GAHC020004182025 2026:GAU-NL:571

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : WP(C)/124/2025

M/S 3A CAPITAL SERVICES LIMITED AND ANR
THROUGH MR. RAJESH PANDURANG BHOSALE, AUTHORIZED REPRESENTATIVE, HAVING ITS REGISTERED OFFICE AT - 204, 2ND FLOOR, SAHYOG BUILDING, ABOVE CENTRAL BANK OF INDIA, S.V. ROAD, KANDIVALI (WEST) MUMBAI-400067

2: NAGALAND PULP AND PAPER COMPANY LIMITED
THROUGH MR RAJESH PANDURANG BHOSALE
AUTHORIZED REPRESENTATIVE
COMPANY REGISTERED UNDER COMPANIES ACT 7956
HAVING ITS REGISTERED OFFICE AT PAPER NAGAR
P.O.- TULI
MOKOKCHUNG
NAGALAND-79862

VERSUS

UNION OF INDIA AND 2 ORS
REPRESENTED BY SECRETARY MINISTRY OF LABOUR AND EMPLOYMENT, GOVT. OF INDIA, SHRAM SHAKTI BHAWAN RAFI MARG, NEW DELHI - 110001

2:REGIONAL P.F. COMMISSIONER-II (COMPLIANCE AND RECOVERY)
EMPLOYEES PROVIDENT FUND ORGANISATION (MINISTRY OF LABOUR AND EMPLOYMENT
GOVT. OF INDIA) OFFICE AT SPECIAL STATE OFFICE
HALF NAGARJAN
1ST FLOOR
H.NO. 218
UNITED COLONY
DIMAPUR-797112
NAGALAND

3:EMPLOYEES PROVIDENT FUND ORGANISATION
MINISTRY OF LABOUR AND EMPLOYMENT
GOVT. OF INDIA
OFFICE AT SPECIAL STATE OFFICE
HALF NAGARJAN
1ST FLOOR
H.NO. 218
UNITED COLONY
DIMAPUR-797112
NAGALAN

Advocate for the Petitioner : AKASH SINGH, MEDO VERO,PFOSEKHO PFOTTE

Advocate for the Respondent : CGSC,

BEFORE:

HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocates:

For the Petitioners	: Akash Singh
	: Vaibhav Shukla
	: Pfosekho Pfotte
	: Medo Vero
For the Respondents	: Yangerwati, CGSC (R-1)
	: Laknyei Phom (R-2 & 3)
Date of Judgment and pronouncement	: **26.10.2026**

:JUDGMENT & ORDER (ORAL):

1. The question regarding the interpretation of Section 17B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act of 1952) arises for decision in the instant writ petition, whereby the orders of the Respondent Nos. 2 and 3 dated 06.05.2025, 27.09.2022 and 01.07.2025 are impugned.

2. Heard learned counsel for the Petitioners, Mr. Akash Singh along with Mr. Vaibhav Shukla; also heard learned counsel, Mr. Laknyei Phom, appearing for Respondent Nos. 2 and 3 and Mr. Yangerwati, learned CGSC, appearing for Respondent No. 1.

3. The facts giving rise to the writ petition may now be examined. The Petitioner No. 2 was a government company and it was a joint undertaking of the Hindustan Paper Company Limited (HPCL) and the Government of Nagaland. HPCL was a company wholly owned by the Union of India.

4. In the year 1982, the Petitioner No. 2 entered into an agreement with the State of Nagaland whereby the parties agreed to establish a paper mill and other facilities to ensure production and supply of paper. However, due to severe financial crisis and difficult market scenarios, the commercial production of paper was suspended. Accordingly, the petitioner No. 2 was declared as a sick industry under The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), by an order dated 31.08.1998.

5. Subsequently, The SICA 1985 was repealed and the Board for Industrial and Financial Reconstruction (BIFR) proceedings of the petitioner No. 2 stood abated. In the meantime the parent company/HPCL went into liquidation vide order of the learned National Company Law Tribunal (NCLT), New Delhi dated 02.05.2019 and the same is still pending before the learned NCLT Court No. 2, New Delhi.

6. Subsequently, the Official Liquidator of HPCL published repeated newspaper advertisements for sale of assets of the HPCL wherein the shares of Petitioner No. 2 were to be e-auctioned. The last such sale

advertisement notice was published on 04.10.2023. In pursuance thereof, Petitioner No. 1/M/s 3A Capital Services Ltd. bought the shares of Petitioner No. 2 held by HPCL and the sale certificate was issued by the Official Liquidator of HPCL. Thus, the Petitioner No. 1 being the majority shareholder, holding 96.49% became the new management of the Petitioner No. 2/Nagaland Pulp and Paper Company Ltd. along with the existing minority shareholder, the State of Nagaland.

