

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
AT CHENNAI**

**(APPELLATE JURISDICTION)**

**COMPANY APPEAL (AT) (CH) (INS.) NO. 176/2022**  
**(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)**

**Arising out of the Impugned Order dated 21/03/2022 in IA No. 1027/2021**  
**in IA/1228/IB/2020 in CP (IB) No. IBA/42/2020 passed by the ‘Adjudicating**  
**Authority’, (National Company Law Tribunal, Chennai Bench)**

**In the matter of :**

**Employees Provident Fund Organization,**

Regional Office, Royapettah

Employees’ Provident Fund Organization, Regional Office, Royapettah,

37, Royapettah High Road, Chennai – 600 014.

E-mail address: [ro.chennai2@epfindia.gov.in](mailto:ro.chennai2@epfindia.gov.in)

...Appellant

**Versus**

**CA. S. Prabhu**

IBBI Registration No. IBBI/IPA-001/IP-P01275/2018-19/11948

No. 27/9, NivedhVkas, Pankaja Mill Road,

Puliyakulam, Coimbatore 641 045

Mobile: 94888 36000

E-mail: [carpprabhu@gmail.com](mailto:carpprabhu@gmail.com)

...Respondent

**Present:**

For Appellant : Mr. M.S. Vishwanathan, Advocate

For Respondent : Mr. D. Akshita, Advocate

**J U D G M E N T**

**(Physical Mode)**

**[Per: Shreesha Merla, Member (Technical)]**

1. The Present Appeal arises out of the Impugned Order passed by the ‘Adjudicating Authority’/ ‘National Company Law Tribunal, Chennai Bench’ in IA No. 1027/CHE/2021 in IA/1228/IB/2020 in Company Petition No.

IBA/42/2020, dated 21/03/2022, by which Order, the challenge to the Rejection of the 'Claim' by the Liquidator was dismissed by the 'Adjudicating Authority' on the grounds that the Appellant did not file any Order passed under the 'EPF & MP Act, 1952' and that no supporting documents have been enclosed in that regard.

2. The Corporate Debtor /'M/s Abra Motors Private Limited' was admitted into CIRP, vide Order dated 08/05/2020 and subsequently in IA/1228/IB/2020, the Liquidation of the Corporate Debtor was ordered, vide Order dated 16/04/2021. It is submitted by the Learned Counsel for the Appellant that a Claim was filed by the Appellant in Form B on 12/04/2021 for admission of the Claim of Rs. 26,16,268/-. The Liquidator had suggested that a fresh Claim was required to be submitted in Form C and the Claim was also acknowledged vide email dated 22/06/2021. The Liquidator had sent emails dated 26/06/2021 and 07/07/2021 to substantiate the Claims and the Appellant had sent a letter dated 16/07/2021 clarifying that there was a short remittance against the dues in the year 2012-13. But the Claim was rejected in full, subsequent to which the Appellant had addressed letters dated 27/07/2021 and 02/09/2021 to which the Liquidator had replied seeking the Assessment Order and Computation with regard to the Claim Form C.

3. The Learned Counsel for the Appellant submitted that they had given in a tabular column, the details of the short remittance from 2008-2009 to 2018-2019. It is submitted that the Establishment Ledgers to substantiate the Claim

were filed. But the Liquidator insisted on an Assessment Order and further documentary evidence.

**4.** The Liquidator rejected the Claim on 16/07/2021 on the following grounds:

- a) Non submission of any Assessment Order / Recovery Order for substantiating the Claim amount.
- b) No Reply to the remainder emails sent by the Liquidator for producing additional documents.

**5.** It is the case of the Appellant that there is no Assessment Order in the present case as the dues claimed by the Appellant is less the dues declared and the remittance made by the employer, year wise. The Learned Counsel for the Appellant submitted that the Claim was filed based upon the monthly returns filed by the Employer / Corporate Debtor, wherein the Corporate Debtor had defaulted the amount payable towards Provident Fund, Employers Pension Fund, Employees Deposit Linked Insurance Scheme and the Admission Charges. It is the case of the Appellant that as the dues claimed in this case is regarding short remittance by the Establishment, the Corporate Debtor declared in the monthly returns submitted, there is no requirement for any Assessment or Inquiry Order under Section 7A or any other provision of the 'EPF & MP Act. 1952' to be conducted as the dues are already admitted by the Employer.

