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INSOLVENCY & BANKRUPTCY

Jet Airways Ratio Re-affirmed: Liquidator Need Not Honour Post-liquidation PF Penalties

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On 9 July 2025 the National Company Law Tribunal, Kochi Bench, closed a long-running skirmish between the Employees' Provident Fund Organisation and the liquidator of Raihan Healthcare Private Limited. The dispute began in March 2019 when the Chennai Bench admitted the corporate insolvency resolution process (CIRP) against the Kerala-based hospital chain. A year later the same bench ordered its liquidation; Chartered Accountant Mahalingam Suresh Kumar was appointed liquidator on 7 February 2020.

The EPFO, which had been chasing unpaid PF dues since 2016, filed its first consolidated claim of ?1.73 crore in December 2019 and repeated it in Form G on 6 March 2020, well within the final cut-off date of 11 March 2020. The liquidator admitted this entire amount and has already paid ?1.90 crore, treating the basic employer and employee contributions as exempt from the liquidation estate under Section 36(4)(a)(iii) of the Insolvency and Bankruptcy Code, 2016.

Trouble arose in 2023. After fresh inspections and Section 7A assessments that culminated between February and April 2023, the EPFO submitted a revised claim of ?4.72 crore. The new figure added ?40.99 lakh for March-December 2019 dues, ?1.81 crore in damages under Section 14B, and ?1.06 crore in interest under Section 7Q. The liquidator refused to recognise the additional demand; he merely asked the EPFO to approach the Tribunal for modification of the stakeholder list. EPFO responded by filing an application on 25 January 2024 under Section 60(5) of the Code, praying that the balance ?2.82 crore be declared exempt from the liquidation estate and be paid on priority.

The EPFO's counsel argued that PF contributions are held in trust for workers and therefore never form part of the debtor's assets. They relied on a line of NCLAT and Supreme Court judgments (Jet Airways, Assam Tea Employees Provident Fund, Rainbow Papers and others) that have consistently placed such contributions outside the waterfall mechanism. They also insisted that the liquidator had not formally rejected the revised claim and therefore the Tribunal's intervention was appropriate under Section 60(5).

The liquidator countered that all the impugned assessments were completed after liquidation had commenced in December 2019. Once the moratorium under Section 33(5) kicked in, no quasi-judicial proceeding, including a fresh Section 7A inquiry, could validly create fresh liabilities. The liquidator also pointed out that damages and interest are penal in nature and rank as unsecured operational debt, entitled only to a Section 53 waterfall share. Finally, he maintained that the revised claim was filed three years late without any prayer for condonation of delay and ought to be dismissed on that ground alone.

After reviewing the pleadings and the recent NCLAT decisions in Employees Provident Fund Organisation v. Girish Siriram Juneja (30 June 2025) and the Assistance Provident Fund Commissioner v. Chandra Prakash Jain (2024), the two-member Bench of Madhu Sinha (Technical) and Vinay Goel (Judicial) agreed with the liquidator. It held that any assessment conducted after the liquidation order is void because it violates the statutory moratorium embedded in Sections 14 and 33(5) of the Code. While the basic contributions already admitted remain protected, penal damages and interest that crystallised only through post-liquidation orders cannot be fast-tracked or exempted.

The Tribunal therefore dismissed the application, confirming that the EPFO must be content with the ?1.90 crore already disbursed and that no further amount is payable from the estate. The order has been circulated electronically and the file consigned to records, putting an end to a litigation that tested the outer limits of statutory moratorium and the sanctity of liquidation timelines.

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