IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.304

IA/807(AHM)2026 in CP(IB)/210(AHM)2021

Proceedings under Section 60(5) r/w 42 of IBC,2016 r/w Rule 11 of NCLT Rules,2016

IN THE MATTER OF:

The Central Board of Trustees
(Employees Provident Fund Oraganization) Through the
Regional Provident Fund Commissioner (Legal) **.....Applicant**
V/s
CA Kailash Shah Liquidatior of M/s.Omshri Devprocon
Limited **.....Respondent**

Order delivered on: 25/09/2026

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

This case is fixed for pronouncement of order

The order is pronounced in open court vide separate sheet

sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)

IA No. 807 of 2026
In
CP(IB) No. 210 of 2021

(An Application filed under Section 60(5) readwith Section 42 of The Insolvency and Bankruptcy Code, 2016, readwith Rule 11 of the National Company Law Tribunal Rules 2016)

IN THE MATTER OF:

The Central Board of Trustees,
(Employees Provident Fund Organization,
Ministry of Labour and Employment,
Government of India),
Through Assistant Provident
Fund Commissioner (Legal),
Regional Office, Ahmedabad,
Bhavishya Nidhi Bhawan,
Nr. RBI, Income Tax Circle,
Ashram Road,
Ahmedabad – 380014.
(E-mail: ro.ahmedabad@epfindia.gov.in) ...Applicant

Versus

IP CA Kailash Shah,
Liquidator in the matter of
M/s. Omshri Devprocon Limited,
IBBI Registration No.
IBBI/IPA-001/IP-P00267/2017-18/10511,
Address: 505, 21st Century Business Center,
Near World Trade Centre, Ring Road,
Surat -395002.
(E-mail: ipktshah@gmail.com/
cirpdevprocon@gmail.com) .... Respondent

Sd/-

Sd/-

Order pronounced on 25.09.2026

Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant : Mr. Aravindakshan V. Nair,, Adv.
For the Respondents : Mr. Nipun Singhvi, Adv,
Mr. Mayur Jugtawat Adv and
Mr. Rahul Bhavsar, Adv.

JUDGEMENT

1. The present Application is filed under Section 60(5) read with Section 42 of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the NCLT Rules, 2016, assailing the decision of the Respondent-Liquidator, conveyed vide e-mail dated 28.04.2026, rejecting the filed statutory claim of the Applicant for Rs. 10,64,17,849/- towards provident fund dues, damages, interest and short payment in respect of the Corporate Debtor, M/s Omshri Devprocon Limited. Relief sought in the present application by the applicant is as follows:

a) *to set aside and quash the impugned communication/e-mail dated 28.04.2026 issued by the Respondent-Liquidator*

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Sd/-

rejecting the Applicant's claim for Rs. 10,64,17,849/- in the liquidation of M/s Omshri Devprocon Limited;

b) *to direct the Respondent-Liquidator to accept/admit the Applicant's claim for the total amount of Rs. 10,64,17,849/- towards provident fund dues, damages, interest and short payment in respect of the workmen and employees of the Corporate Debtor, as submitted by the Applicant on 01.08.2025 pursuant to the public announcement dated 07.07.2025;*

c) *to declare that the Applicant's admitted PF dues, inclusive of damages under Section 14B and interest under Section 7Q of the EPF & MP Act, 1952, stand excluded from the liquidation estate of the Corporate Debtor under Section 36(4)(a)(iii) of the IBC and are required to be paid in full in accordance with Section 11(2) of the EPF & MP Act, 1952, without being subjected to the waterfall under Section 53 of the IBC.*

2. The Applicant submits that the Corporate Debtor was covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("EPF & MP Act") and that, during the CIRP, the Applicant had initially lodged a claim of Rs. 98,108/- towards short remittance and further submits that vide communications dated 03.03.2023, 12.04.2023 and 18.07.2023, informed the IRP/RP of the revised provident fund dues aggregating to Rs. 4,02,64,664/-, based on the records

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and financial statements of the Corporate Debtor made available during the insolvency proceedings. It is submitted that pursuant to commencement of liquidation vide order dated 03.07.2025, the Applicant conducted proceedings under Section 7A of the EPF & MP Act for the period 01.04.2009 to 30.06.2025 and, along with the consequential proceedings under Sections 14B and 7Q thereof, determined the dues and filed its claim of Rs. 10,64,17,849/- with the Liquidator on 01.08.2025, along with the relevant orders, statements and computations. It is contended that the Liquidator initially kept the claim "under verification" and, further applicant enquired status of claim vide email dated 12.01.2026 subsequently vide e-mail dated 28.04.2026, liquidator rejected the said claim on the ground that the orders and enquiry reports forming the basis of the claim under Sections 7A, 14B and 7Q of the EPF & MP Act were passed after commencement of liquidation and during the moratorium under Section 33(5) of the IBC.