**6.** It is seen from the record that the Appellant had submitted the entire Establishment Ledger from the period 2008-09 till 2018-19 which records the

short remittance with the corresponding balance based on the payment received from the Corporate Debtor towards PF Contribution and the part of the dues which correspondingly accumulated till 2018-19. For better understanding of the case, Para 35 of the ‘Employees Provident Fund Scheme 1952’ is detailed as hereunder:

***“35. Preparation of Contribution Cards***

*The employer shall prepare a contribution card [in Form 3] [or Form 3A] as may be appropriate, in respect of every employee in his employment at the commencement of the Scheme or who is taken into employment after that date and who is required or entitled to become or is a member of the Fund including those who produce an Account Number and in respect of whom no fresh Declaration Form is prepared;....”*

7. As per the aforementioned provision, the Corporate Debtor is required to prepare the Contribution Cards in Form 3A, which is reflected in the Establishment Ledger filed by the Appellant. Para 36 of the ‘Employees Provident Fund Scheme, 1952’ is also reproduced as herein:

***“Duties of employers***

*(1) Every employer shall send to the Commissioner, within fifteen days of the commencement of this Scheme, a consolidated return in such form as the Commissioner may specify of the employees required or entitled to become members of the Fund showing the [basic wage, retaining allowance (if any) and dearness allowance including the cash value of any food concession] paid to each of such employees:*

*Provided that if there is no employee who is required or entitled to become a member of the Fund, the employer shall send a 'NIL' return*

***(2) Every employer shall send to the Commissioner within fifteen days of the close of each month a return-***

*(a) in Form 5 of the employees qualifying to become members of the Fund for the first time during the preceding month together with the declarations in Form 2 furnished by such qualifying employees, and*

*(b) [in such form as the Commissioner may specify], of the employees leaving service of the employer during the preceding month:*

*Provided that if there is no employee qualifying to become a member of the Fund for the first time or there is no employee leaving service of the employer during the preceding month, the employer shall send a 'NIL' return.*

*(c) Provided further that a copy of the forms as mentioned in clauses (a) & (b) above shall be provided by the employer to concerned employees immediately after joining the service or at the time of leaving the service, as the case may be.*

***(3) [Omitted]***

*(4) Every employer shall maintain an inspection note book in such form as the Commissioner may specify, for an Inspector to record his observation on his visit to the establishment.*

***(5) Every employer shall maintain such accounts in relation to the amounts contributed to the Fund by him and by his employees as the Central Board from time to time, direct, and it shall be the duty of every employer to assist the Central Board in making such payments from***

***the Fund to his employees as are sanctioned by or under the authority of the Central Board.”***

8. This Tribunal also finds force in the contention of the Learned Counsel for the Appellant that Sections 7A(a) and (b) are to be taken into consideration only when there is ‘dispute’ regarding the applicability of the Act to an Establishment and in the instant case, is not required. The relevant Section is reproduced as hereunder:

*....7A Determination of moneys due from employers-2[(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,-*

*(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and*

*(b) determine the amount due from any employer under any provision of this Act, the Scheme or the 3 [Pension] Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary];... ” .....*

*.....  
“1. Inquiries u/s 7A shall not be initiated for any purpose extraneous to the statutory mandate of Section 7A i.e. dispute of the applicability or determination of dues. Therefore grounds such as non-submission of returns, non-production of records, non-cooperation in inspections etc are not reasons within the sweep of Section 7A and do not, therefore, constitute a sufficient basis for initiating proceedings under Section 7A.”*

9. It is seen from the record that the Corporate Debtor has declared the Contribution amount in the monthly returns, but while remitting the amounts admittedly he has permitted amounts short of the already declared contribution and the same is reflected in the Establishment Ledger. The aforementioned Paras 35 and 36 of the Employees Provident Fund Scheme, 1952 requires the Employer / Corporate Debtor to prepare a Contribution Card which would deal all the payments made by the Corporate Debtor against the monthly PF dues payable by the Corporate Debtor and the shortcomings in the remittance of the said dues would be automatically reflected in the Establishment Ledger. The contention of the Learned Counsel appearing for the Liquidator that an Assessment Order is an essential prerequisite for realising the amounts, is untenable in the light of the aforementioned discussion. Further, this Tribunal is of the considered view that the ratio of the NCLAT, Principal Bench in the matter of ***‘Jet Aircraft Maintenance Engineers Welfare Association Vs. Ashish Chhawchharia, Resolution Professional of Jet Airways (India) Ltd. &Ors.’*** reported in ***[(2022) SCC OnLine NCLAT 418]*** dated 21/10/2022 and upheld by the Hon’ble Apex Court in ***‘Jalan Fritsch Consortium Vs. Regional Provident Fund Commissioner and Anr.’*** in ***Civil Appeal No. 407/2023***, dated 31/01/2023, with respect to the full payment of the Provident Fund dues, is squarely applicable to the facts of this case.

**10.** For all the foregoing reasons, this Company Appeal (AT) (CH) (Ins) No. 176/2022 is allowed and the Order of the Adjudicating Authority is set aside and the Liquidator is permitted to admit the 'Claims' based on the Establishment Ledger, keeping in view the provisions of the 'Employees Provident Fund Scheme, 1952'. This Company Appeal (AT) (CH) (Ins) No. 176/2022 is 'allowed' accordingly. No costs. Connected pending Interlocutory Applications, if any, are 'closed'.

**[Justice M. Venugopal]**  
**Member (Judicial)**

**[Shreesha Merla]**  
**Member (Technical)**

02/08/2023  
SPR/NG