

Bombay High Court

The Official Liquidator High ... vs Navinon Ltd on 16 March, 2017

Bench: R.D. Dhanuka

ppn

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olr-517.15 in cp-1176.01.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

OFFICIAL LIQUIDATOR'S REPORT NO.517 OF 2015/ACCOUNTS
IN
COMPANY PETITION NO.1176 OF 2001

In the matter of Companies Act, I of
1956;

And

In the matter of M/s.Navinon Limited
(In Liqn).

M/s.Indian Link Chain Manufacturers Limited

.. Petitioner

Mr.Suresh Kumar for the Regional Provident Fund Commissioner.

Mr.S.C. Naidu with Mr.T.R. Yadav for 2963 employees.

Mr.K.P. Anil Kumar for 1616 employees.

Mr.Apoorav Karekar i/by M/s.Divekar Bhagwat & Co. for ICICI Bank
Limited (secured creditor).

Ms.Dipti Panda with Ms.Amita Jasani and Ms.Dwani Bokaria i/by
M/s.Purnanand & Co. for the Punjab & Maharashtra Co-operative Bank
Limited.

Mr.Nikhil Rajani i/by M/s.V. Deshpande & Co. for the Kotak Mahindra
Bank Limited & I.A.R.C., the secured creditor.

Mr.Naushad Engineer for the Official Liquidator.

Mr.Vinod Sharma, Official Liquidator present.

Ms.Yogini D. Chauhan, Deputy Official Liquidator present.

Mr.Amrita Joshi i/by M/s.The Law Point for the Noticee Nos.10 & 14 -
ARCIL for Dena Bank & Union Bank.

CORAM

: R.D. DHANUKA, J.

RESERVED ON : 10th March 2017 PRONOUNCED ON : 15th March 2017 Judgment :-

. By this report, the learned official liquidator seeks permission to keep the provision of Rs.23,40,49,334/- towards the ppn 2 olr-517.15 in cp-1176.01.doc payment of Employees Provident Fund Office of Thane, Kandivali, Bandra and Vadodara against their claims i.e. from Punjab and Maharashtra Co-operative Bank Ltd. at the rate of 93.02% for Rs.21,77,12,691/- and from UCO Bank at the rate of 6.98% for Rs.1,63,36,643/- and seeks direction against the Employees Provident Fund Office Kandivali to deposit an amount of Rs.1,12,93,011/- being excess amount alleged to have been paid by the learned Official Liquidator against their admitted amount of Rs.5,54,64,810/-. The

Official Liquidator also seeks permission to pay dividend at the rate of 2.504 paise in a rupee, amounting to Rs.28,29,640/- on movable assets and at the rate of 41.024 paise in rupee amount to Rs.4,63,59,090/- on immovable properties i.e. totalling to Rs.4,91,88,730/- to 385 workers.

2. The Official Liquidator seeks further permission to declare further dividend to 3348 works and Punjab and Maharashtra Co-operative Bank Ltd. for sum of Rs.33,89,11,654/- on immovable properties at the rate of 10.882 paise in a rupee whose claims were admitted as per the certified list and 1st to 6th Supplementary List filed with the Prothonotary and Senior Master of this Court and to issue an advertisement for 'Notice of Declaration of Dividend' in various newspapers and to pay the advertisement charges, open a 'Separate Dividend Account' with Punjab National Bank, PNB House, Fort, Mumbai for a consolidated amount of Rs.41,10,65,789/- for payment of 385 workers etc.

3. Learned Official Liquidator seeks permission against UCO Bank and against Punjab and Maharashtra Co-operative Bank Ltd. to pay various amounts towards Central Government Commission payable under Rule 291 of the Companies (Court) Rule, 1959 and to pay further ppn 3 olr-517.15 in cp-1176.01.doc amounts of payment of dividend to workman and secured creditors.

4. The learned Official Liquidator had filed a report dated 23rd February,2012 for various directions. On 29th March,2012, this court passed an order on the OLR dated 28 th March 2012 alongwith Company Application (L) No.7 of 2012 permitting the Official Liquidator to declare dividend.

