives 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 cannot claim over such dues,..."

16. We find that this Appellate Tribunal had also delivered a judgement dated 21.10.2022 in the matters of ***Jet Aircraft Maintenance Engineers Welfare Association vs. Ashish Chhwachharia, RP of Jet Airways (India) Limited and others*** in which it had deliberated on the same issue in a substantial manner and came to the conclusion that the PF dues will also include within it the amount determined under Section 7Q and 14B. The relevant paragraphs are reproduced here under:

“118. Challenge to the Resolution Plan by the Appellant is on the ground that Section 11 of the 1952 Act requires

priority over all other dues and further Section 36(4)(a)(iii) excludes provident fund dues from the liquidation estate of the Corporate Debtor. We have already dealt with provisions of Section 36(4)(a)(iii) in foregoing paras of this judgment. Now, we, need to look into Section 11 of 1952 Act. The Section 11 of the 1952 Act provides for priority of payment of contributions over other debts. Learned counsel for the Appellant has relied on judgment of the Hon'ble Supreme Court in "Maharashtra State Cooperative Bank Limited vs. Assistant Provident Fund Commissioner & Others, (2009) 10 SCC 123". The Hon'ble Supreme Court dealing with Section 11 of 1952 Act laid down following in Para 67:

"67. The expression "any amount due from an employer" appearing in sub-Section (2) of Section 11 has to be interpreted keeping in view the object of the Act and other provisions contained therein including sub-Section (1) of Section 11 and Sections 7A, 7Q, 14B and 15(2) which provide for determination of the dues payable by the employer, liability of the employer to pay interest in case the payment of the amount due is delayed and also pay damages, if there is default in making contribution to the Fund. If any amount payable by the employer becomes due and the same is not paid within the stipulated time, then the employer is required to pay interest in terms of the mandate of Section 7Q. Likewise, default on the employer's part to pay any contribution to the Fund can visit him with the consequence of levy of damages."

119. The above judgment lays down that any amount due from employer appearing in sub-Section (2) of Section 11 also covers the amount determined under Section 14B and there cannot be any quarrel to the preposition as laid down by the Hon'ble Supreme Court in the above case. The priority for payment of debt under Section 11 of the 1952 Act has to be looked into in view of the mechanism which is specifically provided under Section 53(1) of the Code. We have already dealt the provision of Section 36(4)(a)(iii) of the Code and

held that provident fund dues are not subject to distribution under Section 53(1) of the Code. The issue is fully covered by three member bench judgment of this Tribunal in “Tourism Finance Corporation of India Ltd. vs. Rainbow Papers Ltd. & Ors.” (Supra). In view of foregoing discussion, we hold that provident fund dues were entitled to be paid in full. In view of the judgment of Supreme Court in “Maharashtra State Cooperative Bank Limited vs. Assistant Provident Fund Commissioner & Others” (Supra), the claim of Appellant was to be satisfied in full, otherwise breach of provision of Section 30(2)(e) would have occurred. We, thus, are inclined to issue direction to the Successful Resolution Applicant to make payment of the admitted claim of the Appellant towards provident fund dues to save the plan from invalidity.”

17. Similar views have also been expressed by other coordinate benches of this Appellate Tribunal in the matters of ***Truvisory insolvency professionals Private Limited (IPE) versus EPFO in CA(AT)(Ins) No. 580/2023***; and also in the matter of ***SBI versus Moser Baer employees union in Company Appeal (AT) (Insolvency) No. 396 of 2019***. All the judgments draw their inspiration from the findings recorded in the judgment of the Honourable Supreme Court in the matter of ***Maharashtra State Cooperative Bank versus Assistant Provident Fund Commissioner***. In view of the above ratios, it has to be accepted that the issue is no more Res Integra and that all sums due from provident fund will include within it the amounts determined under Section 7Q and 14B as well.

18. Now we will proceed to answer the third issue framed by us, i.e., whether the sums due to workmen/employee from provident fund, pension fund, and the gratuity fund are to be held in a dedicated fund so as to qualify for being treated

as a third party asset, to be kept outside the liquidation estate? The Respondent argues that, as per the ratio laid down in the matter of **Sunil Kumar Jain** (Supra), there has to be a dedicated fund for such sums, failing which, the said amounts will be included in the liquidation estate. The relevant paragraph which is cited by the Respondent. is extracted below:-

“25.2 considering Section 36(4) of IBC and when 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.”

19. The Respondent relies on a cursory reading of the paragraph as above to contend that workmen/employees will be paid out of the provident fund, gratuity fund, and the pension fund, if any, available and if such funds are not available, then the dues of the employees in form of PF, pension, and gratuity will have to be paid in accordance with the provisions of Section 53 of the code. This is not a correct interpretation which can be assigned to the issue. If the entire judgement is taken into consideration, it will be apparently clear that the provident fund, gratuity fund and the pension fund will have to be kept outside the liquidation estate by treating it as third party asset. It is not material whether this funds are maintained in a dedicated account as long as such amounts are held by the CD. Even if they are not classified in a dedicated account, then too it has to be

presumed that, the CD is holding these amounts and will have to pay the said amount to the workmen/employee at an appropriate time. It needs to be mentioned here that certain enterprises have been given the latitude to open their own provident funds/pension funds/gratuity funds by giving exemption under EPF Act, and these enterprises maintain separate funds. The rest of the enterprises who come under EPF Act are mandated to remit the dues to EPFO promptly, failing which they have to pay the same with interest and damages computed under Section 7Q and 14B respectively. Thus, if an enterprise has not been permitted to maintain separate provident fund/pension fund/gratuity fund, it has to remit the dues to be paid into the respective funds maintained by EPFO by law and even if it has not done so, which is the case on hand, then the said amount will be deemed to be a part of the said funds and consequently, a part of 'all sums due to the workmen/employee' will be within the meaning of Section 36(4)(a)(iii) and accordingly will have to be treated as a third-party asset under Section 36(4)(a)(iii) to be kept outside the liquidation estate. The third issue is answered accordingly.

20. From the above, we come to the conclusion that the Liquidator has erroneously placed the claim of the Appellant EPFO under Section 53(1)(e) of the code instead of treating it as a third-party asset under Section 36(4)(a), that the amount Rs. 6,34,816/-ought to have paid to the Appellant before the distribution under Section 53 was resorted to by the Liquidator and therefore, the

said amount should be recovered from the financial creditor City Union Bank Respondent-2 herein under Regulation 43 of IBBI liquidation process regulations 2016 and paid to the Appellant.

21. We find that NCLT has already passed the order of dissolution. The right course would have been to set aside the order of dissolution, and to direct the Liquidator. to rectify this error and then to apply for dissolution of the CD. However, in the interest of cutting short the litigation, we are of the view that the interest of justice will be served, in case the financial creditor, Respondent-2, is directed to remit the amount Rs. 6,34,816/-to the Appellant herein within 30 days and report the same to NCLT, which will then direct for making the necessary entries in the liquidation records to the effect.

22. The appeal will be closed accordingly. Interlocutory applications, if any, will stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

13/01/2026
SN/MS/AK