IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I

I.A. NO. 3426 OF 2025 & IA 4627 of 2025 IN C.P. (IB) NO. 2205 (MB) 2019

Under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016

In the matter of

State Bank of India

….Financial Creditor

Versus

Jet Airways India Limited

....Corporate Debtor

AND

In the matter of

Manoj Kumar Das & Ors.

….Applicants

Versus

1. State bank of India

2. Jet Airways India Limited

3. MR. SATISH KUMAR GUPTA

….Respondents

Order Pronounced on 04.02.2026

Coram:

Sh. Prabhat Kumar	**Sh. Sushil Mahadeorao Kochey**
Hon'ble Member (Technical)	Hon'ble Member (Judicial)

Appearances:

For the Applicant	: Ms. Ronita B (for IA 4627 OF 2025) Mr. M.P. Sahay (for IA 3426 OF 2025)
For the Financial Creditor	: Mr. Ravi Kadam, Adv. Ananya Bajpai a/w Adv. Aman Patidar
For the Liquidator	: Adv. Malhar Zatakia a/w Adv. Vasudev Jain and Adv. Mayank Jain

ORDER

Background of the case :

1. These two Interlocutory Application(s) being **I.A. No. 3426 of 2025** and **I.A. No. 4627 of 2025** in **C.P. (IB) NO. 2205 (MB) 2019** are filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("Code") for seeking directions against the Liquidator (the Respondent herein), inter-alia for exclusion of Applicants' statutory dues (Provident Fund and Gratuity) from the liquidation estate, in terms of Section 36(4)(a)(iii) of the Insolvency and Bankruptcy Code, 2016 and for other reliefs. Since, the main issue in both the application is same, both the applications are taken together for adjudication.

2. The Applicants in IA 3426 of 2025 are former workmen of corporate debtor and also former members of Jet Aircraft Maintenance Engineer's Welfare Association ('JAMEWA'), a registered trade Union who are seeking directions regarding the exclusion of their statutory dues such as Provident Fund (PF), Gratuity, and unpaid salary from the liquidation estate. The applicant has sought the following reliefs:

a. *Take the present application on record and into consideration; and*
b. *Direct the exclusion of Applicants' statutory dues (Provident Fund and Gratuity) from the liquidation estate, in terms of Section 36(4)(a)(iii) of the Insolvency and Bankruptcy Code, 2016; and*
c. *Direct that the Recovery Certificate issued by the Deputy Labor Commissioner for salary dues (January-March 2019) be honored and kept out of the liquidation estate; and*
d. *Direct that 1,656 days (time spent in legal proceedings, in excess of 330 days) be excluded from the computation of the Liquidation Commencement date, and that 20.05.2020 be deemed the effective commencement date of liquidation and not 26.11.2024 for the purpose of determining 24 months' dues under Section 53(1)(b) of the IBC.*

3. The Applicant in IA 4627 of 2025 is Mr. Gopalkrishnan, a former Senior Executive of Jet Airways (India) Limited and claiming to be duly nominated representative of the workmen and employees in the Stakeholders' Consultation Committee ("SCC") constituted under the liquidation proceedings of the Corporate Debtor, and has filed the present Application seeking the following directions from this Tribunal:
   a. *A direction that Provident Fund and Gratuity dues fall outside the liquidation estate and must be paid in full, with statutory damages, penalties and interest, before any waterfall distribution under Section 53 IBC.*
   b. *A direction to the Liquidator to ensure that no funds are distributed to any of the SCC members until the Provident Fund and gratuity dues of the workmen and employees are paid in full;*
   c. *A direction to the Liquidator to bring on record what use has been attributed to the forfeited funds of Rs. 350 Crore;*

4. The Corporate Insolvency Resolution Process ("CIRP") commenced on 20.6.2019 in case of Jet Airways Limited, and thereafter, a resolution plan was approved on 22.06.2021, however, the SRA failed to implement the approved Resolution Plan, which led to liquidation of the Corporate Debtor in terms of order dated 26.11.2024 passed by this Tribunal pursuant to order dated 7.11.2024 passed in Civil Appeal 5023-5024 of 2024 by Hon'ble Supreme Court. The applicant has sought (i) exclusion of gratuity and provident fund dues payable to them from the Liquidation estate; (ii) payment for salary for January – March 2019 in terms of recovery certificate dated 16.5.2019; and (iii) exclusion of period for determination of liquidation commencement date.