5. Pursuant to the said order dated 29th March,2012, the Official Liquidator declared 1st dividend at the rate of 1.565 paise in a rupee to 2963 workers and to various secured creditors on the movable properties at the rate of 25.64 paise in a rupee of the amount admitted by the Official Liquidator to the 2963 workers and Punjab and Maharashtra Co-operative Bank Ltd. only on the immovable properties. The Official Liquidator thus declared the total dividend at the rate of 27.205 paise in a rupee and issue notices to 2963 workers and 9 secured creditors. Out of those workers, 2940 workers who had discharged their notices of payment and they were paid. The remaining 32 workers who failed to discharge their notices of payment in time were treated as unclaimed claimants and amount payable to those 32 workers had been treated as an unclaimed dividend under section 555 of the Companies Act, 1956. The said amount was transferred on 16th January 2015 to the Registrar of Companies, Maharashtra.

6. UCO Bank and Punjab Maharashtra Co-operative Bank Ltd. furnished various details of the fixed deposit receipts to the Official Liquidator on 27th July 2015 and 29th July 2015 lying with those two ppn 4 olr-517.15 in cp-1176.01.doc secured creditors and the date of maturity and maturity amount payable to Rs.1,05,06,53,781/-. The Official Liquidator has already paid 100% dividend on admitted and adjudicated amount against the claims made by the Provident Fund Commissioner in the sum of Rs.8,07,34,351/-.

7. The claims of EPFO of Thane, Vadodara and Kandivali were re-adjudicated and the claim of Bandra EPFO were adjudicated through the Chartered Accountant. The total amount adjudicated in respect of EPFO Unit Thane, Vadodara and Bandra came to Rs.24,80,25,844/-. The Official

Liquidator has already made payment of Rs.1,39,76,530/-. The balance amount payable to those three offices of Employees Provident Fund came to Rs.23,40,49,334/- according to the claim adjudicated by the chartered accountant. Insofar as EPFO Kandivali is concerned, the claims admitted was at Rs.5,54,64,810/- whereas the amount released by the Official Liquidator is Rs.6,67,57,821/- thereby making an excess payment of Rs.1,12,93,011/-.

8. The Official Liquidator by his report seeks permission to make the provision of Rs.23,40,49,334/- towards the payment of EPFOs Thane, Kandivali, Bandra and Vadodara. The Official Liquidator further seeks direction that the EPFO Unit Kandivali be directed to deposit amount of Rs.1,12,93,011/- being excess amount paid by the office against their admitted amount of Rs.5,54,64,810/- and as against that payment made to the said EPFO Kandivali is at Rs.6,67,57,821/-.

9. It is the case of the Official Liquidator that he has already declared and paid 1st and 2nd dividend at the rate of 43.528 paise in a ppn 5 olr-517.15 in cp-1176.01.doc rupee to Certified List of 2963 workers and 8 other secured creditors at the rate of 2.504 paise in rupee on movable properties and 41.024 paise in a rupee to Punjab and Maharashtra Co-operative Bank Ltd. on immovable properties. The Official Liquidator has not declared the similar rate of dividend to 385 workers whose claims were subsequently adjudicated upon. By this report, the Official Liquidator seeks declaration of dividend to total 385 workers of adjudicated and admitted amount of Rs.11,30,04,802/- the particulars whereof are described in Supplementary List of claims.

10. It is the case of the Official Liquidator that the total amount of Rs.91,17,80,710/- in the form of fixed deposits is available with the secured creditors and after making provision of Rs.23,40,49,334/- towards EPFO claims, the balance amount of Rs.67,77,31,376/- will be available for distribution of dividend to the workers and secured creditors.

11. Learned counsel for the official liquidator invited my attention to the averments made in the Official Liquidator's Report and also to various annexures and submits that the report be made absolute in terms of prayer clauses (a) and (b).

