



W.P.No.23976 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2025

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CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

W.P.No. 23976 of 2022

and

W.M.P.Nos. 22955, 22956 & 22959 of 2022

The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office,
No.3, Rajaji Salai, Tambaram,
Chennai – 600 045.

.. Petitioner

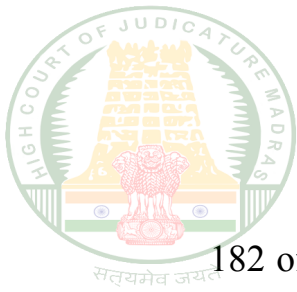
VS

1.The Deputy Registrar,
National Company Law Appellate Tribunal,
Chennai – 600 001.

2.Mr.Vasudevan
(Resolute Professional & Liquidator of
M/s. Titanium Tantalum Products Limited),
17B, Maruthi Nagar,
Hasthinapuram,
Chennai – 600 064.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India
praying to issue a writ of certiorarified mandamus to call for the records of
the 1st respondent in its Order in Company Appeal (AT) (CH) (INS) No.



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182 of 2022 & IA No. 415 of 2022 dated 11.07.2022 and quash the same and consequently direct the 2nd respondent to deposit the entire amount of Rs.3,09,88,511/- as claimed by the petitioner in order to disperse the same to the employees of the Corporate Debtor as per EPF MP Act, 1952.

For Petitioner : Mr.R.Thirunavukarasu

For Respondents : Mr.K.Subbu Ranga Bharathi
for R1
Mr.K.Moorthy, for R2

ORDER

(Order of the Court was made by Dr. ANITA SUMANTH.,J)

The challenge is to an order dated 11.07.2022 passed by the National Company Law Appellate Tribunal (R1/NCLAT). The petitioner is the Regional Provident Fund Commissioner, Employees Provident Fund Organisation (Petitioner/Organisation).

2. We have heard the submissions of Mr.R.Thirunavukarasu, for the petitioner, Mr.K.Subbu Ranga Bharati, for R1 (formal party) and Mr.K.Moorthy, for R2/Official Liquidator appointed in the matter.

3. Upon hearing the parties, we find that the appeal is itself rendered unnecessary, though some directions are called for, for the matter to achieve quietus. Hence this order.

4. One, Titanium Tantalum Products Private Limited (corporate



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debtor) had been brought before the National Company Law Tribunal (NCLT) and ultimately, liquidated on 12.06.2018. In the course of the Corporate Insolvency Resolution Process (CIRP), the petitioner had put forth claims for settlement of certain amounts before the liquidator, that had come to be rejected vide order dated 17.12.2021, as against which, the petitioner preferred an appeal before the NCLAT.

5. The NCLAT has, vide the impugned order, held that the delay in filing of the claim petitions by the writ petitioner is not liable to be condoned and has confirmed the order of the liquidator. However, despite such rejection, the liquidator has himself paid over amounts in settlement of the dues under the PF and Gratuity Acts of a sum of Rs.1.78 crores (Rs.92.83 lakhs being PF and Gratuity, and Rs.85.58 lakhs being simple interest payable for delayed remittances under Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short 'Act')).

6. This is the proper approach in light of Section 36 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') which defines 'Liquidation estate'. For the purposes of liquidation, the liquidator is required to form an estate of the assets mentioned in sub-section (3) of



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Section 36, which is to be called as the liquidation estate. Section 36(4) excludes certain amounts from the purview of the Liquidation Estate and the relevant portion of the provision reads thus:

Section 36 - Liquidation estate

(1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.

....

(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)

(ii)

(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;

.....

7. Thus, all sums due to any workman or employee from the provident fund, pension fund and gratuity, stand excluded from the purview of the Liquidation Estate. In the present case, it is an admitted position that the amounts sought to be kept out of the liquidation estate by the writ petitioner relate to provident funds and interest due to be paid to the employees and R2 has rightly settled the amounts due to the employees on this account.



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8. That apart, the Petitioner seeks to avail the benefit of the exclusion in relation to penalty under Section 14B of the Act as well, that enures not to the workmen but to the Provident Fund account which is a general pool created in terms of Sections 51 to 53 of Chapter VII of the Employees Provident Fund Scheme, 1952, to be used by the Organisation, for various other purposes.

9. The benefit of exclusion would therefore not cover penalty under Section 14B of the Act for delayed remittances, as section 36(4)(a)(iii) of the Code stipulates that the amount standing outside the purview of the liquidation estate must be of the nature of '*all sums due to any workman or employee or the provident fund, pension fund and gratuity fund*'.

10. Since some grievances/disputes are raised in the computation of the amounts of PF, Gratuity and interest thereupon, that constitute questions of fact, we permit the Petitioner to make a representation setting out the grievances before the Official Liquidator, within four weeks from date of receipt of this order. Let R2 look into the grievances and pass necessary orders within four weeks from date of receipt of the representation. If the liquidator requires any assistance or particulars, he is at liberty to call upon the petitioner to furnish the same.



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11. This writ petition is disposed in terms of this order. No costs.

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Consequently, connected miscellaneous petitions are closed.

[A.S.M., J] [N.S., J]
10.06.2025

Index:Yes

Neutral Citation:Yes

ssm

To

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