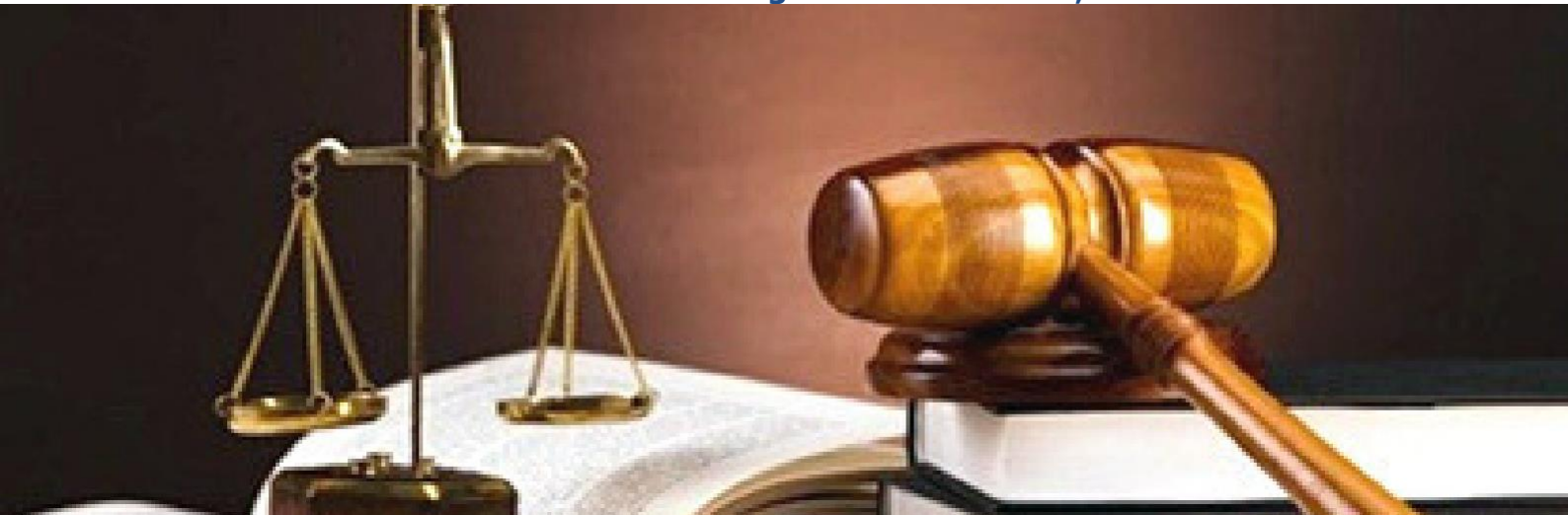


IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



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

Brief Facts

On 14.11.2017, pursuant to an application under Section 7 of the Code, the CIRP was initiated against the Corporate Debtor, wherein finally on 20.09.2018, the order of liquidation was passed by the Adjudicating Authority and the workmen stood discharged under Section 33(7) of the Code. According to the Liquidator, he categorically 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 Code. In January 2019, the Moser Baer Karamchari Union filed CA No. 19(PB)/ 2019 with prayer 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 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 NCLT by impugned order dated 19.03.2019, allowed the CA No. 19(PB)/ 2019 and held that the 'Provident Fund Dues', 'Pension Fund Dues' and 'Gratuity Fund Dues' cannot be part of Section 53 of the Code. The 'State Bank of India', a 'Secured Creditor', has challenged the order in this appeal.



INSOLVENCY PROFESSIONAL AGENCY
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Decision

Section 36 of the Code deals with 'Liquidation Estate' for the purpose of liquidation. As per sub-section (1) of Section 36, for the purpose of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the 'Corporate Debtor'. From sub-section (4) (a) (iii) of Section 36, it is 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. From sub-section (1) of Section 53, it is clear 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 thereunder.

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 fund 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. The 'workmen's dues' is mentioned in clause (b) (i) of Section 53(1), which are the dues for the period of twenty-four months preceding the liquidation commencement date. In view of the aforesaid specific provisions, the Explanation (iii) below Section 53, for the purpose of meaning of 'workmen's dues', the Appellant cannot derive the meaning as assigned to it in Section 326 of the Companies Act, 2013, including the Explanation below it. There is a difference between the distribution of assets and preference/ priority of workmen's dues as mentioned under Section 53(1) (b) of the 'I&B Code' and Section 326(1) (a) of the Companies Act, 2013. It has also been noticed that Section 53(1) (b) (i) which relates to distribution of assets, workmen's dues is confined to a period of twenty-four months preceding the liquidation commencement date.

- While applying Section 53 of the Code, Section 326 of the Companies Act, 2013 is relevant for the limited purpose of understanding 'workmen's dues' which can be more than provident fund, pension fund and the gratuity fund kept aside and protected under Section 36(4) (iii). On the other hand, the workmen's dues as mentioned in Section 326(1)(a) is 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. This apart, as the provisions of the Code have 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 overriding effect on Section 326(1) (a), including the Explanation (iv) mentioned below Section 326 of the Companies Act, 2013.

- Once the liquidation estate/ assets of the 'Corporate Debtor' under Section 36(1) read with Section 36(3), do not include all sum due to any workman and employees from the provident fund, the pension fund and the gratuity fund, for the purpose of distribution of assets under Section 53, the provident fund, the pension fund and the gratuity fund cannot be included. The Adjudicating Authority having 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, we find no ground to interfere with the impugned order dated 19th March, 2019.

Link of the Order

<https://ibbi.gov.in/uploads/order/b518aa9ba0071760955b4808054320f0.pdf>