12. Mr.Suresh Kumar, learned counsel for the Regional Provident Fund Commissioner submits that in so far as the claim of the Regional Provident Fund Commissioner, Bandra Office is concerned, the Official Liquidator has rejected the substantial part of the claim and has admitted the claim only to the extent of Rs.1,09,82,128/- and has calculated interest only upto 24th February 2005. He submits that the ppn 6 olr-517.15 in cp-1176.01.doc company was wound up on 16th December 2005. The Bandra Office has submitted the revised claim of Rs.3,08,58,392/- towards damages and interest with the Official Liquidator on 3 rd September 2013 which includes the recovery interest calculated upto 5 th September 2013. He submits that the said claim for interest upto 5 th September 2013 be included in the total claim adjudicated upon by the Official Liquidator and would file further claim for the period 6 th September 2013 subsequently. He submits that the claim of interest upto the date of liquidation was wrongly rejected by the Official Liquidator and thus the Regional Provident Fund Commissioner, Bandra is entitled to the claim of Rs.3,08,58,392/-.

13. Mr.Suresh Kumar, learned counsel for the Regional Provident Fund Commissioner submits that the claim of Rs.30,26,37,317/- filed by the Provident Fund Commissioner with the official liquidator on 19th June 2013 includes the claim towards the Provident Fund dues of the company for the period from September 2000 to December 2005 and also includes the employees' share of Rs.14,18,05,857/- and employer's share of Rs.14,18,05,857/-.

14. Learned counsel placed reliance on Section 6 of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (for short "the said EPF Act") and also on the paragraph 30 of the Employees' Provident Funds Scheme, 1952. He submits that the claim for Rs.14,18,05,857/- towards employees' share is maintainable which is not considered by the official liquidator in its report. He submits that the claim for Rs.14,18,05,857/- is also maintainable towards the employer's share. Pursuant to the direction issued by this Court on 13th October ppn 7 olr-517.15 in cp-1176.01.doc 2016, learned counsel filed statement of Employees wages with Employees Provident Fund contribution containing Employee share and Employer share. He submits that the claim for interest and damages also be allowed.

15. In so far as the claim of the Regional Provident Fund Commissioner, Vadodara is concerned, it is submitted that out of total alleged dues of Rs.3,60,88,824/- receivable by the said office from the Official Liquidator, the said office has received only an amount of Rs.95,54,327/- from the Official Liquidator and submits that the outstanding amount of Rs.2,65,34,497/- is still due and payable by the Official Liquidator which claim has priority over all other dues in accordance with Section 11 of the said EPF Act.

16. It is submitted by the learned counsel that the official liquidator has re-adjudicated the claim on 8 th June 2012 and allowed a sum of Rs.1,21,59,876/- as preferential claim as against the claim of Rs.3,60,88,824/- and has rejected the balance claim on the ground that the recovery proceedings were not undertaken for the said amount prior to the date of winding up of the company i.e. prior to 16 th December 2005. He submits that the official liquidator has wrongly rejected the claim of interest upto the date of liquidation. He submits that the official liquidator could not have restricted the claim of Vadodara office only to the amount of Rs.1,21,59,876/- and the said office is entitled to be paid the entire amount of Rs.2,65,34,497/-.

17. In so far as the claim of the Regional Provident Fund Commissioner, Kandivali is concerned, it is submitted that the official ppn 8 olr-517.15 in cp-1176.01.doc liquidator has allowed only a sum of Rs.6,67,57,821/- as against the claim amount of Rs.17,17,84,760/- and has rejected the balance amount which was claimed towards interest and damages. He submits that the said Kandivali office has filed a Company Application (120 of 2012) for claiming the interest and damages against the enhanced amount of Rs.20,27,36,257/- before the official liquidator. He submits that by an order dated 7th March 2013 in Company Application No.120 of 2012 filed by the said Kandivali office, this Court remanded the official liquidator's report back to the official liquidator with a direction to re-adjudicate the claim of the said Kandivali office in accordance with law. He submits that the demand of the official liquidator for refund of the alleged excess amount of Rs.1,12,93,011/- prayed in the Official Liquidator's Report No.517 of 2015 is illegal and shall be rejected. He submits that the claim of the Provident Fund had priority over the secured creditors and thus the claim of the Provident

Fund Commissioner has to be given priority over the secured creditors.