7. Thereafter, the Respondent No. 2 vide impugned recovery notice dated 06.05.2025 raised a demand against the Petitioner No. 1 allegedly under Section 17B of the Act of 1952 stating that the Petitioner No. 1 is the new employer and hence liable to clear the pending dues under Section 7Q and 14B of the Act of 1952 for the period 2009-2012 which was pending.

8. The Petitioner No. 2 vide letter dated 10.05.2025 sought a clarification regarding the details of the dues raised by the Respondents vide impugned recovery notice dated 06.05.2025.

9. The Respondent No. 2 in response issued a clarification letter vide Ref. No. SSO/DMP/NEGHY0000707/Recvry/87 dated 20.05.2025 contending that the demands raised vide impugned notice dated 06.05.2025 were of the period 2009-2012. It was also stated in the letter that the total demand was of Rs. 2,74,63,309/- out of which Rs. 70,60,026/- was already deducted from the account of the Petitioner No. 2. The balance amount of Rs. 2,04,03,283/- was being demanded from Petitioner No. 1 by virtue of Section 17B of the Act of 1952.

10. Thereafter, the office of the Recovery Officer, Employees Provident Fund Organization (EPFO), Guwahati on 07.09.2022 issued a recovery notice vide No. NEGHY00707000/Recovery/709 dated 27.09.2022, to the

Branch Manager of Axis Bank, Park Street Branch, Kolkata. The notice was addressed to the Petitioner No. 2 for failing to pay arrears amounting to Rs. 2,74,63,309/- (Rupees Two Crore Seventy-Four Lakhs Sixty-Three Thousand Three Hundred Nine) along with recovery cost of Rs. 550/- under the Act of 1952. The notice directed the bank to attach the account of the petitioner and remit the due amount by means of Banker's Cheque/Demand Draft to be drawn in favour of the Regional Provident Fund Commissioner, Guwahati within three days of the receipt of the order.

11. On 01.07.2025, the EPFO issued a follow-up attachment letter vide letter No. EPFO/SSO/DMR/707/Recovery/273 in reference to the previous recovery notice issued to the Axis Bank, Park Street Branch, Kolkata, reiterating the outstanding arrears of Rs. 1,94,22,263/- (Rupees One Crore Ninety-Four Lakhs Twenty-Two Thousand Two Hundred Sixty Three) and further extending the recovery directive by directing the Bank to recover the dues from other accounts held by the Petitioner No. 2, if the primary account lacked sufficient dues and also mandated that the attached account should remain attached until full recovery. Being aggrieved, the Petitioner is before this Court.

12. Learned counsel for the Petitioners submits that the Petitioners are aggrieved by the arbitrary and wrong application of the provisions of the Act of 1952 and by the action of the Respondents to fasten the new management with the liabilities that arose in the year 2009-2012 under the old management.

13. Learned counsel submits that the impugned recovery notice dated 06.05.2025 issued by the Respondents is a wrong application of Section

17B of the Act of 1952 as the matter is already settled by several decisions of the High Courts across the country in similar matters.

14. The learned counsel for the Petitioners has placed reliance on the following judgments in respect of his submissions:

i. ***Shri Angappa Spinning Mills & Ors. v. Regional Commissioner, Employees' Provident Fund, Tamil Nadu and Pondicherry,*** **(1987) 1 LLJ 235 (Mad)**. The Madras High Court in this judgment had ruled that Section 17B contemplates a voluntary transfer *inter vivos*. A transfer resulting from a court sale, seizure or auction by a state financial corporation, like an involuntary auction happens by operation of law rather than by a voluntary transaction executed by the employer. Because it was an involuntary sale, the provisions of Section 17B did not apply to saddle the new auction purchaser with the arrears and liabilities accumulated by the previous employer before the petitioner became the employer.

ii. ***Vibhu Drinks Pvt. Ltd. v. Assistant Provident Fund Commissioner, Nagpur & Ors.*****, 2017 SCC OnLine BOM 9174**. In the said case, the Bombay High Court held that a reading of Section 17B of the Act of 1952 shows that it is the voluntary transfer made by the employer which is covered by the said provision. Involuntary transfer or the transfer under statutory provisions is not covered by the said provision.

