

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

**CORAM: MS. REETA KOHLI,**  
**HON'BLE JUDICIAL MEMBER**  
**MS. KAVITA BHATNAGAR**  
**HON'BLE TECHNICAL MEMBER**

**IA (IBC) No. 224/JPR/2025**  
**In CP No. (IB)- 87/9/JPR/2020**

*(Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)*

**IN THE MATTER OF:**

**Apollo Pipes Limited**

**...Operational Creditor**

**Versus**

**Tonk Water Supply Limited**

**...Corporate Debtor**

**MEMO OF PARTIES**

**IA (IBC) No. 224/JPR/2025**

**Employee Provident Fund Organization,**  
**Regional P.F. Commissioner- II**  
**(Legal) Ministry of Labour & Employment,**  
**Govt. of India, Regional Office: Nidhi Bhawan,**  
**Vidhut Marg, Jyoti Nagar, Jaipur.**

**.... Applicant**

**Versus**

**Tonk Water Supply Limited**  
**F-2, 1st Floor, Jagdamba Tower, Amrapali**  
**Circle, Vaishali Nagar, Jaipur,**  
**Rajasthan-302021**

**...Respondent No. 1**

**Solr** **C) No. 224/JPR/2025**

**In**

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**Solr**

Mr. Amit Gupta, Liquidator,  
Tonk Water Supply Limited  
C-17. Vinay Nagar, Krishna Nagar, Lucknow,  
Uttar Pradesh-226023.  
Email: cirp.tonkwater@gmail.com

.... Respondent No. 2

**Present:**

For the Applicant : R.K. Verma, Adv.  
For the Respondent : Mahima Khandelwal, Adv.

**Order Pronounced on: 24.04.2026**

**ORDER**

**Per: Ms. Kavita Bhatnagar, Technical Member**

1. The instant Application bearing No. 224/JPR/2025 was filed by Employees Provident Fund Organization ('EPFO'/ 'Applicant') against Tonk *Water Supply Limited* ('Respondent No.1'/ 'Corporate Debtor') and *Mr. Amit Gupta* ('Respondent No.2'/ 'Liquidator') under Section 60(5) of the Insolvency and Bankruptcy Code ('IBC'/ 'Code') seeking the following reliefs: -

*"(i) direct the respondent liquidator to pay the EPFO dues in full forthwith to the applicant.*

*(ii) To provide the complete record of establishment (Corporate Debtor) pertaining to employees to determine the actual dues in full extent;"*

**Facts in Brief: -**

2. The Corporate Insolvency Resolution Process ('CIRP') was commenced against the Corporate Debtor *vide* order dated 16.09.2022. *Mr. Amit Gupta*

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was appointed as the Interim Resolution Professional to conduct the CIRP of the Corporate Debtor, later confirmed as the Resolution Professional.

3. Thereafter, in the 7<sup>th</sup> CoC meeting held on 18.05.2023 it was discussed that despite publication of Form-G on three occasions the Applicant has not received any Resolution Plan till the last date of submission of the Resolution Plan. Therefore, the Committee of Creditors ('CoC') members have decided and approved the agenda for liquidation of the Corporate Debtor and approved the appointment of *Mr. Amit Gupta*, Resolution Professional to act as the Liquidator of the Corporate Debtor. By a majority vote of not less than 66% voting, the CoC has resolved to liquidate the Corporate Debtor in the 7<sup>th</sup> CoC meeting.
4. Later, during the continuation of the CIRP, an Application bearing No. *408/JPR/2023* was filed by the Resolution Professional under Section 33 and 34 of the Code for initiation of the process of Liquidation of the Corporate Debtor. The Adjudicating Authority *vide* Order dated 22.12.2023 ordered the Liquidation of the Corporate Debtor and the Resolution Professional namely *Mr. Amit Gupta* was allowed to continue as Liquidator in the said Liquidation process.
5. A Public Announcement dated 16.01.2024 was made by Liquidator inviting claims from the stakeholders of the Corporate Debtor and the last date to

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submit the claims was 11.02.2024. The Applicant filed their claim of statutory dues *vide* office letter dated 09.02.2024 for a total amount of Rs. 12578.65/- along with a request to provide the record of the establishment for determination of dues under Section 7A and 14B and 7Q of the Employee Provident Fund & Miscellaneous Provisions ('EPF & MP') Act, 1952.