18. Learned counsel for the Punjab and Maharashtra Co- operative Bank Ltd., one of the secured creditors submits that her client stands outside winding up proceedings and had conducted the sale of the immovable properties and other movable assets and has received consideration of Rs.180 crore for the sale of the immovable securities. The said bank has sold movable securities and has received Rs.13,51,00,000/-. She submits that the official liquidator has admitted the claim of the bank in the sum of Rs.1,16,91,34,883/-. She submits that her client has already deposited a sum of Rs.1,36,58,98,280/- with the official liquidator and UCO Bank and has also deposited the amount ppn 9 olr-517.15 in cp-1176.01.doc with the official liquidator. The PMC bank has also deposited a sum of Rs.99,93,23,213/- in FDR. It is submitted that the bank has no objection if prayer clause (a) of the report is allowed.

19. Mr.Naidu, learned counsel appearing for 2963 workers opposes the submissions made by Mr.Suresh Kumar, learned counsel for the Regional Provident Fund Commissioner and placed reliance on the judgment of this Court in the case of Regional Provident Fund Commissioner, Thane Vs.Official Liquidator of M/s.Zodana Electronic Ltd., reported in 2016 (2) Mh.L.J. 439 and would submit that in so far as the claim for damages made by the Provident Fund Commissioner is concerned, there is no order of adjudication of damages by the Authorities under Section 14B nor any enquiry is proposed by the Provident Fund Authorities in the matter of determining the damages under the said provision. He submits that since the claim for damages is not proved as on the date of winding up order, the official liquidator cannot be directed to pay any claim for damages to the Provident Fund Commissioner. He submits that the official liquidator himself cannot adjudicate upon the claim for damages at this stage. He placed reliance on the judgment of this Court also for opposing the claim for interest made by the Provident Fund Commissioner upto the date of actual payment. Reliance is placed on Rule 179 of the Companies (Court) Rules, 1959 and it is submitted that the interest is paid only in the event of there being a surplus after payment in full of all claims admitted to proof and that also rate prescribed therein. He submits that the interest can be permitted only upto the date of winding up order and not for the subsequent period.

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20. Mr.Anil Kumar, learned counsel appearing for 1616 employees working in the Kalyan Establishment of the respondent- company also supported the arguments of Mr.Naidu. He also placed reliance on the judgment of this Court Regional Provident Fund Commissioner, Thane (supra). Mr.Engineer, learned counsel for the official liquidator also placed reliance on the said judgment.

21. In so far as the case of the Punjab and Maharashtra Co- operative Bank Ltd. is concerned, it is the case of the official liquidator that there is no document to indicate that any security is created on the movable property in favour of the said bank. It is submitted by the learned counsel for the official liquidator that even the said bank is standing outside winding up proceedings, it cannot be allowed to urge that its claim should be considered with interest upto the date whereas, the claims of the workmen are considered only upto the date of winding up. It is submitted that the Punjab and

Maharashtra Co-operative Bank Ltd. has never objected to the adjudication process of the official liquidator nor has challenged the decision of the official liquidator admitting the claim of the said bank in the sum of Rs.1,16,81,34,883/- within 21 days from the date of such adjudication by the official liquidator. He submits that 1st and 2nd dividend have already been paid to the said bank.

22. In so far as the submission of the learned counsel for the the Regional Provident Fund Commissioner, Kandivali is concerned, learned counsel submits that the claim of the Kandivali office is ppn 11 olr-517.15 in cp-1176.01.doc admissible only for a sum of Rs.5,54,64,810/- for the period from January 2000 till the date of winding up i.e. 16 th December 2005. However, the claim of the said Kandivali office has been allowed in the sum of Rs.6,67,57,821/-. He submits that the official liquidator is thus entitled to recover the excess amount of Rs.1,12,93,011/- from the Kandivali office of the Regional Provident Fund Commissioner. The official liquidator submits that the interest is calculated by the official liquidator upto the date of winding up and no further interest is payable. He submits that the claim of the Kandivali office was adjudicated upon after taking into consideration the submissions made by the said office. It is submitted that the claims of interest beyond the date of winding up and damages are not payable. He submits that the office of Regional Provident Fund Commissioner, Kandivali be directed to refund the said amount of Rs.1,12,93,011/- which was paid in excess by the official liquidator to the said office with interest.

