NCLT INDORE BENCH
IA No. 4 (MP) of 2021
In
TP 33 of 2019 [CP(IB) 67 of 2018]
Date of Order: 13.10.2026

NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.203

IA/4(MP) 2021
in
TP 33 of 2019 [CP(IB) 67 of 2018]

Order under Section 36 r.w 42 & 60(5) IBC

IN THE MATTER OF:

Nainesh Sanghvi & Ors **.....Applicant**
V/s
Rajesh Jhunjhunwala Liquidator of Siddharth Tubes Ltd **.....Respondent**

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 13/10/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

MAN MOHAN GUPTA
MEMBER (TECHNICAL)

Sd/-

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

Tomar

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NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH

I.A. No. 4 of 2021

In

TP 33 of 2019 [CP(IB) 67 of 2018]

IN THE MATTER OF:

1. Nainesh Sanghvi, S/o- Shri Jayantilal Sanghvi, 21, Pragati Vihar, Bicholi Mardana, Indore, M.P.- 452016.

2. Shreyans Gupta, S/o- Late Shri R.P. Gupta, 21, Pragati Vihar, Bicholi Mardana, Indore, M.P.- 452016.

3. Mahesh Sharma, S/o- Shri Chokhelal Sharma, 157-B, Ashok Nagar, Near M.P. Public School, Indore, M.P.- 452005.

.....Applicants

Versus

Mr. Rajesh Jhunjhunwala,
Liquidator of Siddhartha Tubes Ltd.,
A-51, Aashit Apartment, H.B. Gawde Marg, Juhu, Mumbai-400049.

.....Non- Applicant/Respondent

CORAM:
Hon'ble Shri Brajendra Mani Tripathi, Member (Judicial)
Hon'ble Shri Man Mohan Gupta, Member (Technical)

Order Pronounced on: 13/10/2026

PRESENT:

For the Applicants : Ms. Somya Dharwa, Adv.

For the Respondent : Mr. Arjun Sheth, Adv.

O R D E R

1. This Interlocutory Application, I.A. No. 4 of 2021, has been filed by Mr. Nainesh Sanghvi (Applicant No. 1), Mr. Shreyans Gupta (Applicant No. 2) and Mr. Mahesh Sharma (Applicant No. 3) (together, "**Applicants**") under Section 36 read with Sections 42 and 60(5) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") against Mr. Rajesh Jhunjhunwala, the Liquidator of Siddharth Tubes Limited ("**Corporate Debtor**") ("**Respondent**").

2. The Applicants pray for the following reliefs:

   (I) to direct the Respondent to exclude the amounts of gratuity and provident fund of Rs. 75,28,846/-, Rs. 15,57,692/- and Rs. 1,62,369/- of the Applicants (Nos. 1, 2 and 3 respectively), as employees of the Corporate Debtor, from the liquidation estate under Section 36(4) of the Code and to pay them before applying the waterfall mechanism under Section 53 of the Code;

   (II) to direct the Respondent to keep aside the said amounts from the liquidation estate before distribution under Section 53 of the Code till the disposal of the present Application; and

   (III) any other relief the Tribunal deems fit.

Submission made by the Applicant :

3. The Corporate Debtor's Corporate Insolvency Resolution Process was commenced by this Tribunal's order dated 24.01.2019 in an application

under Section 7 of the Code filed by the Madhya Pradesh State Industrial Development Corporation Limited. By order dated 24.06.2020, this Tribunal ordered the liquidation of the Corporate Debtor and appointed the Respondent as Liquidator.

4. The Respondent made a public announcement on 26.06.2020 calling upon stakeholders to submit proofs of claim as on the liquidation commencement date, i.e. 24.06.2020. The Applicants submitted their claims in Form E on 08.07.2020 as follows:

S. No.	Applicant	Total claim (Rs.)	Gratuity claimed (Rs.)	Provident Fund claimed (Rs.)
1.	Nainesh Sanghvi	3,50,60,046/-	75,28,846/-	Nil
2.	Shreyans Gupta	2,15,63,582/-	15,57,692/-	Nil
3.	Mahesh Sharma	2,49,585/-	1,39,569/-	22,800/-