6. The Liquidator *vide* email dated 18.05.2024 intimated the Applicant to submit the claim as provided under Form-C. The Applicant filed the claim *vide* office letter dated 05.06.2024 through email for a total amount of Rs. 12,579/- with a request to provide the records of the Corporate Debtor to determine the actual dues in full extent. The Applicant determined a claim of Rs. 1,12,26,981/- on the basis of the records available with the Applicant and records provided by the Liquidator and submitted the revised claim before the Liquidator *vide* letter dated 10.09.2024.
7. It is further contended by the Applicant that his claim was not considered till date by the Liquidator despite several reminders from the Applicant side, but no response was received from the Liquidator. The Applicant citing grounds for the instant Application submitted that EPFO is a statutory body and the contribution, interest and damages claimed by the EPFO are statutory dues and cannot be construed as merely a claim under the provisions of the Code. The Applicant further submitted, referring to Section 36 of the Code that the

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Liquidator is not entitled to take custody of the assets, owned by a third party in possession of the Corporate Debtor and considering the nature of the provident fund dues, it is not an asset of the Corporate Debtor but is a asset, owned by the Provident Fund, held under trust by the Corporate Debtor.

8. It was further contended that all dues towards the Provident Fund are third party assets and needs to be excluded from the Liquidation Estate of the Corporate Debtor. The entrustment of these monies with the employers is merely a collection mechanism and is required to be understood as an operational debt under IBC.
9. The Applicant cited judgments in *Kushal Ltd. v Regional Provident Fund Commissioner-I, Civil Appeal No. 1920 of 2020, Jet Aircraft Maintenance Engineers Welfare Association vs. Ashish Chhawchharia & Ors. (2022) SCC Online NCLAT 418* among others to support their argument that while deciding on the statutory debt, the dues of the EPF & MP Act need to keep outside by the CoC.
10. The Applicant further cited the Hon'ble NCLAT judgement in *Sikandar Singh Jamwal vs. Vinay Kumar Talwar (CA (AT) 483/2019)* among others stating that dues under the EPF Act are not debts and do not form part of the waterfall mechanism under Section 53 of the Code.

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11. A reply was submitted on behalf of Respondent No.1 in the instant Application stating that the initial claim of Rs. 12,578.65/- was filed before the Liquidator without any claim form, which was later resubmitted in Form-C on 05.06.2024 under Regulation 8 of Insolvency and Bankruptcy Board of India ('IBBI') (Insolvency Resolution Process of Corporate Persons) Regulations, 2016. The Liquidator informed the Applicant to file the claim in Form C of the IBBI Liquidation Process Regulations, 2016 and that the dues are statutory operational dues and do not fall within the definition of financial debt under Section 5(8) of the Code making such claim as procedurally defective.
12. It was further submitted that the amount of Rs. 12,579/- being based on a recovery letter dated 22.09.2022 is misleading as the dues reflected in such letter is Rs. 20,885/- making the reliance on the recovery letter highly misplaced.
13. The claimed amount in the instant Application amounting to Rs. 1,12,26,981/- submitted on 10.09.2024 is based on the report dated 23.08.2024 by the Area Enforcement Officer which is after the last date of filing the submission of claims i.e. 11.02.2024. The Respondent No.1 cited judgement in EPFO vs. Vineeta Maheshwari (Bloom Dekor), Comp. App. (AT) (Ins) No. 1618 stating that no assessment proceedings can be initiated or continued by the

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EPFO under Section 7Q and 14B of the EPF Act, 1952 after imposition of moratorium under Section 14 of IBC, 2016 against the Corporate Debtor.

14. The Respondent No.1 also cited the judgement of Hon'ble NCLAT in Regional Provident Fund Commissioner vs. Liquidator of Gujarat Foils Ltd. (2025 SCC Online NCLAT 1370) and Nashik vs. Girish Siriram Juneja (MANU/NL/0482/2025) stating that any claim founded on assessments or orders passed after the liquidation commencement date is barred under Regulation 16(2) of the IBBI Liquidation Process Regulations, 2016.
15. The claim submitted by the Applicant solely relies on the report by the Area Enhancement Officer which is neither an order under Section 7A of the EPF & MP Act nor a recovery certificate under Section 7Q or 14B thereof. The Respondent No.1 contended that in the absence of the statutory assessment crystallized before 22.12.2023, speculative or unverified figures merely on the basis of an internal departmental report. The Respondent No.1 further stated that Provident Fund dues can only be admitted and distributed in the manner specified under Section 53 and cannot claim precedence over the priority expressly provided under the Code.
16. It was further contended in the reply that no particulars of the employees or their individual claims were provided to the Liquidator. Also, no claim has

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been filed by any employee in respect of the Provident Fund dues. In the absence of any such details, the Liquidator is unable to verify the claims of any amount alleged by the Applicant.

