

**Insolvency and Bankruptcy Board of India**  
**7<sup>th</sup> Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001**

**11<sup>th</sup> November, 2022**

***Subject: Judgment<sup>[1]</sup> dated 2<sup>nd</sup> November, 2022, in the matter of Assam Tea Employees Provident Fund Organization Vs. Mr. Madhur Agarwal & Anr. [Company Appeal (AT) (Insolvency) No. 262 of 2022]***

**I. Brief Background:**

The Adjudicating Authority (AA) vide order dated 21<sup>st</sup> January, 2020 initiated CIRP against the CD. The Assam Tea Employees Provident Fund Organization (Appellant) submitted its claim for an amount of Rs. 2,10,13,797.92/- being the default on part of the CD to deposit its Provident Fund Contribution, Provident Fund Administrative Cost, Interest for delay in deposit of the provident fund dues, interest for delay in depositing of Deposit Linked Insurance Dues and Provident Fund Contribution due and payment for the period commencing from 28<sup>th</sup> March, 2019 till 26<sup>th</sup> September, 2019.

2. Resolution Professional (RP) admitted the entire claim. Resolution Plan came to be approved by AA vide order dated 3<sup>rd</sup> January, 2022. In the Resolution Plan, the Appellant was proposed an amount of only Rs. 1,07,21,592/-. The RP made part payment of Rs. 64,30,222/-. Aggrieved by the said order of AA, the appeal was filed.

3. NCLAT referred to its judgment in the case of *Regional P.F. Commissioner Vs. Ashish Chhawchharia, Resolution Professional for Jet Airways (India) Ltd. & Anr.*, wherein it was observed that provident fund dues are not subject to distribution under section 53(1) of the Code and further directed the Successful Resolution Applicant to make payment of the admitted claim of the Regional P.F. Commissioner, towards provident fund dues to save the plan from invalidity

Relying on its aforementioned decision, NCLAT held that provident fund dues are not the assets of the CD, and they have to be paid in full and the Appellant was clearly entitled for payment of full provident fund dues i.e., an amount of Rs. 2,10,13,798. NCLAT issued a 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.

**Analysis:** The order of the NCLAT is on the lines of the Code regarding the treatment of PF dues.

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