5. By e-mails dated 16.08.2020 the Respondent pointed out discrepancies in the claims of Applicant Nos. 1 and 2, and by e-mail dated 17.08.2020 in the claim of Applicant No. 3. Applicant No. 3 replied by letter dated 19.08.2020, and the Respondent, by e-mail dated 23.08.2020, informed him that his clarification was not satisfactory and his claim could not be admitted. On 31.08.2020 the Respondent filed the List of Stakeholders under Regulation 31 of the IBBI (Liquidation Process) Regulations, 2016 ("**Liquidation Regulations**"), in which the claims of the Applicants are shown as pending proof of claim. On 04.12.2020 Applicant No. 1 wrote to the Respondent asking that his gratuity claim of Rs. 75,28,846/- be considered under Section 36 of the Code and paid before the Section 53 distribution; the Respondent replied on 07.12.2020 that the claim had not been accepted and that this had

already been communicated on 16.08.2020. The present Application was thereafter filed.

SUBMISSIONS MADE BY THE APPLICANTS

6. The Applicants state that Applicant No. 1 was the Employee Managing Director of the Corporate Debtor since 1988, Applicant No. 2 was its Executive Director and Chief Financial Officer, appointed in 2013 and Applicant No. 3, an ex-employee, was appointed Additional Director in November 2017 after resigning as an employee. They state that the Application is within the jurisdiction of this Tribunal and is not barred by limitation.

7. The Applicants submit that the provisions for their salary, gratuity and provident fund were made in the books of the Corporate Debtor and that the Respondent, despite the supporting documents furnished, pointed out discrepancies and thereafter kept their claims in abeyance by showing them as "pending proof of claim" in the List of Stakeholders and that the Respondent was repeatedly apprised that gratuity and provident fund are to be treated as assets of the employees in the hands of the Company and their payment cannot be denied. A copy of the list of stakeholders of the corporate debtor is attached herewith as Annexure A-3.

8. Relying on Section 36(4)(a)(iii) of the Code, they submit that sums due to a workman or employee from the provident fund, pension fund and gratuity fund do not form part of the liquidation estate and must therefore be paid before the waterfall under Section 53 is applied. They contend that the Respondent has fallen into a basic error by not distinguishing between salary on the one hand and gratuity and

provident fund on the other, and that the non-acceptance of the latter is unjust, arbitrary and against settled jurisprudence.

"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 workmen 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."

9. The Applicants rely on the decision of the **Hon'ble National Company Law Appellate Tribunal ("NCLAT") in *State Bank of India v. Moser Baer Karamchari Union & Another* (CA/396/2019),** in which it was held that, since sums due from the provident fund, pension fund and gratuity fund are outside the liquidation estate, they cannot be included for the purpose of distribution under Section 53. They further rely on the decision of the **New Delhi Bench of this Tribunal in *Alchemist Asset Reconstruction Company Limited v. Moser Baer India Limited* (CP(IB) 378 of 2017),** which, as extracted in the Application, directs the liquidator to ensure that funds are made available in the relevant accounts where there is a deficiency in the provident fund, pension fund and gratuity fund, even if the employer has not diverted the requisite amount.

10. Therefore in the light of aforesaid, the applicant most respectfully prays before this Tribunal to direct the Respondent to accept the claims and make the payment as per the correct provisions as pointed out above.

SUBMISSIONS OF THE RESPONDENT

11. The present Affidavit-in-Reply has been filed in response to the Applicants' Interlocutory Application under Sections 42 and 60(5) of the Insolvency and Bankruptcy Code, 2016 ("Code"). At the outset, it is submitted that the said Application is frivolous and that the Applicants have failed to establish any grounds warranting the reliefs sought therein.

12. At the outset, the respondent denies all averments and contentions made by the Applicant in the captioned Interlocutory Application to the extent they are contradictory to or inconsistent with the averments made in this Affidavit-in-Reply, and state that nothing contained in the said

Application shall prejudice or affect the contents of this Affidavit-in-Reply, including the letter dated 17.08.2020, letter dated 19.08.2020 and e-mail dated 23.08.2020.

13. It is settled law that the provident fund, pension fund and gratuity fund do not form part of the liquidation estate for distribution under Section 53 of the Insolvency and Bankruptcy Code, 2016 ("Code") and, therefore, cannot be utilized by the liquidator to satisfy the claims of creditors. In terms of Section 36(2) of the Code, the liquidator holds the liquidation estate in a fiduciary capacity for the benefit of the creditors and has no authority to deal with or utilize any property of the corporate debtor that does not form part of the liquidation estate.