17. It was further contended by the Respondent that the exclusion of the Provident Fund dues as claimed by the Applicant citing Section 36 of the Code applies only to the amounts actually identifiable and separately maintained in the books of the Corporate Debtor as provident fund corpus. In the present case, no such segregated provident fund corpus or trust property was available, nor did the Liquidator take custody of any plant, machinery or other assets of the Corporate Debtor which could constitute Liquidation Estate.
18. The Respondent No.1 further submitted that Applicant's reliance on the judgment of Sikandar Singh Janwal vs. Vinay Talwar is misplaced, as in the present case there is no segregated provident fund corpus and no assets of the Corporate Debtor and therefore the question of the exclusion from the Liquidation Estate does not arise.
19. The Respondent No.1 has submitted its reply and prayed for the dismissal of the Application filed by the Applicant.
20. The Liquidator / Respondent No. 2 in his reply has oppose the application on several grounds. The main being that the revised claim is not a claim existing

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on the liquidation commencement date but that was submitted on a much later date i.e. on 23.08.2024 and was filed on 10.09.2024 much after the liquidation commencement date and much after the last date of inviting claims. Further the Liquidator has stated that the applicant first filed the defective claim without the prescribed form. Later filed the claim in the wrong form and then the very proceedings under the EPF act were initiated after the commencement of CIRP on 16.09.2022 when moratorium under Section 14 had already come into force. Liquidator has also stated that there is no segregated Provident fund corpus as seen from the books of accounts of the Corporate Debtor. That Hon'ble NCLAT in his various. in various cases have held that no assessment proceedings can be initiated or continued by EPFO under section 7A,7Q or 14 B after the imposition of moratorium and no claim based on such assessments can be pressed in CIRP.

### Analysis & Findings

21. This Tribunal has considered the pleadings, documents on record and heard the counsels of the parties. At the outset, it is necessary to emphasize that the present controversy is about the admissibility of the claim of EPFO in liquidation stage. It is not merely procedural but goes to the root of the

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- distribution mechanism under the Code and is governed strictly by the provisions of the Code and the Liquidation Regulations.
22. Regulation 16(2) of the IBBI (Liquidation Process) Regulations, 2016 mandates that a person shall prove its claim “as on the liquidation commencement date”. The language is very clear and leaves no scope for admitting claims which are not in existence either in fact or in law on the said relevant date.
23. The Hon’ble NCLAT in EPFO, Nashik vs. Girish Srinam Jitendra has categorically held that claims under sections 7Q and 14B of the EPF Act which arise subsequent to the liquidation commencement date cannot be entertained in liquidation. Similarly, in Regional Provident Fund Commissioner vs. Liquidator of Gujarat Foils Ltd., the Hon’ble NCLAT reiterated that claims based on assessments made after the liquidation commencement date are not admissible.
24. While applying the said principle to the facts of the present case, it is evident that the revised claim of Rs. 1,12,26,981/- was submitted on 10.09.2024 and was based on the Enforcement Officer’s report dated 23.12.2023. Hence, it is clear that the enhanced claim is based upon material which came into existence subsequent to the liquidation commencement date.

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25. Therefore, the claim in its present form was neither crystallized nor ascertainable as on the liquidation commencement date. The attempt to characterize it as a mere “revision” of an earlier claim is not borne out from the record because the magnitude and basis of the claim underwent a fundamental change. Such a claim cannot be admitted in liquidation in view of the mandate of Regulation 16(2).
26. The scheme of the Code, particularly Sections 38 to 40, makes it abundantly clear that the liquidator is required to verify, admit or reject claims. The liquidator does not exercise adjudicatory powers akin to those conferred upon statutory authorities under special enactments.
27. Determination of dues under Sections 7A, 7Q and 14B of the EPF Act is a statutory function of the competent authority under that enactment. In the absence of a valid determination existing as on the liquidation commencement date, this Tribunal cannot direct the liquidator to undertake an exercise of adjudication or quantification.
28. Accepting Applicant’s contention would in effect amount to permitting a claim to be adjudicated and quantified post facto and thereafter foisted upon the liquidation process. Such an approach would be contrary to the scheme of the Code and would thereby render the statutory timelines meaningless.