23. In so far as the submission of the learned counsel for the Regional Provident Fund Commissioner, Bandra is concerned, it is submitted by the official liquidator that the claim for recovery of interest upto 16th December 2005 is rightly not admitted. Similarly, the cost charges claimed by the Regional Provident Fund Commissioner, Bandra are also not tenable and claim for interest for the period between 16 th December 2005 and 5th September 2013 as claimed is also rightly rejected by the official liquidator in accordance with law. It is submitted that the amount of interest was rightly disallowed.

24. It is submitted by the learned counsel that the official liquidator had conducted meeting with the Employees Provident Fund ppn 12 olr-517.15 in cp-1176.01.doc Office and the workers' union on 17th September 2013 and 25th September 2013 and claim received from the Provident Fund Authorities has been adjudicated by restricting interest upto the date of winding up. It is submitted that subject to filing of Form 71 of the Company (Court) Rules, 1959, the official liquidator can release to the Employees Provident Fund Office, Bandra the admitted amount as per notice of admission dated 8th June 2012.

25. Mr.Naidu, learned counsel appearing for 2963 employees and Mr.Anil Kumar, learned counsel appearing for 1616 employees state that their respective clients will not make any claim or take any action against the Provident Fund Authorities in respect of the employees' contribution not deducted by the respondent company in view of the fact the respondent company has not deducted the said amount and has not deposited any amount with the Provident Fund Authorities.

26. This Court in the case of Regional Provident Fund Commissioner, Thane (supra) has considered the issue whether the official liquidator can be directed to admit the claim towards employees' contribution though it was not deducted from arrears of the salary and can be directed to admit the

claim for damages under Section 14B of the said EPF Act and interest beyond the date of winding up though there was no surplus. This Court after adverting to the judgment of the Supreme Court in the case of Employees Provident Fund Commissioner Vs. Official Liquidator of Esskay Pharmaceuticals Ltd., reported in (2011) 2 Comp.L.J. 465 (SC) has held that by virtue of Section 11(2) of the said EPF Act, the provident fund dues have priority over all other dues including the dues of secured creditors. It is further held that such ppn 13 olr-517.15 in cp-1176.01.doc priority needs to be accorded not only to the provident fund dues computed under Section 7C, but also to interest due under Section 7Q and damages adjudicated under Section 14B.

27. This Court in the said judgment has held that since the salaries payable to the employees for the relevant period have been paid in full i.e. without deducting any employees' contribution to the fund, there is no question of paying the Regional Provident Fund Commissioner the component of employees' contribution on behalf of the employees. These amounts have been directed to be received by the employees in winding up and are not claimable separately by the Regional Provident Fund Commissioner. This Court has also construed Section 14B of the said EPF Act and has held that only after the order of adjudication of damages becomes final under the said provisions of Section 14B, there was no question of recovery arise. It is held that since there was no adjudication by the Authorities under Section 14B, there was no provable debt as on the date of the winding up order in relation to the purported damages which could be estimated in value under Rule 154 of the Companies (Court) Rules, 1959. It is held that there is no question of the official liquidator himself adjudicating the claim for damages which jurisdiction exclusively rests with the authorities under the provisions of the said EPF Act. This Court has accordingly rejected the claim for damages made by the Provident Fund Authorities under Section 14B of the said EPF Act.

28. In so far as the claim for interest between the date of winding up order and the date of actual payment claimed under Section 7Q of the said EPF Act is concerned, this Court after adverting to the ppn 14 olr-517.15 in cp-1176.01.doc judgment of this Court in the case of IDBI Ltd. & Ors. Vs. Official Liquidator, High Court of Bombay, Nagpur Bench, reported in 2011(4) ALL MR 770 and in the matter of Re Pal Peugeot Ltd. in Company Petition No.110 of 2000 decided on 22 nd September 2011 has held that the creditors of the company cannot claim interest in winding up for the period subsequent to the winding up if there is no surplus and even if there is surplus, interest cannot exceed 4% p.a. on the admitted amount of the claim. It is held that in so far as the secured creditors are concerned, they may pursue their remedy outside winding up.

