

Provident Fund Dues Survive Resolution Plan: Bombay High Court Reinforces EPFO's Priority under IBC

In a landmark decision with significant implications for insolvency practitioners, resolution applicants, and employee stakeholders, the Bombay High Court (Nagpur Bench) in *Dalmia Cement (Bharat) Limited & Ors. v. Central Board of Trustees, EPFO & Ors.* (WP No. 693/2022, decided on April 29, 2025), has ruled that dues payable to the Employees' Provident Fund Organisation (EPFO) cannot be extinguished merely because they were not verified or included in an approved resolution plan under the Insolvency and Bankruptcy Code, 2016 (IBC).

The Dispute in Focus

During the CIRP of Murli Industries Ltd., the EPFO submitted an initial claim for ₹54.98 lakh but did not follow up with the mandatory documentation required under the IBC regulations for claim verification. Consequently, the Resolution Professional (RP) recorded a "nil" claim for PF dues. The resolution plan submitted by Dalmia Cement (Bharat) Limited was thereafter approved by the Committee of Creditors, the NCLT, and upheld by the NCLAT and the Supreme Court.

Subsequently, the EPFO issued demand notices to recover statutory dues exceeding ₹25 crore under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, triggering the writ petition.

Arguments and Legal Framework

Petitioners' Stand: Finality of Resolution Plan

The successful resolution applicants contended that:

- The EPFO's failure to submit and verify its claim within prescribed timelines led to waiver/extinguishment of its rights under the approved plan.
- In line with the Supreme Court's decision in *Ghanshyam Mishra & Sons v. Edelweiss ARC* (2021) 9 SCC 657, once a resolution plan is approved, claims not dealt with therein are deemed extinguished.
- PF dues, being in the nature of "operational debt", are subject to the IBC framework and the waterfall mechanism if they are not timely lodged.

EPFO's Position: PF Dues Are Not Debts – They Are Trust Assets

In a significant line of argument, the EPFO argued that **provident fund contributions are not "debts" owed to it. Rather, they are trust assets belonging to employees** and merely held in fiduciary capacity by the employer (i.e., the corporate debtor). Citing Sections 5 and 6 of the EPF Act and the explanatory provisions of Section 18 of the IBC, the EPFO emphasized that:

- These amounts are held under a statutory trust and do not form part of the debtor's estate.
- Under Section 30(2)(e) of the IBC, a resolution plan cannot contravene existing law. Failure to provide for statutory contributions under the EPF Act would render the plan legally infirm.
- The protection under Section 36(4)(a)(iii) of the IBC – which excludes PF dues from the liquidation estate – reflects the broader legislative policy to insulate such funds from the insolvency process, even at the resolution stage.

The EPFO relied on the NCLAT's judgment in *Jet Aircraft Maintenance Engineers Welfare Association v. Ashish Chhawchharia*, and the Supreme Court's affirmation in 2024 SCC OnLine SC 727, which recognized PF contributions as employee-owned assets and not corporate property.

High Court's Reasoning and Ruling

The Bombay High Court concurred with the EPFO's submissions, holding that:

1. **Provident fund contributions – including the employer's share – are not debts but amounts held in trust.** As such, they are not extinguishable merely due to procedural lapses under the CIRP.
2. **Even if the EPFO failed to verify its claim within the prescribed timelines,** the statutory nature of the obligation under the EPF Act overrides the mechanics of the IBC. A verified claim is not a prerequisite to enforce the underlying statutory liability.
3. The resolution plan's non-inclusion of EPF dues cannot be used as a shield by the resolution applicant, particularly when such exclusion would contravene the mandate of Section 30(2)(e) of the IBC.
4. The protection accorded under Section 36(4) of the IBC – though situated within the liquidation chapter – is a **manifestation of the policy that PF, pension, and gratuity dues are sacrosanct**, and should inform the approach even at the resolution stage.

Implications for Resolution Applicants and Insolvency Professionals

This judgment sounds a cautionary note for all stakeholders involved in the CIRP ecosystem:

- **Provident fund contributions are not like other operational dues** – they carry a statutory trust character and must be treated with utmost care in the resolution plan.
- **Resolution applicants must factor in contingent and unverified statutory liabilities** in their bid evaluations and implementation strategies.
- **Resolution professionals have a proactive duty to ensure that critical employee welfare obligations are not overlooked**, even where procedural compliance by authorities is lacking.
- **A clean slate under IBC does not extend to immunizing against non-discharge of mandatory welfare dues.**

Conclusion

The Bombay High Court has reinforced a principle often invoked but occasionally overlooked – **employee welfare dues, especially those held in trust, are not negotiable liabilities that can be compromised in a resolution plan.**

While *Ghanshyam Mishra* provided much-needed finality to the CIRP process, this ruling ensures that such finality does not come at the expense of statutory social security protections.

As legal and commercial advisors on distressed transactions, we believe this decision underscores the need for thorough diligence and conservative structuring when dealing with public dues and employee entitlements.

For a deeper discussion on how this judgment might impact your ongoing or prospective resolution plans, feel free to get in touch with us.

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