iii. ***Suburban Ply and Panels (Private), Ltd. v. Regional Provident Fund Commissioner, Orissa, & Ors.*****, 2003 SCC OnLine ORI 88**. The Orissa High Court in this judgment was of the view that the transfer by the employer of the establishment

contemplated under Section 17B is an act by the employer but where the transfer has not been made by the employer but after seizure of the unit/establishment and the same being transferred by the State Financial Corporation would not render the petitioner company/new management liable. The Court held that there is no indication that Section 17B contemplates transfers other than those made by an employer as defined in the EPF Act in relation to an establishment. When a transfer takes place by a court sale, or otherwise by operation of law and not by any transaction *inter vivos*, in that scene it is an involuntary sale against the wishes of the person whose property is sold. This cannot be called a transfer as ordinarily understood which connotes a voluntary transaction entered into between two parties. The Court further held that it is to be also remembered that the provisions of the Transfer of Property Act generally dealing with transfers do not affect transfer by operation of law, or by any execution of a decree or order of a court of competent jurisdiction under Section 2(d) of the Transfer of Property Act. The Court held that when the petitioner had taken delivery of possession by entering into an agreement with the State Financial Corporation it cannot be considered to be a transfer by the employer and the provisions of Section 17B of the EPF Act cannot be applied.

iv. ***Regional Provident Fund Commissioner v. Tayal Energy Limited & Ors.***, **2011 SCC Online PNH 8081**. In this case, the transfer had taken place in the process of winding up. The Punjab & Haryana High Court agreeing with the view in *Angappa Spinning*

Mills (supra) and *Suburban Ply and Panels (supra)* held that in the absence of an agreement or statutory provision, expressed or implied, the dues not being charged over property, the transferee in an auction sale is not liable to provident fund dues of the previous owner from whom the property is purchased in an auction sale. It was held that statutory liability under Section 17B is limited to voluntary transfers.

15. In view of the settled position of law, the learned counsel for the Petitioner submits that the new management/Petitioner No. 1 can only be held jointly and severally liable if Section 17B of the Act of 1952 is applicable. Additionally, for Section 17B of the Act of 1952 to be made applicable, there has to be a voluntary transfer by the 'employer' of the establishment. In the absence of the same, there is no transfer within the scope of Section 17B and hence the new management cannot be held liable for the demands raised by the Respondents. It is therefore the prayer of the petitioners to aet aside the impugned recovery notice vide letter No. EPFO/SSO/DMR/NEGHY0000707/40 dated 06.05.2025; the recovery notice NO. NEGHY00707000/Recovery/709 dated 27.09.2022 and the recovery and attachment order No. EPFO/SSO/DMR/707/Recovery/273 dated 01.07.2025 being misplaced and not in accordance with law.

16. It is also the submission of the learned counsel for the Petitioners that the Respondents have the alternative option of going before the learned NCLT where the liquidation process is ongoing for recovery of the dues and can also fill up the relevant form to enroll on the committee of creditors.

17. Mr. Laknyei Phom, learned counsel appearing for the Respondent Nos.

2 and 3, opposing the contentions of the Petitioners submits that Section 17B of the Act of 1952 makes both the transferor and transferee jointly and severally liable to pay the dues and that the liability of the transferee shall be equal to the value of the assets obtained by him by way of such transfer. He submits that the Petitioner No. 1 has taken over the assets of the Company and naturally he should be equally liable for the liabilities as well, more so when it comes to the statutory liabilities pertaining to provident funds and allied dues. It is stated that the object of the Act of 1952 is to protect the interest of the employees and when such contribution is being made from the salary/wages of the employees, it is the bounden duty on the part of the employer to contribute as well as to pay towards the fund as it involved a matter of life and survival of the employees.

18. Learned counsel submits that Section 7Q of the Act of 1952 is endorsed as a regulatory measure thereby directing the employee to systematically deposit the funds and it cannot be either termed as discriminatory or as against the freedom of trade and profession of the employer. Payment of interest under Section 7Q is to compensate for failure on the part of the employer to make contribution on time as such deposit on time would have necessarily earned interest and that interest would have been paid by the concerned department/government. Penal damage levied under Section 14B refers to payment of damages upon such failure to pay the contribution regularly and within the due date.