29. The record indicates that proceedings under the EPF Act were initiated on 22.09.2022 whereas the CIRP had already commenced on 16.09.2022. The Hon'ble Supreme Court in *Sundaresh Bhatt vs. CBIC* has held that initiation of proceedings seeking to recover or determine liability during the moratorium period is impermissible. The Hon'ble NCLAT in subsequent decisions dealing specifically with EPFO claims has held that assessment proceedings under sections 7A, 7Q and 14B cannot be initiated or continued after imposition of moratorium.
30. In the present case, the Applicant has not demonstrated that the determination of dues was completed prior to the commencement of CIRP. On the contrary, reliance on a subsequent Enforcement Officer's report clearly indicates that the quantification exercise was undertaken post CIRP and even post liquidation. Consequently, the claim is vitiated at its very foundation.
31. The Applicant has strongly relied upon section 36(4) of the Code to contend that Provident Fund dues are outside the liquidation estate. There is no dispute with the proposition laid down by the Hon'ble Supreme Court in *Sunil Kumar Jain vs. Sundaresh Bhatt* that Provident Fund, Gratuity Fund and Pension Fund are not to be treated as part of the liquidation estate and that the liquidator has no claim over such funds.

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32. However, the said judgment does not lay down that any amount subsequently determined or claimed by EPFO automatically stands excluded from the liquidation estate. The exclusion under section 36(4) operates in respect of identified and existing funds, such as amounts already deducted or maintained as Provident Fund.
33. In the present case, no material has been placed on record to demonstrate the existence of any segregated or identifiable Provident Fund corpus in the books of the Corporate Debtor. In absence of such material, the protection under section 36(4) cannot be invoked in the abstract.
34. The Hon'ble NCLAT in *Pr. DGIT vs. Synergies Dooray Automotive Ltd.* has held that statutory dues including those arising under tax laws constitute "operational debt" within the meaning of the Code.
35. While Provident Fund dues may have certain distinct characteristics, the claim when sought to be enforced through the insolvency framework must conform to the statutory mechanism under the Code. The Applicant cannot seek exemption from the requirement of filing and proving its claim in accordance with the liquidation regulations.
36. The Applicant has relied upon several judgments to contend that Provident Fund dues have overriding priority and are outside the liquidation estate. Each of these judgments is required to be examined in its proper context.

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37. In *Kushal Ltd vs. Regional Provident Fund Commissioner-I*, the Hon'ble NCLAT recognized the protection accorded to Provident Fund dues and held that such dues are not assets of the Corporate Debtor. However, the said judgment was rendered in the context of admitted and determinable dues and does not deal with a situation where the claim itself is based on a post-liquidation assessment.
38. In *Jet Aircraft Maintenance Engineers Welfare Association vs. Ashish Chhawchharia*, the Hon'ble NCLAT reiterated that Provident Fund dues cannot be included in the liquidation estate. However, the factual context elaborated after the liquidation commencement date involved identifiable dues and does not lay down that claims can be created or enhanced after the liquidation commencement date.
39. In *Precision Fasteners Ltd vs. EPFO*, the Tribunal emphasized the statutory nature of Provident Fund dues. The judgment does not address the issue of admissibility of claims based on post-liquidation quantification. The reliance on *Sales Tax Officer vs. Rainbow Papers Ltd.* is misplaced. The said judgment pertains to treatment of statutory dues in the context of a resolution plan and the existence of a statutory charge. The issue of admissibility of a claim arising after the liquidation commencement date was not under consideration in that case.

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40. In *Sikander Singh Jamwal vs. Vinay Talwar*, the Hon'ble NCLAT reiterated that Provident Fund dues are to be protected. However, the case does not involve a claim based on post-liquidation determination.
41. The order of the Kochi Bench in IA No. 174/KOB/2020 dated 18.12.2021 also proceeds on the premise of identifiable Provident Fund dues and does not deal with the admissibility of claims arising after the liquidation commencement date.
42. Therefore, none of the judgments relied upon by the Applicant support the proposition that a claim which was not crystallized as on the liquidation commencement date and which is based on subsequent determination must nevertheless be admitted in liquidation.
43. In light of the above analysis, this Adjudicating Authority finds that the Applicant's claim suffers from multiple legal infirmities, namely, it is based on post-liquidation material, it is founded upon proceedings initiated after imposition of moratorium, it lacks proof of existence as on the liquidation commencement date; and no identifiable Provident Fund corpus has been established.
44. The Liquidator cannot be faulted for not admitting such a claim. Any direction to the contrary would be contrary to the statutory framework and binding precedents.

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45. Considering the above facts, *IA (IBC) No. 224/JPR/2025 is dismissed.*

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