

**ASSAM TEA EMPLOYEES PROVIDENT FUND ORGANIZATION
VERSUS**

**1. MR. MADHUR AGARWAL, (RESOLUTION PROFESSIONAL OF HAIL
TEA LIMITED)**

2. HAIL TEA LIMITED

COMPANY APPEAL (AT) (INSOLVENCY) NO. 262 OF 2022

NCLAT, DELHI BENCH

THE NCLAT HELD THAT: *has held that provident fund dues are not the assets of the Corporate Debtor, and they have to be paid in full.*

BRIEF FACTS.

- 1. The Adjudicating Authority vide Order dated 21st January 2020 initiated “Corporate Insolvency Resolution Process” (hereinafter referred to as “CIRP”) against the Corporate Debtor-HAIL Tea Limited.*
- 2. In pursuance of the Public Announcement, the Appellant-Organization submitted its claim in Form-B for an amount of Rs. 2,10,13,797.92/- on account of default on part of the Corporate Debtor to deposit its Provident Fund Contribution, Provident Fund Administrative Cost, Interest for delay in deposit of the Provident Fund Dues, Interest for delay in deposit of Deposit Linked Insurance Dues and Provident Fund Contribution due and payment for the period commencing from 28th March 2019 till 26th September 2019.*
- 3. The Resolution Professional admitted the entire claim of the Appellant Organization of Rs. 2,10,13,797.92/-.*
- 4. Resolution Plan came to be submitted by the Respondent No. 2. Resolution Plan came to be approved by National Company Law Tribunal; Kolkata Bench vide Order dated 3rd January 2022.*

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5. In the Resolution Plan, the Appellant was proposed an amount of only Rs. 1,07,21,592/-.
6. The Resolution professional shared a copy of the Judgement dated 03rd January 2022 and made part payment of Rs. 64,30,222/-.
7. Being aggrieved by the said Order, the Appellant-Organization has come up in this Appeal.

SUBMISSION BY APPELLANT:

8. Learned Counsel for the Appellant challenging the Impugned Order submits that Provident Fund Dues were entitled to be paid in full. The Resolution Professional having admitted the amount of Rs. 2,10,13,797.92/-, was required to be paid in full.
9. He further submits that non-payment of the full amount is violation of provision of Section 30(2)(e).
10. Learned Counsel for the Appellant has referred to Section 11(2) of EPF Act, 1952. It is submitted that Provident Fund Dues are not dues of any other Operational Creditor.

SUBMISSION BY RESPONDENTS:

11. Learned Counsel for the Respondents opposed the Appeal. It is submitted that the Appeal is barred by time it is having been filed on 28th February 2022 challenging the Order dated 3rd January 2022, ought to be rejected since limitation for filing an Appeal is only for 30 days.
12. It is further submitted that approval of the Resolution Plan is in the domain of the commercial wisdom of the Committee of Creditors.

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13. *Haircut has been given to all the Financial Creditor(s) and Operational Creditor(s).*

ANALYSIS AND DECISION

14. *The facts of the present case are fully covered by the Judgement in Appeal filed by the “Regional P.F. Commissioner” i.e., Company Appeal (AT) Ins. No. 987 of 2022 dated 21.10.2022. The above Appeal had been allowed and direction has been issued to Successful Resolution Applicant (SRA) to make the payment of Provident Funds dues in full.*
15. *The submissions of Learned Counsel for the Respondent that Appeal is barred by time, cannot be accepted. The Appeal has been filed on 28th February 2022 against the Order dated 3rd January 2022. The Judgement of the Hon’ble Supreme Court in Suo Moto Writ Petition No. 03/2022 extended the period of limitation till 28th February 2022 for all Appeals and has further granted 90 days’ time to file the Appeal. The present Appeal is fully covered by the Judgment of the Hon’ble Supreme Court in Suo Moto Writ Petition No. 03 of 2022 extending the period of limitation as afore noted. Thus, objection of the Respondent regarding limitation cannot be accepted.*
16. *Submission of Learned Counsel for the Respondent that Appellant is an Operational Creditor and both Operational Creditor and Financial Creditor has taken haircut, also cannot be accepted. As held by this Tribunal in above case “Regional P.F. Commissioner” (supra), provident fund dues are not the assets of the Corporate Debtor, and they have to be paid in full.*
17. *Hence, the Appellant was clearly entitled for payment of full provident fund dues i.e., an amount of Rs. 2,10,13,798/-.*

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18. *Ends of Justice will be served in issuing direction to Successful Resolution Applicant to make the payment of balance amount of Provident Fund to the Appellant to save the Resolution Plan from invalidity.*
19. *We thus dispose of this Appeal by directing the Respondent to make payment of balance amount of Provident Fund i.e., Rs. 1,02,92,206/-.*

CONCLUSION: *Section 11 of the EPF Act, 1952 clearly provides any sum due to the employees of the organisation towards PF, Insurance Fund are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be.*

DISCLAIMER: *the case law presented here is only for sharing information and knowledge with the readers. The vies are personal ,shall not be considered as professional advice. in case of necessity do consult with professionals for more clarity and understanding of subject matter.*

Footnotes.

SECTION 11 OF EPF ,1952.

Priority of payment of contributions over other debts.—

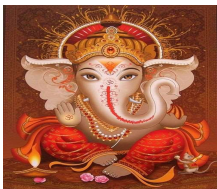
(1) Where any employer is adjudicated insolvent or, being a company, an order for winding up is made, the amount due—

(a) from the employer in relation to an establishment to which any Scheme or the Insurance Scheme applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable under section 14B, accumulations required to be transferred under sub-section (2) of section 15 or any charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme; or an establishment to which any Scheme or

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the Insurance Scheme applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable under section 14B, accumulations required to be transferred under sub-section (2) of section 15 or any charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme; or"

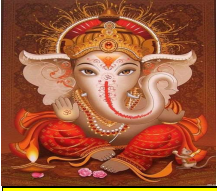
*(b) from the employer in relation to an exempted establishment in report of any contribution to the provident fund or any insurance fund (in so far it relates to exempted employees), under the rules of the provident fund or any insurance fund, any contribution payable by him towards the Pension Fund under sub-section (6) of section 17, damages recoverable under section 14B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified under section 17, establishment in report of any contribution to the provident fund or any insurance fund (in so far it relates to exempted employees), under the rules of the provident fund or any insurance fund, any contribution payable by him towards the Pension Fund under sub-section (6) of section 17, damages recoverable under section 14B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified under section 17," **shall, where the liability therefor has accrued before the order of adjudication or winding up is made, be deemed to be included among the debts which under section 49 of the Presidency-towns Insolvency Act, 1909 (3 of 1909), or under section 61 of the Provincial Insolvency Act, 1920 (5 of 1920), or under section 530 of the Companies Act, 1956 (1 of 1956) are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be.***

Explanation.—In this sub-section and in section 17, "insurance fund" means any fund established by an employer under any scheme for providing benefits in the nature of life insurance to employees, whether linked to their deposits in provident fund or not, without payment by the employees of any separate contribution or premium in that behalf.

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(2) Without prejudice to the provisions of sub-section (1), if any amount is due from an employer whether in respect of the employee's contribution (deducted from the wages of the employee) or the employer's contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being force, be paid in priority to all other debts.

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