

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Ins) No. 301 of 2024
&
I.A. No. 1013, 4529 of 2024

IN THE MATTER OF:

Regional Director, ESI Corporation

...Appellant(s)

Versus

**Manish Kumar
Bhagat Liquidator, Gupta Dyeing & Printing Mills
Pvt Ltd.**

...Respondent(s)

Present:

For Appellant : Mr. Manav Goyal Mr. Vaibhav Manu Srivastava & Ms. Amrita Sony, Advocates.

For Respondents : Mr. Kritiman Singh, Sr. Advocate with Mr. Sahil Sood, Advocates for R-1.
Ms. Shruti Shivkumar, Advocate for Bank/Intervenor.

O R D E R
(Hybrid Mode)

[Per: Justice Rakesh Kumar Jain(Oral)]

24.09.2025: This appeal is filed by the Regional Director of ESI Corporation, being aggrieved against the order dated 28.11.2023 by which IA No. 184/NCLT/AHM/2022, filed by the appellant in CP (IB) No. 537/NCLT/AHM/2018 under Rule 11 of NCLT Rules, 2016 against the liquidator of M/s Gupta Dyeing & Printing Mills Pvt. Ltd., Navrangpura, Ahmedabad Corporate Debtor for the purposes of keeping the ESI dues out of the liquidation estate by the corporate debtor has been dismissed.

2. Shorn off unnecessary details, the aforesaid application was dismissed by the Ld. Tribunal while making the following observations:

“20. The liquidator had considered the claim of the applicant in terms of provisions of IBC 2016 and also included the applicant as an operational (unsecured) creditor. Applicant also attended various CoC meetings

during the CIRP. The claim was settled in terms of the IBC provisions treating the applicant as an operational unsecured creditor and proportionately allotted the amount to be disbursed. Therefore, the Appellant for the purpose of determining the workmen's dues as mentioned in Section 53 (1) (b) cannot derive any advantage of explanation (iv) Section 326 of the Companies Act 2013.

21. The consequences of non-payment of employees contribution from wages deducted in terms of Section 40(4) of the EST Act, 1948 and when not paid would be the responsibility of the principal employer which amounts to "breach of trust" and is punishable under IPC 406, 409 and also an offence u/s 85 of ESI Act. The liquidator has admitted the claims as per provision of the IBC 2016. The applicant has not proceeded in any manner against the corporate debtor, individually for which a provision is available in the ESI Act.

22. Role of Liquidator and powers are defined in Section 35 of the IBC, Liquidation Estate in Section 36 and determination of value of claims in Section 41 of IBC. Section 36 (4) (iii) of the IBC does not define the ESIC dues as workmen dues except for PF, Pension Fund and the Gratuity Fund. Secured Creditor is defined in Section 52 of liquidation proceedings in which the ESIC cannot make a claim or status to be included.

23. Insurance is a coverage on the premium paid whether run by private or government institution and offers a service when there is an even which is triggered and cannot be equated with other benefits which are protected under IBC. This applies for both state run and private institution, but there are imbibed provisions in the state insurance which gives it a statutory status for compliance and is on par with the other authorities who are treated as operational creditors. There is no provision in the statute of ESIC for any charge or special status other than those provided in Section 45 A of the ESIC whereby the applicant could have proceeded individually against the defaulter.

24. While treating the claim filed by the applicant the liquidator has arrived at the admissible amount and priority as per the provisions of IBC, 2016".

3. Counsel for the appellant has submitted that the Ld. Tribunal has committed an error in not appreciating the provision of Section 36(4) (a) (i) as per which the assets in trust of any third party with the CD does not become the liquidation estate as such.

4. In this regard, he has relied upon a decision of a coordinate Bench of this court rendered in the case of **Nurani Subramanian Suryanarayanan, Liquidator of M/s Care IT Solutions Pvt. Ltd. vs. Employees State Insurance Corporation, Rep. by its Regional Director & 2 Ors., TA (AT) No. 212/2021 CA (AT) (Ins) No. 116/2020** decided on 18.07.2024 in which the similar controversy was involved and the Appellate Tribunal had categorically held that the amount of ESI, contributed both by the employer and employee, lying with the CD/Company in liquidation, is in trust in view of Section 40(4) of the ESI Act, 1948 to which the provisions of Section 36 (4) (a) (i) shall squarely apply.

5. Counsel for the appellant has also submitted that the amount of claim of Rs. 1,20,80,940/- submitted by the appellant was admitted by the liquidator under the category of operational creditor.

6. Ld. Sr. Counsel appearing on behalf of the Respondent has submitted that the decision in the case of Nurani Subramanian (Supra) will not apply to the facts of the case and has rather relied on three decisions of the Hon'ble Supreme Court in the case of **Moser Baer Karamchari Union vs. Union of India & Ors., (2023) 9 SCC 499, Sunil Kumar Jain & Ors. vs. Sundaresh Bhatt & Ors. (2022) 7 SCC 540 and K. Kishan vs. Vijay Nirman Company Pvt. Ltd. (2018) 17 SCC 662.**

7. We have heard Counsel for the parties and after examining the record, are of the considered opinion that the controversy at hand is squarely covered by the decision of this court in the case of Nurani Subramanian (Supra) and the Judgments relied upon by the Respondents are not applicable as the said judgments are not on the issue of ESI.

8. In view of the aforesaid discussion, the present appeal is hereby allowed and the impugned order is set aside.

9. The parties shall bear their own costs.

10. Pending IA's if any are hereby closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

sr/rr