

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



State Bank of India Vs. Moser Baer Karamchari Union & Anr.

Brief Facts

In the present case, On 14th November 2017, pursuant to an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 the 'Corporate Insolvency Resolution Process' was initiated against the 'Corporate Debtor', wherein finally, on 20th September 2018, the order of liquidation was passed by the Adjudicating Authority and the workmen stood discharged under Section 33(7) of the 'I&B Code'. The Liquidator denied the payment of the gratuity fund, the provident fund, and the pension fund preferentially and included the same for the payments under the waterfall mechanism under Section 53 of the 'I&B Code'. In January 2019, the 'Moser Baer Karamchari Union' filed that the directions be issued to the Liquidator to exclude the amount due to them towards 'Provident Fund', 'Pension Fund' and Gratuity Trust Fund' from the waterfall mechanism envisaged under Section 53 of the 'I&B Code' and pay them the 'Provident Fund Dues', 'Pension Fund Dues' and 'Gratuity Fund Dues' as these will not constitute part of the liquidation estate.

The Adjudicating Authority held that the 'Provident Fund Dues', 'Pension Fund Dues', and 'Gratuity Fund Dues' cannot be part of Section 53 of the 'I&B Code'. The 'State Bank of India', a 'Secured Creditor', has challenged the order in this appeal.

The question that arises for consideration in this appeal was whether the provident fund, pension fund, and gratuity fund come within the meaning of assets of the 'Corporate Debtor for distribution under Section 53 of the 'I&B Code'.

Decision

According to sub-section (4) (a) (iii) of Section 36, it was clear that all sums due to any workman or employee from the provident fund, the pension fund, and the gratuity fund, shall not be included in the liquidation estate assets and cannot be used for recovery in the liquidation.

Sub-section (1) of Section 53, states that the proceeds from the sale of the liquidation assets of the 'Corporate Debtor', the distribution is to be made in order of priority and within such period and in such manner as provided.

In terms of sub-section (4) (a) (iii) of Section 36, as all sums due to any workman or employees from the provident fund, the pension, and the gratuity fund, do not form part of the liquidation estate/ liquidation assets of the 'Corporate Debtor', the question of distribution of the provident fund or the pension fund or the gratuity fund in order of priority and within such period as prescribed under Section 53(1), does not arise.

In view of Section 53, for the purpose of the meaning of 'workmen's dues', the Appellant cannot derive the meaning as assigned to it in Section 326 of the Companies Act, 2013. The workmen's dues as mentioned in Section 326(1) (a) are not confined to a period like twenty-four months preceding the liquidation commencement date and, 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) of Section 326 of the Companies Act, 2013.

The provisions of the 'I&B Code' have an overriding effect in case of consistency in any other law for the time being enforced, we hold that Section 53(1) (b) read with Section 36(4) will have an overriding effect on Section 326(1).

The Adjudicating Authority has come to such finding that the aforesaid funds i.e., the provident fund, the pension fund, and the gratuity fund do not come within the meaning of 'liquidation estate' for the purpose of distribution of assets under Section 53, and find no ground to interfere with the impugned order dated 19th March 2019.

The appeal was accordingly, dismissed. No costs.

[Link of the Order](https://ibbi.gov.in/uploads/order/b518aa9ba0071760955b4808054320f0.pdf)

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