19. It is further contended by the learned counsel for the Respondent Nos. 2 and 3 that the writ Petitioners have acquired the establishment through auction and by obtaining a certificate of sale and hence it is the

duty of the Petitioners to understand, receive and digest all the aspects of the assets and liabilities while taking over. The Petitioners had visited the office of the Respondents at Dimapur and introduced themselves as the new owner of the Company and submitted a Return of Ownership vide Form No. 5A and requested for certain records and documents and accordingly such documents were provided to them. The failure on the part of the writ Petitioners to acquaint themselves regarding all the facts and figures of the establishment as a prudent businessman while acquiring the Company should not be attributed to the Respondents.

20. The learned counsel also submits that the implication of Section 17B is that change of ownership does not affect the liability of an establishment as the establishment continues to exist.

21. Learned counsel for the Respondents has relied on the case of ***Dalgaon Agro Industries Ltd. v. Union of India & Ors.***, **2005 SCC Online CAL 313**. Learned counsel submits that in this case the Calcutta High Court held that liability to meet the provident fund dues remains unaffected by transfer of establishment in view of Section 17B of the EPF Act. Learned counsel has also relied on the case of ***K.C. Ninan v. Kerala State Electricity Board & Ors.*** in **Civil Appeal No. 2109-2110 of 2004** wherein the Hon'ble Supreme Court had held that the implication of the expression "as is where is" or "as is what is basis" and "without recourse basis" is not limited to the physical condition of the property but also extends to the condition of the title of the property and the extent and state of whatever claims, rights and dues affecting the property, unless stated otherwise in the contract. The implication of the expression is that every intending bidder is put on notice that the seller does not

undertake any responsibility to procure permission in respect of the property either for sale or any liability for the payment of dues like water/service charges/electricity dues for power, communication and taxes of the local authorities, among others. It was held that in cases of e-auction, the existence of electricity dues, whether quantified or not has been mentioned as a liability of the purchaser and when the sale is of "as is where is, whatever there is and without recourse basis", there can be no doubt that the liability to pay electricity dues exists on the purchaser. Learned counsel, therefore, submits that similarly even in the instant case, the sale certificate dated 29.11.2023 clearly shows that the sale notice and e-auction was made on "as is where is basis" and "whatever there is basis" and "no recourse basis". Therefore, the Petitioners cannot contend at this stage that they are not liable for the liabilities with regard to the provident fund penal damages and penal interest. Learned counsel submits that the Petitioners have failed to make out a case for the interference of this Court under Article 226 of the Constitution of India.

22. I have duly considered the submissions made by the learned counsel for the parties and also perused the authorities relied upon.

23. Before proceeding to consider the rival submissions of the parties, it would be necessary to refer to the relevant provisions of the Act of 1952. Under Section 2(e) of the Act, the word 'employer' is defined as follows:

> *"2[(e) 'employer' means—*
>
> *(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause*

(f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent."

24. Section 17B of the Act of 1952 states as follows:

*"**17B. Liability in case of transfer of establishment.**-Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, in respect of the period up to the date of such transfer:*

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer."

25. Under Section 2(e) of the Act of 1952, an 'employer' is defined as the owner, occupier, agent or person who has ultimate control over the affairs of the establishment. In the opinion of this court a liquidator appointed by the court or tribunal to wind up a company acts as an officer of the court or a statutory administrator to realize assets, not as an employer who runs the business. Section 17B applies strictly where an employer voluntarily

transfers an establishment by sale, gift, lease, license or similar means making the transferor and transeferee jointly and severally liable.

26. In the present case this court is called upon to decide the liability of the petitioner 1 which has purchased the assets of the HPCL through a public auction conducted by the Liquidator in respect of PF dues attributable to the period preceding the auction sale. The principal question is whether such liability can be fastened upon the auction purchaser by invoking Section 17B of the Act of 1952.

27. A plain reading of Section 17B indicates that its application is attracted where an establishment, in whole or in part is transferred by an employer. The liability of the transferee is not unlimited. The proviso expressly restricts it to the value of the assets obtained through the transfer. Two aspects of the provision are material. First, the transaction must fall within the statutory concept of transfer of an establishment. Secondly, the mere existence of outstanding provident fund dues against the former owner does not dispense with the requirement of establishing that the transaction attracts Section 17B.

28. The object of the EPF Act is undoubtedly to secure the social security benefits of employees. The statutory obligation of an employer to deposit the provident fund contributions cannot be diluted merely because the employer undergoes liquidation. At the same time, the beneficial object of a statute cannot justify the imposition of a liability upon a person/company who does not fall within the scope of the provision invoked against him. The question is whether the respondents have established a lawful basis for recovering those dues from the Petitioner under Section 17B.