5. In relation to gratuity and provident fund dues, the Applicant had earlier approached the Hon'ble National Company Law Appellate Tribunal ('NCLAT') against the approved Resolution Plan dated 22.06.2021, citing non-payment of statutory dues. Vide common order dated 21.10.2022 the Hon'ble NCLAT held that *"the employees and workmen are entitled to their full provident fund, gratuity, leave encashment etc. which have not been provided to employees and workmen".* The Order was pertinently upheld in the Hon'ble Supreme Court in Civil Appeal Nos. 465-469 of 2023).

6. The Ld. Counsel for State Bank of India as well as Liquidator vehemently argued that the Section 36(3) of the IBC requires with the assets of the Corporate Debtor and Section 36(4)(a) expressly excludes certain assets of third party which are in possession of the Liquidator from the Liquidation Estate to be formed by the Liquidator in terms of section 36(1) of IBC and the said section can not be read to mean that the liabilities on account of Provident Fund, Pension Fund or Gratuity Fund due from the Corporate Debtor are to be necessarily excluded from the Liquidation Estate comprising of assets of the Corporate Debtor other than Provident Fund, Pension Fund or Gratuity Fund. It was also emphasized by the Ld.

Counsel for Respondents that all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund are excluded and not the sums due to any workman or employee from the Corporate Debtor. It was also asserted by Ld. Counsel for the Respondents that the decisions relied upon by the applicant, including the decision by Hon'ble NCLAT in case of present corporate debtor on this aspect, were rendered in context of distribution under resolution of corporate debtor and not in context of distribution in liquidation proceedings, and for this purpose it was emphasized that the decision in case of ***Sunil Kumar Jain & Ors v Sundaresh Bhatt & Ors., (2022) 7 SCC 540*** is required to be followed wherein it was held that "*25.2 considering Section 36(4) IBC and when the provident fund, gratuity fund and pension fund are kept out of the liquidation estate assets, the share of the workmen dues shall be kept outside the liquidation process and the concerned workmen/employees 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*." It was also argued by the Ld. Counsel for Respondent that the direction in this case was given by Hon'ble NCLAT in its order dated 21.10.2022 to Successful Resolution Applicant and not to the corporate debtor.

7. We heard the Ld. Counsel and perused the material on record.

PF & Gratuity Dues : whether to be excluded from Liquidation Estate

8. It is noted that Hon'ble NCLAT had considered "Report on the Bankruptcy Law Reforms Committee, November, 2015"; Report of the Joint Committee on the Insolvency and Bankruptcy Code, 2016"; decisions in case of (i) *State Bank Of India us. Moser Baer Karamchari Union & Anr. Company Appeal (AT) (Ins) No. 396 of 2019*, (ii) *Tourism Finance Corporation of India Ltd. vs. Rainbow Papers Ltd. & Ors., Company Appeal (AT) (Ins.) No. 354 of 2019 & Other Appeals*. (iii) *Mr Savan Godiwala. the liquidator Of Lanco Infratech Limited vs. Apalla Siva*