14. It is submitted that the Hon'ble National Company Law Appellate Tribunal, in *Mr. Savan Godiwala, Liquidator of Lanco Infratech Limited v. Mr. Apalla Siva Kumar*, Company Appeal (AT) (Insolvency) No. 1229 of 2019, set aside the direction of the Adjudicating Authority requiring the liquidator to make provision for payment of gratuity in the absence of a separate gratuity fund. The judgment is relied upon in support of the contention that, where no separate fund exists, the liquidator cannot be directed to make such provision.

15. This Hon'ble Adjudicating Authority, by its order dated 24.06.2020, ordered the liquidation of the Corporate Debtor and appointed the respondent as its Liquidator. Pursuant thereto, the respondent made a public announcement on 26.06.2020 inviting all stakeholders of the Corporate Debtor to submit their proof of claims as on 24.06.2020, being the liquidation commencement date.

16. The Applicants submitted their respective claims to the Respondent on 08.07.2020, following which the Respondent, through e-mails dated

16.08.2020 and 17.08.2020, pointed out discrepancies in the claims of Applicants Nos. 1, 2 and 3, respectively. The claims could not be admitted due to insufficient supporting documents and the applicable legal position. Applicant No. 3 responded by letter dated 19.08.2020, however, the Respondent, by e-mail dated 23.08.2020, informed Applicant No. 3 that the clarification was unsatisfactory and consequently rejected the claim. The Respondent has also relied upon the judgment of the Hon'ble National Company Law Appellate Tribunal in *Mr. Savan Godiwala, Liquidator of Lanco Infratech Limited v. Mr. Apalla Siva Kumar*, Company Appeal (AT) (Insolvency) No. 1229 of 2019.

17. The respondent states that paragraphs I to III of the Interlocutory Application require no reply, while the allegations in paragraph V(1) are categorically denied, particularly the claim that Applicants Nos. 1 to 3 were employees of the Corporate Debtor, for which strict proof is sought. The contents of paragraphs V(2) to (4) are stated to be matters of record, subject to denial of anything contrary thereto. It is further submitted that, in view of Sections 36(2) and 36(4)(a)(iii) of the Insolvency and Bankruptcy Code, 2016 and the judgment in *State Bank of India v. Moser Baer Karamchari Union*, provident fund, pension fund and gratuity fund do not form part of the liquidation estate and therefore cannot be utilized, attached or distributed by the liquidator for satisfying other creditors' claims. Accordingly, even where no separate gratuity fund has been created in breach of the Payment of Gratuity Act, 1972, the liquidator cannot be directed to make gratuity payments from assets forming part of the liquidation estate, as the liquidator has no authority over property outside the liquidation estate.

18. With respect to paragraphs V(5) and V(6) of the Interlocutory Application, the respondent denies that the Books of the Corporate Debtor contain any provisions for payment of directors' salaries, gratuity or provident fund, and submits that the Applicants have failed to produce any evidence in support of such assertions. The respondent further states that , by e-mail, the defects and deficiencies in the Applicants' claims were brought to their notice, on account of which their claims were not admitted.

19. With respect to paragraphs V(8) to V(10) of the Interlocutory Application, the respondent denies that the amounts claimed in the table therein are payable to the Applicants and submits that Applicant No. 1's request made by e-mail dated 04.12.2020 was unsupported by sufficient documentary evidence. The respondent further denies that the rejection of Applicant No. 1's claim was unjust, arbitrary or unlawful, or that it is liable to be quashed for any reason whatsoever.

20. With respect to paragraph V(7) of the Interlocutory Application, the respondent states that the List of Stakeholders filed before the Hon'ble Adjudicating Authority under Regulation 31 of the IBBI (Liquidation Process) Regulations, 2016, and its contents are matters of record, and anything contrary thereto is denied. The respondent further denies that the Applicants' claims were kept in abeyance despite submission of the requisite documentary proof and submits that the Applicants failed to provide satisfactory explanations or supporting documents addressing the discrepancies pointed out by the respondent vide e-mail dated 16.08.2020.