29. The Bombay High Court in the case of *Vibhu Drinks Pvt. Ltd. (supra)*, the Orissa High Court in the case of *Suburban Ply and Panels (supra)* and the Punjab and Haryana High Court in the case of *Tayal Energy Limited (supra),* it has been held that a sale or transfer carried out by an official liquidator is a court-ordered transfer or involuntary sale by operation of law, rather than a transfer *inter vivos* under Section 17B.

30. The aforesaid decisions support the proposition that the statutory liability of a transferee cannot be inferred solely from the fact of acquisition of assets belonging to an establishment against which provident fund arrears remain outstanding. The nature of the transaction, the terms of the auction and the applicable statutory provisions must be examined.

31. In the instant case also the materials on record indicate that the Petitioner acquired the assets through an auction conducted by the Liquidator in the course of liquidation proceedings. The transaction was not entered into by the erstwhile employer as a voluntary arrangement with the petitioner 1 for transferring the establishment and its business. It is necessary to distinguish the present case from one in which the establishment itself is transferred to a successor employer who continues the business and becomes responsible for its management.

32. Since a liquidator is not an employer and the sale is conducted by operation of law rather than a voluntary transfer by an employer, the concept of joint and several liability between the liquidator and the auction purchaser will not be attracted. The purchaser generally takes the property free from all encumbrances.

33. This Court is in agreement with the views taken by the High Court of

Bombay in the case of *Vibhu Drinks Pvt. Ltd. (supra)*, the view of the Orissa High Court in the case of *Suburban Ply and Panels (supra)* and that of the Punjab and Haryana High Court in the case of *Tayal Energy Limited (supra)* wherein it has been held that a sale or transfer was carried out by an official liquidator is a court-ordered transfer or involuntary sale by operation of law, rather than a transfer *inter vivos* under Section 17B. I am of the view, therefore, that a purchaser from a liquidator cannot be held jointly and severally liable for past EPF dues under Section 17B.

34. This Court is also of the view that the case of *K.C. Ninan (supra)* and *Dalgaon Agro Industries Ltd. (supra)* can be differentiated from the instant case. In the case of *Dalgaon Agro Industries Ltd. (supra)* it is seen that an establishment was transferred pursuant to an agreement which included a condition that the transferee shall not be liable for any dues under the 1952 Act in respect of the period prior to the date of transfer arising after the date of transfer not known or determined on the date when the transfer was effected. However, all other known dues were either paid by the transferor or the transferee or were so adjusted within the consideration of the transfer. After such transfer, the notices under Section 14B were issued upon the transferee. However, in the instant case, there was no agreement signed by the Petitioners and there were no conditions in the sale certificate regarding the provident fund dues. Further, in the case of *K.C. Ninan (supra),* the issue was regarding pending electricity dues and it is a known fact that electricity, water, and other such dues related to bills are charged over the property concerned and are, therefore, different from provident fund dues which does not create any charge over the property.

35. As such, it is the considered view of this Court that Section 17B of the Act of 1952 does not apply to involuntary or court-ordered sales. It is also pertinent that the auction document or the certificate of sale does not explicitly saddle the Petitioner with past EPF liabilities. The respondents have failed to establish the necessary statutory basis for fastening the pre-acquisition PF dues upon the petitioner. The impugned orders are therefore unsustainable.

36. Accordingly, the writ petition is allowed. The impugned impugned recovery notice vide letter No. EPFO/SSO/DMR/NEGHY0000707/40 dated 06.05.2025, the recovery notice NO. NEGHY00707000/Recovery/709 dated 27.09.2022 and the recovery and attachment order No. EPFO/SSO/DMR/707/Recovery/273 dated 01.07.2025 are quashed and set aside.

37. It is clarified that this judgment shall not affect the liability of the erstwhile employer or the rights of the respondent authorities to lodge, pursue or recover their claims against the assets of the company in liquidation, or against any person legally liable, in accordance with law. The Respondents may enforce their statutory demands against the liquidation estate currently held by the liquidator.

38. It is further clarified that the present judgment shall not be construed as absolving the petitioner 1 of any independent statutory liability arising from its own period of operation or from any liability expressly assumed under the terms of the auction or imposed by an applicable statutory provision.

39. The Petitioners have stated that they have already paid Rs. 10,00,000/- (Rupees Ten Lakhs) towards the penal damage and penal

interest to show their *bona fides*. It is therefore directed that the said amount of Rs. 10,00,000/- deposited by the Petitioners shall be adjusted for future/ongoing provident fund dues.

40. The petition stands disposed of. No order as to costs.

JUDGE

Comparing Assistant

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