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NCLAT Holds ESI Contributions Outside Liquidation Estate

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In a ruling that re-aligns the tension between social-security statutes and insolvency law, the National Company Law Appellate Tribunal (NCLAT), Principal Bench, New Delhi, has held that contributions collected by an employer for the Employees' State Insurance Corporation (ESIC) never become the property of the corporate debtor and must be ring-fenced from the liquidation estate. The judgment, delivered on 24 September 2025 in Company Appeal (AT)(Ins) No. 301 of 2024, upsets an order passed by the Ahmedabad bench of NCLT on 28 November 2023 and directs that Rs 1,20,80,940/- of ESI dues be kept out of the distributable pool available to other creditors of Gupta Dyeing & Printing Mills Pvt. Ltd., a company now in liquidation.

Facts that Triggered the Litigation

Gupta Dyeing & Printing Mills Pvt. Ltd., situated at Navrangpura, Ahmedabad, slipped into corporate insolvency in 2018. After the Committee of Creditors failed to approve a resolution plan, the National Company Law Tribunal ordered liquidation and Mr Manish Kumar Bhagat was appointed liquidator. The Regional Director, ESIC, filed an interim application in the liquidation proceedings claiming that the unpaid ESI contributions, though admittedly collected from workers' wages, should not be treated as an asset of the company because they were impressed with a statutory trust under Section 40(4) of the ESI Act, 1948. The application was resisted by the liquidator as well as by financial and operational creditors who stood to gain if the amount swelled the liquidation estate. On 28 November 2023 the NCLT dismissed the ESIC plea, holding that the Corporation was only an operational creditor, that ESI dues did not figure in the priority waterfall of Section 53(1)(b) of the Insolvency and Bankruptcy Code (IBC), and that no special charge or trust existed in favour of the ESIC.

Appeal Before NCLAT

Aggrieved, the Regional Director preferred the present appeal and argued that the moment an employer deducts employees' contributions from wages it holds the money as a trustee for the ESIC; non-payment is a criminal breach of trust punishable under Sections 406 and 409 of the Indian Penal Code as well as an offence under Section 85 of the ESI Act. They relied heavily on a coordinate-bench decision of the same tribunal in Nurani Subramanian Suryanarayanan, Liquidator of M/s Care IT Solutions Pvt. Ltd. v. ESIC decided on 18 July 2024, where an identical controversy was resolved in favour of the Corporation. The liquidator, countered that the Nurani ruling was distinguishable and pressed into service three Supreme Court judgments—Moser Baer Karamchari Union v. Union of India (2023), Sunil Kumar Jain v. Sundaresh Bhatt (2022) and K. Kishan v. Vijay Nirman Company (2018)—to contend that once liquidation commences all claims must be adjudicated strictly within the IBC hierarchy.

Rival Contentions

The appellant's camp asserted that Section 36(4)(a)(i) of the IBC expressly carves out "assets in trust for any third party" from the liquidation estate; that Section 40(4) of the ESI Act creates precisely such a trust; and that the legislative intention is to protect workers' deductions even if the employer sinks into insolvency. They stressed that the liquidator had already admitted the claim, so the only question was its ranking versus its exclusion. The respondents, on the other hand, maintained that ESI is essentially an insurance premium giving rise to a contractual service, not a segregated fund; that the statute does not create a charge or hypothecation; and that permitting exclusion would open the flood-gates for every statutory levy to masquerade as a trust. They argued that the Supreme Court rulings cited by them affirm the supremacy of the IBC waterfall and that the Nurani bench had either overlooked or misapplied these precedents.

Tribunal's Analysis

After examining the text of Section 40(4) of the ESI Act and the punitive consequences attached to default, the bench comprising Justice Rakesh Kumar Jain, Justice Mohammad Faiz Alam Khan and Member (Technical) Naresh Salecha concluded that the coordinate bench in Nurani Subramanian had already correctly interpreted the interplay between the two statutes. The tribunal noted that the contributions are "collected by the employer as agent, held by it as trustee and payable to the ESIC as beneficiary," a relationship that survives the commencement of liquidation. The Supreme Court judgments relied upon by the liquidator, the NCLAT pointed out, dealt with priority of payment, not with the anterior question whether the money belonged to the company at all. Since Section 36(4)(a)(i) keeps third-party trust assets out of the estate, the statutory trust under the ESI Act squarely invokes that exclusion.

Final Disposition

Setting aside the NCLT order, the appellate tribunal directed that the sum of Rs 1,20,80,940/- shall not be treated as part of the liquidation estate and shall be remitted to the ESIC. Each party was left to bear its own costs and all miscellaneous applications were disposed of.

Concluding Paragraph

The ruling reiterates that social-security deductions enjoy a sui generis character in insolvency: they travel from the worker's wage packet to the statutory fund without ever merging into the corporate debtor's patrimony. For liquidators it is a reminder that not every rupee shown in the books is available for distribution, and for statutory authorities it is a shot-in-the-arm to insist on exclusion rather than mere priority. As the NCLAT aligns itself with the Nurani precedent, the decision is poised to become the touchstone for similar claims under provident fund, gratuity and other wage-related statutes, subtly reshaping the contours of asset identification in Indian insolvency practice.

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