21. The respondent denies that the Applicants' claims were rejected arbitrarily or without applying the correct legal position. It is submitted

that, even according to the Applicants, gratuity, pension and provident fund do not form part of the liquidation estate, and therefore the Liquidator has no authority to deal with or utilize such funds. This position is supported by the Hon'ble NCLAT's judgment in *Mr. Savan Godiwala, Liquidator of Lanco Infratech Limited v. Mr. Apalla Siva Kumar*, Company Appeal (AT) (Insolvency) No. 1229 of 2019.

22. The respondent denies any flaw in the reasoning behind the rejection of the Applicants' claims and submits that the non-acceptance of their gratuity and provident fund claims is neither unjust nor arbitrary, nor contrary to law. It is further submitted, relying on *State Bank of India v. Moser Baer Karamchari Union and Another* and its interpretation in *Mr. Savan Godiwala, Liquidator of Lanco Infratech Limited v. Mr. Apalla Siva Kumar*, that where the Corporate Debtor has not made any specific provision for gratuity or provident fund, the Liquidator cannot be directed to make such payments. Accordingly, the respondent denies having misinterpreted the Code or committed any error in rejecting the claims and submits that the Applicants have failed to establish any entitlement to the reliefs sought.

23. It is submitted that the captioned Interlocutory Application is devoid of merit and constitutes an abuse of the process of the Court, and therefore deserves to be dismissed.

REJOINDER SUBMITTED BY THE APPLICANTS

24. The Applicants have filed a Rebuttal dated 28.06.2021, supported by affidavits of each Applicant. They submit that the Respondent has relied mainly on *Lanco Infratech*, in which, according to them, the NCLAT, overturning the order of the NCLT Hyderabad, held that the liquidator

need not arrange funds from sale proceeds to pay gratuity if the corporate debtor fails to maintain separate funds. They point out that this judgment is under challenge before the Hon'ble Supreme Court in Civil Appeal No. 2520 of 2020, in which, by order dated 12.06.2020 (Annexure A/1), the Hon'ble Supreme Court has stayed disbursement to the extent of the gratuity claims of the employees. They reiterate the submissions in the Application, seek leave to produce further documents at the time of arguments, and pray that the reliefs be granted.

25. The order dated 07.02.2023 of the Hon'ble Supreme Court in Civil Appeal No(s). 2520/2020 (*Appala Siva Kumar & Ors. v. Savan Godiwala & Ors.*) records that the order passed by the learned NCLAT is quashed and set aside, and the order passed by the NCLT is restored.

ANALYSIS AND OBSERVATIONS:

26. Heard the learned counsel appearing for the Applicants and the learned counsel appearing for the Respondent-Liquidator. Perused the Application, reply, rejoinder and documents placed on record.

27. The following questions arise for consideration

(i) whether the absence of a separately maintained gratuity or provident fund disentitles the Applicants from receiving their statutory dues; and

(ii) whether the applicant has provided sufficient documents to prove his claim and the respondent was justified in refusing to admit the claims and in keeping them pending.

Question No. (i)

28. Section 36(4)(a)(iii) of the Insolvency and Bankruptcy Code, 2016 provides that "all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund" shall not be included in the liquidation estate. The provision protects such sums from being utilised for distribution among the creditors under Section 53 of the Code, and the principle that provident fund, pension fund and gratuity dues are excluded from the liquidation estate is well settled.

29. The expression "all sums due" is of wide amplitude. The statutory protection does not make the exclusion conditional upon the Corporate Debtor having maintained a separate bank account or separately earmarked fund. The employer's failure to create, maintain or adequately fund such an account cannot, by itself, defeat the statutory right of an employee, otherwise, an employer who maintains a separate fund would be required to preserve it for employees, while an employer who fails to do so would effectively deprive them of their statutory dues. Such an interpretation would reward non-compliance and defeat the object of the protection.

30. The Supreme Court in **Moser Baer Karamchari Union v. Union of India** affirmed that provident fund, pension fund and gratuity dues are excluded from the liquidation estate and cannot be reduced or diluted in the liquidation process. Similarly, the subsequent legal position arising from the proceedings in Savan Godiwala v. Apalla Siva Kumar recognises that the absence of a separately maintained gratuity fund cannot, by itself, extinguish the employees' right to gratuity.