3. The Applicant submits that Section 36(4)(a)(iii) of the IBC expressly excludes sums due to workmen or employees from the provident fund, pension fund and gratuity fund from the liquidation estate, while Section 11(2) of the EPF & MP Act

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accords such dues priority over other debts. It is contended that the moratorium under Section 33(5) of the IBC does not bar the statutory authority from determining and quantifying pre-existing PF liabilities for the purpose of filing and proving the claim, and further contends that the date of quantification of the dues with the period to which the underlying defaults relate, which commenced as far back as 2009. The Applicant further submits that the EO's report dated 05.12.2022 and communications dated 03.03.2023, 12.04.2023 and 18.07.2023 demonstrate that substantial PF dues had already been identified and communicated during CIRP on the basis of the Corporate Debtor's records, and that the Respondent had participated in the subsequent Section 7A proceedings and furnished financial records. It is further submitted that the claim was filed on 01.08.2025 within the stipulated date of 02.08.2025, was initially kept "under verification", and was rejected on 28.04.2026 without affording an opportunity of explanation.

4. The Respondent has not filed any reply however a pursish has been filed placing on record the judgments relied upon by the respondent. The judgments so relied upon are as follows:

(i) CA Pankaj Shah vs Employee Provident Fund Organisation & Anr. In Company Appeal (AT) (Insolvency) No. 17 of 2025 & I.A. No. 77 of 2025

(ii) Central Board of Trustees Through The Regional Provident Fund Commissioner-II (Legal) VS Ms. Niharika Maheshwari ResolutionProfessional of M/s. Amul Industries Private Limited in IA(I.B.C)/68/AHM/2025

(iii) The Regional Provident Fund Commissioner-II VS Ms. Vineeta Maheshwari Interim/ Resolution Professional of M/s Bloom Dekor Limited in IA(I.B.C)/516/AHM/2024

(iv) Regional Provident Fund Commissioner-II (Legal) VS Mr. Pawankumar Jagetia Resolution Professional of M/s Eurocoin Ceramics Private Limited in IA(I.B.C)/979/AHM/2025

5. Heard the counsel for the applicant as well as the respondents. Perused the material available on record.

6. Observations:

(i) The applicant has relied on the admissibility of his claim on the following grounds:

a) The said claim amount comprises for the following orders passed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 i.e. (i) assessed provident fund dues of Rs. 3,18,83,285/- for the period

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01.04.2009 to 31.03.2021 under 7A order dated 30.07.2025, (ii) damages of Rs. 3,18,94,975/- under Section 14B for the period 01.04.2009 to 30.06.2025; (iii) interest of Rs. 4,24,61,871/- under Section 7Q for the same period; and (iv) short payment of Rs. 1,77,718/- up to June 2021.

b) The Copy of the application dated 01.08.2025 along with e-mail dated 01.08.2025 submitting proof of claim of Rs. 10,64,17,849/- with the appended documents thereto, including orders passed under Section 7A, 14B, 7Q under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and short payment and the enforcement officer's reports.

c) The Applicant is the statutory body established under Section 5A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter to be referred as "The EPF Act"), which is competent to sue and be sued under Section 5C of the EPF Act.

d) The issues raised pertain to the interpretation and application of Sections 33(5), 36(4) (a)(iii), 53 and 238 of

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the IBC regarding treatment of provident fund dues in liquidation.

(ii) The grounds submitted by the applicant are examined from the respective sections of IBC 2016:

Section 33(5)(since omitted under new Amendment) *: "Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the CD"*

Sec 3 (6) "claim" means – *"(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured; (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;"*

Sec 36(4)(a)(iii): "All sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund";

Form C prescribed for Operational Creditors under Regulation 17 of the IBBI (Liquidation Process) Regulations 2016, specifies the claim format which mentions in the column "*Total*

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amount of claim, including any interest, as at liquidation commencement date and details of nature of claim".

(iii) It appears that the applicant had not crystalised the liability of the claim on the CD either on the date of admission to CIRP, no claim was submitted, nor during its process when moratorium was in existence in terms of Sec 14 of IBC 2016, but appears that certain enforcement action culminated during the process of liquidation, thereby there was no claim outstanding as on date of liquidation, but resultant, after the process and a modified claim was submitted.

(iv) Even though the applicant states that its act which is statutory prevails, the obvious fact and inference drawn from submissions is that the arriving at the disputed amount was not crystalised or arose on or before the date of liquidation, thereby the Respondent RP who had taken up the claim for "verification" of claim, which is legal and permitted as part of his duties under IBC 2016 has rightly rejected the claim.

(v) We also conclude that Sec 238 prevails over other laws and there are no valid grounds for granting any relief to the applicant.

7. In view of the above, we order as follows:

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ORDER

IA No. 807 of 2026 in CP(IB) 210 of 2021 is rejected and disposed of.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

AS