Kumar Company Appeal (AT) (Ins.) No. 1229 of 2019, (iv) *Regional Provident Fund Commissioner, Employees Provident Fund Organisation vs. Vandana Garg, Company Appeal (AT) (CH) (Ins) No. 50 of 2021*, (v) *Sikander Singh Jamuwal vs. Vinay Talwar & Ors., Company Appeal (AT) (Ins.) No. 483 of 2019*, (vi) *Nitin Gupta vs. Applied Electro-Magnetics Put. Ltd. & Ors., Company Appeal (AT) (Ins.) No. 502 of 2019*, and observed that *the judgment of "State Bank of India vs. Moser Baer Karamchari Union" was a case relating to liquidation proceeding, in which proceeding, relying on Section 36(4)(a)(iii) the Adjudicating Authority has directed the Liquidator to make the payment of provident fund, pension fund and gratuity fund. The basis of judgment of this Tribunal in State Bank India's Case was that the I&B Code will have overriding effect and the Section 53(1) (b) read with Section 36(4) will have overriding effect on Section 326(1) (a), including the Explanation mentioned below Section 326 of the Companies Act, 2013*". The Hon'ble NCLAT also analyzed these decisions and held at Para 63 as follows :

> *"63. Learned counsel for the Respondent has relied on two two members judgments delivered by this Tribunal in "Sawan Godiwala vs. Apalla Siva Kumar" and "Regional Provident Fund Commissioner, Employees Provident Fund Organisation vs. Vandana Garg" (Supra) where direction issued by the Adjudicating Authority for payment of provident fund was interfered with by this Appellate Tribunal. The judgment of "Sawan Godiwala" only refers to the judgment of "State Bank of India vs Moser Baer Karamchari Union", and does not notice the another three member bench judgment in "Tourism Finance Corporation of India Ltd. vs. Rainbow Papers Ltd.". The two member bench judgment in "Sawan Godiwala" also follows the three member bench judgment in "State Bank of India vs Moser Baer Karamchari Union" and does not take any different view. However, with regard to direction to pay gratuity the two member bench judgment set*

aside the order of Adjudicating Authority holding that no gratuity fund was created. Another judgment in "Regional Provident Fund Commissioner, Employees Provident Fund Organisation vs. Vandana Garg" (Supra) delivered by two member bench does not refer to any of the earlier three member bench judgments and has relied on "Sawan Godiwala" judgment. We find ourself bound to follow he three member Bench judgment in "Tourism Finance Coporation India Ltd. vs. Rainbow Papers Ltd" where direction was issued to the Successful Resolution Applicant to release full provident fund and interest thereof in terms the Employees' Provident Funds and Miscellaneous Provision Act, 1952, which judgment has also received approval by the Hon'ble Supreme Court."

9. It is pertinent to note that the decision of Hon'ble NCLAT in relation to gratuity dues in case of 'Sawan Godiwala' was overturned by the Hon'ble *Supreme Court in Appala Siva Kumar vs Savan Godiwala in Civil Appeal No. 2520 of 2020,* thus restoring the decision of this Tribunal that the gratuity dues are to be paid in full.

10. At the same time, SBI acknowledges the findings recorded in *All India Jet Airways Officers and Staff Association vs. Ashish Chhawchharia Resolution Professional & Ors. CA(AT)(Ins.) 771 of 2022 ("JAMEWA judgment")* dated 21.10.2022 itself, where it was Hon'ble NCLAT ordered that no payments were made into the EPFO account after February 2019 and that the Corporate Debtor had not maintained a separate provident fund. However, SBI seeks to limit the effect of the JAMEWA judgment by contending that it was rendered only in the context of making the Resolution Plan compliant during CIRP and cannot be extended to liquidation proceedings.

11. The above decision of Hon'ble NCLAT, though rendered in context of distribution in resolution of the Corporate Debtor, equally applies to the

distribution in liquidation process of the Corporate Debtor, as the distribution in resolution of the Corporate Debtor also mandates minimum payment to each stakeholders as would be available to such stakeholder in terms of section 53 of IBC thus requiring determination of the liquidation estate as would be available for the distribution to such stakeholders if the distribution is to be made in accordance with section 53 of IBC, and formation of liquidation estate necessarily requires exclusion of these funds therefrom in accordance with section 36(4) of IBC.