31. However, the exclusion under Section 36(4)(a)(iii) does not mean that every amount claimed under the description of "gratuity" or "provident

fund" must automatically be admitted. The claimant must first establish the employer–employee relationship, the period of service, the legal or contractual basis of entitlement, the event giving rise to the claim, the method of computation and the actual amount payable. The provision excludes established statutory dues from the liquidation estate, it does not itself determine the existence or quantum of the underlying liability.

32. The judgment in **State Bank of India v. Moser Baer Karamchari Union** protects provident fund, pension fund and gratuity dues from distribution under Section 53, but does not dispense with proof of the claim or authorise admission of an unverified and disputed amount. Likewise, **Alchemist Asset Reconstruction Company Limited v. Moser Baer India Limited** applies to duly ascertainable statutory dues and cannot substitute proof of entitlement. The interim order relied upon in the proceedings arising out of **Savan Godiwala v. Apalla Siva Kumar** also does not finally determine the Applicants' entitlement or quantum in the present matter.

33. The above question has very recently been decided by the **Hon'ble NCLAT in state Bank of India and Others & Ors vs. Manoj Kumar Das (Decided on 30th June, 2026) , Hon'ble NCLAT has considered all the above judgementa i.e Savan Godiwala v. Apalla Siva Kumar, State Bank of India v. Moser Baer Karamchari Union, chronologically ,** and decided that the corporate debtor is under statutory obligation to pay the pension and gratuity funds to the concerned employee irrespective of the fact that a separate fund for the same has been created or not.

Referring to the judgement of ***State Bank Of India & Others & Ors vs Manoj Kumar Das & Others, decided on 30th June 2026.***

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.

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 Comp. App. (AT) (Ins.) No. 419 420, 440 & 551 of 2026 54 of 72 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)

34. In the light of the observation made by Hon'ble NCLAT is no more res Integra that the Pension, Provident fund and gratuity are contingent upon the fact that a separate fund for the purpose is created or not.

Question No. (ii):

35. The Applicants submitted their claims for an amount of Rs. 3,50,60,046/- in Form E on 08.07.2020. The Respondent thereafter pointed out discrepancies and deficiencies by communications dated 16.08.2020. Upon scrutiny of the claim and the supporting documents, the following discrepancies are observed:

i. The only supporting document furnished in respect of the claimed amount is an "Outstanding Dues Letter" dated 24.01.2019, purportedly signed by Shri Shreyans Gupta, Suspended Director. The said letter does not set out the basis, computation, period, or break-up of the claimed amount of Rs. 3,50,60,046/-. Accordingly, the details and documentary substantiation of the claim amount have not been provided.

ii. A copy of the resolution of the Board Meeting held on 24.03.2012 has been furnished. However, no approval of the shareholders in general meeting, or approval of the Central Government where applicable, has been provided in support of the alleged remuneration/dues.

iii. On perusal of the audited annual accounts of the Corporate Debtor, it is observed that no provision for Directors'

remuneration has been made from FY 2016-17 onwards, the same having been shown as "NIL". Further, even in respect of FY 2015-16, provision for Directors' remuneration appears to have been made only up to June 2015. In the absence of any corresponding provision, accrual, or approval in the books of account, the claimed amount does not appear to be due and payable by the Corporate Debtor.

iv. No document evidencing compliance with Section 197 of the Companies Act, 2013, including the requisite approval of the shareholders and/or the Central Government, as applicable, has been furnished along with the claim documents.

36. In the present case, the Applicants have not established through cogent and complete documentary evidence that the amounts claimed were standing to their credit in any provident fund, pension fund or gratuity fund, or that the claimed gratuity amounts had crystallised in the amounts asserted. The mere assertion that provisions were made in the books of the Corporate Debtor is insufficient, particularly where the Respondent has specifically denied the existence of such provisions. No audited ledger, actuarial valuation, gratuity register, trust deed, statutory statement, provident fund passbook, contribution statement, deduction record or other contemporaneous record has been placed on record to conclusively establish the alleged dues. The Applicants have also not demonstrated the basis for calculating Rs. 75,28,846/-, Rs. 15,57,692/-, Rs. 1,39,569/- and Rs. 22,800/-, thus the claim forms alone cannot be treated as proof.

37. Therefore, the absence of a separately maintained gratuity or provident fund is not, in isolation, a ground to deny a duly established statutory

claim. Nevertheless, where the claimant fails to establish the underlying entitlement and amount, Section 36(4)(a)(iii) cannot be invoked merely on the basis of the nomenclature used in the claim form. The relevant inquiry is whether the Applicants have established their status, entitlement and quantum, and not whether the Corporate Debtor maintained a separate account.

38. Accordingly, the claim of Rs. 3,50,60,046/- appears to be unsupported, unquantified, unprovided for in the audited accounts, and not demonstrated to have been duly approved or to have accrued as a debt due from the Corporate Debtor

39. The Respondent has specifically pleaded that the Applicants failed to furnish adequate documents in support of their claims and failed to satisfactorily address the discrepancies communicated to them. The Applicants have not produced any material to show that they submitted complete service records, appointment terms, salary records, gratuity calculations, provident fund statements or statutory contribution records sufficient to establish their claims.

40. Applicant Nos. 1 and 2 held the positions of Employee Managing Director and Executive Director-cum-Chief Financial Officer, respectively. Applicant No. 3 was stated to have resigned as an employee and thereafter to have been appointed Additional Director. These facts required a clear determination of the legal character of their relationship with the Corporate Debtor and the precise terms on which gratuity or provident fund benefits were claimed.

41. The designation of Applicant Nos. 1 and 2 as managerial personnel and Applicant No. 3 as an Additional Director does not automatically defeat a statutory claim. However, it makes the production of appointment letters, employment agreements, service records, remuneration records,

board resolutions and statutory records particularly material. The Applicants have not placed sufficient evidence to resolve these issues.

42. The Liquidator has a statutory duty to examine and verify claims. That duty necessarily includes the power to seek clarifications and supporting documents. The Liquidator cannot be compelled to admit a claim merely because it has been submitted in the prescribed form.

43. On the material placed before us, we have found that the board resolution with respect to the amount of salary and appointment of Applicant No.2 has been attached to support his claim. Therefore there is no sufficient documents placed on record. Thus the Respondent did not reject the claims without consideration. The communications dated 16.08.2020 shows that the deficiencies were brought to the Applicants' notice. The Respondent considered the reply of Applicant No. 3 and informed him that the explanation was not satisfactory. In the circumstances, the Respondent was justified in declining to admit claims which remained unsupported or inadequately proved.

44. The fact that the Respondent described the claims as pending proof in the List of Stakeholders does not invalidate the subsequent decision not to admit them. A claim cannot be treated as admitted merely because it was initially reflected as pending verification.

45. In any event, even if the Application is examined on merits, the Applicants have failed to establish that the Respondent's decision was arbitrary, perverse or contrary to the Code. The Respondent was required to act on the basis of available documentary evidence and was not authorised to release funds on the basis of unsupported assertions.

46. The Applicants have also not made out a prima facie case for directing the Respondent to keep aside the amounts claimed. Reservation of funds would be justified only where the claim is prima facie established

and the amount is reasonably ascertainable. In the present case, both entitlement and quantum remain disputed.

47. We accordingly answer the questions as follows:

Question No. (i): The absence of a separately maintained gratuity or provident fund does not, by itself, defeat a duly established statutory claim. The corporate debtor is under statuary obligation to pay pension and gratuity even if there is no separate fund created.

Question No. (ii): The Applicants failed to furnish sufficient documentary evidence to prove their claims and to satisfactorily remove the discrepancies communicated by the Respondent. The Respondent was therefore justified in refusing to admit the claims and in treating them as pending proof of claim.

48. The Applicants have failed to establish any error in the decision of the Respondent-Liquidator. The statutory exclusion under Section 36(4)(a)(iii) cannot be treated as an automatic adjudication of an unproved claim. The claim of the applicant is neither substantiated nor crystalized. The Application is therefore devoid of merit.

ORDER

I. **I.A. No. 4 of 2021** is accordingly **dismissed** and **disposed** off . No order as to costs.

II. A copy of this order shall be communicated forthwith to the Applicants and the Respondent-Liquidator.

Sd/- Sd/-

MAN MOHAN GUPTA
MEMBER (TECHNICAL)

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

Anushka Rawat-L.R.A.