12. Though, there may be some merit in the argument that what is sought to be excluded from the liquidation estates is the 'assets of third party in possession of corporate debtor' and not the 'amounts due to workmen & employees towards provident, pension and gratuity fund, however, we find that the Hon'ble NCLAT also dealt with the proposition whether the liquidator is bound to pay dues provident, pension and gratuity dues if the provident fund, pension fund, and gratuity fund are not available, or if available are not sufficient to meet these claims, and after considering the decision of Hon'ble Supreme Court in case of ***Sunil Kumar Jain vs Sundaresh Bhatt, Civil Appeal No. 5910 of 2019,*** the Hon'ble NCLAT held that "*68. ……. Learned counsel for the Respondent has relied on words "if any, available" occurring in direction (ii). The above words cannot be read to mean that the workmen and employees are not entitled for provident fund, gratuity fund and pension fund if not available with the Liquidator*". Thus, the Hon'ble NCLAT clearly held that the provident and gratuity dues are to be paid by the Corporate Debtor outside the Liquidation estate even if there is no fund maintained by the Corporate Debtor.

13. It is pertinent to note that the Hon'ble NCLAT at para 69 observed that *the present is a case where resolution plan has been approved; present is not a case of liquidation,* and, it held in the later part of the para that *the claim of provident fund till the insolvency commencement date, of the workmen*

and employees was to be accepted and Successful Resolution Applicant was unable to make payment of provident fund till the date of initiation of CIRP and statutory obligation of the Corporate Debtor was liable to be discharged by the Successful Resolution Applicant. This clearly demonstrates that the SRA was made liable to pay the said sums, as it was acknowledged as obligations of the Corporate Debtor which it failed to deposit. Finally, the Hon'ble NCLAT held at Para 72(i) that "*The workmen and employees are entitled to receive the amount of provident fund and gratuity in full since they-are not part of the liquidation estate under Section 36(4)(b)(iii)*". It is also pertinent to note the observation of Hon'ble Supreme Court at para 140 in its order dated 07.11.2024 passed in *Civil Appeal Nos. 5023-5024 of 2024* holding failure in implementation of approved resolution plan that *"Moreover, both the Provident Fund and Gratuity Dues amounting to Rs. 226 Crore should also have been paid by the SRA as per the order dated 21.10.2022 of the NCLAT in fulfillment of its obligations, which it failed to do".*

14. Since, the decision of Hon'ble NCLAT are binding precedents for this tribunal, we hold that the liquidator is liable to pay the provident fund and gratuity dues to the workmen and employees as are payable to them in terms of provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Payment of Gratuity Act, 1972 and such dues shall not form part of the liquidation estate.

Claim under Recovery Certificate

15. As regards claim of the applicant on basis of recovery certificate for unpaid salary for January to March 2019, the said claim was earlier rejected during CIRP on the ground of delay and prior approval of the Resolution Plan. Since, thereafter, the Liquidation process has commenced and the claims from the creditors are to be invited afresh, we do not find any reason for rejection of claim of the applicant on the ground of its rejection earlier in CIRP process. In our considered view, the claim

of the applicant is to be admitted and dealt with in accordance with the provisions of section 53 of the Code. However, it is made clear that the liquidator shall determine and adjudicate the said claim on its merit on the basis of judicial principles and provisions of the code.

Exclusion of Time for determination of Liquidation Commencement Date

16. As regards prayer for exclusion of the time for determination of liquidation commencement date, it is noted that the applicant is seeking such exclusion on account of time spent in legal proceedings, in excess of 330 days. We find no provision in the code contemplating for such exclusion. The Liquidation commencement date is defined under Section 5(17) of the Code, to mean *"the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be".* The applicant has sought such exclusion on ground of correct determination of workmen's dues preceding the liquidation commencement date in terms of Section 53(1)(b) of the Code. It is noted that the resolution plan was approved in this case on 22.6.2021 and the liquidation order was passed on 26.11.2024 in view of failure of the SRA to implement the approved resolution plan.

17. The scope of inherent powers of the sub-ordinate courts was explained by Hon'ble Supreme Court in case of ***GLAS Trust Company LLC v. BYJU Raveendran and Ors.,*** ***(2024) ibclaw.in 275 SC*****,** wherein it was held that:

> ***"70.*** *When a procedure has been prescribed for a particular purpose exhaustively, no power shall be exercised otherwise than in the manner prescribed by the said provisions. In such cases, the court must be circumspect in invoking its 'inherent powers' to deviate from the prescribed procedure. If such deviation is made, the court must justify why this was necessary to "prevent the abuse of the process of the Court".*

> ***71.*** *The need to be circumspect while invoking "inherent powers", when there is an exhaustive legal framework is amplified in the context of a legislation like the IBC. In* ***Ebix Singapore (P) Ltd. vs. Educomp Solutions Ltd. (CoC),***[49] *a two-judge bench of this Court, speaking through one of us (DY Chandrachud, J), affirmed this position and observed as follows:*
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> *"Any claim seeking an exercise of the adjudicating authority's residuary powers under Section 60(5)(c) IBC, NCLT's inherent powers under Rule 11 of the NCLT Rules or even the powers of this Court under Article 142 of the Constitution must be closely scrutinized for broader compliance with the insolvency framework and its underlying objective. The adjudicating mechanisms which have been specifically created by the statute, have a narrowly defined role in the process and must be circumspect in granting reliefs that may run counter to the timeliness and predictability that is central to the IBC.* ***Any judicial creation of a procedural or substantive remedy that is not envisaged by the statute would not only violate the principle of separation of powers, but also run the risk of altering the delicate coordination that is designed by the IBC framework and have grave implications on the outcome of the CIRP, the economy of the country and the lives of the workers and other allied parties who are statutorily bound by the impact of a resolution or liquidation of a Corporate Debtor."***

18. Section 5(17) defines the liquidation commencement date and does not provide for any circumstances in which such date can be altered. Further, there is no provision permitting this tribunal to grant any relief on equitable considerations also. Hence, we do not find any reason to allow the exclusion as prayed by the applicant.

Usage of forfeited sum of Rs. 350 crores

19. The Liquidator has submitted that, from the date of his appointment as the Liquidator by this Tribunal (i.e., November 26, 2024), he has not distributed any amounts received from the sale of assets or otherwise to any concerned stakeholder or any party. In respect of the amount of INR 350 crore ordered to be forfeited in terms of the judgment and order dated November 7, 2024 passed by the Hon'ble Supreme Court, the distribution of the same had already been undertaken by State Bank of India prior to his appointment as the Liquidator, and he has not been involved in the distribution of the forfeited amount.

20. In view of the above, we pass the following orders :
    a. the liquidator is liable to pay the provident fund and gratuity dues to the workmen and employees as are payable to them in terms of provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Payment of Gratuity Act, 1972 and such dues shall not form part of the liquidation estate;
    b. the liquidator shall determine and adjudicate the claim under recovery certificate on its merit on the basis of judicial principles and provisions of the code;
    c. the exclusion of time for determination of liquidation commencement date for the purpose of section 53(1)(b) cannot be allowed by this Tribunal in terms of its inherent powers;
    d. The forfeited amount of Rs. 350 crores has been distributed by SBI. It is clarified that the applicant had sought usage of said sum, hence, we refrain from adjudicating whether such appropriation was within the provisions of IBC.

21. In terms of above, **IA 3426 of 2025** in CP (IB) No. 2205 of 2019 is partly allowed and **IA 4627 of 2025** is allowed. Both the applications are **disposed of** accordingly.

Sd/-	**Sd/-**
Prabhat Kumar	**Sushil Mahadeorao Kochey**
Member (Technical)	Member (Judicial)

/VB/