29. It is not in dispute that in the facts of this case also, there was no order of adjudication of damages by the Authorities under Section 14B of the said EPF Act. In my view, under Section 14B of the said EPF Act, only the Authorities prescribed in the said provision could adjudicate upon the damages after following the requisite procedure and only after such order adjudicating upon the claim for damages made by the Employees Provident Fund Office would have attained finality after exhausting the remedy provided under the said provision or if the said order would have not been impugned by the aggrieved party, the Provident Fund Authorities could make such claim for damages before the official liquidator. The official liquidator himself has no power to adjudicate upon the claim for damages which were to be adjudicated upon exclusively by the authority under the provisions of Section 14B of the said EPF Act. In my view, the judgment of this Court in the case

of Regional Provident Fund Commissioner, Thane (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgment. In my view, the claim for damages made by the Provident Fund Authorities before the official liquidator is thoroughly ppn 15 olr-517.15 in cp-1176.01.doc misconceived and is rightly rejected by the official liquidator. I do not find any infirmity with the order of rejection of this claim by the official liquidator.

30. In so far as apprehension of the learned counsel for the Regional Provident Fund Commissioner that the workers may adopt the appropriate proceedings i.e. civil or criminal against the Authorities for non-payment of contribution of the employees by the Authorities is concerned, Mr. Naidu, learned counsel for 2963 employees and Mr. Anil Kumar, learned counsel for 1616 employees state that the employees have already made a statement before this Court that their respective clients will not make any claim or take any action against the Provident Fund Authorities in respect of the employees' contribution not deducted by the respondent company in view of the fact the respondent company has not deducted the said amount and has not deposited any amount with the Provident Fund Authorities.

31. In addition to the statement made by Mr. Naidu, learned counsel for 2963 employees, his client has filed an affidavit in these proceedings dated 17th January 2017 recording that the claims for provident fund will be only in respect of the accumulated balance to the credit of each member in Account no.1 as on the date of settlement of the said account and for pension as per the provisions of the Employees Pension Scheme, 1995. It is stated in the said affidavit that admittedly no amount was deducted from the wages of the employees for the wages for the period August 2000 to 16th December 2005. The wages paid during the said period has been admitted by the Official Liquidator and the dividend is declared in lieu of the claim for earned wages taking into ppn 16 olr-517.15 in cp-1176.01.doc consideration the net realization upon sale of assets of the company in liquidation.

32. It is stated that the absent deduction and entrustment, the question of depositing employee's (member's) contribution does not arise. Those employees have given undertaking and declaration that they shall not claim employee's (member's) contribution on the amount of dividend disbursed by the Official Liquidator pursuant to the order passed by this court in any manner whatsoever from the Provident Fund Authorities at any time in future. Statements and undertakings rendered in paragraph 7 of the said affidavit is accepted. In my view, the apprehension of the learned counsel for the Regional Provident Fund Commissioner is thus without any merit and in any event is taken care of in view of the statement and undertakings rendered by the learned counsel for the employees.

33. In so far as the claim for interest for the period from the date of winding up till payment is concerned, the said issue is also decided by this Court in the said judgment in the case of Regional Provident Fund Commissioner, Thane (supra). There is no surplus left with the official liquidator as on today. In my view, the question of payment of any interest for the period subsequent to the winding up till payment or for any other period did not arise and is rightly rejected by the learned official liquidator. The judgment of this Court in the case of Regional Provident Fund Commissioner, Thane (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgment.

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34. Division bench of this Court in the case of Pravin S. Shah Vs. Rashtriya Mill Mazdoor Sangh, Bombay Vs. Official Liquidator, High Court, Bombay, reported in 2009 (2) Mh.L.J. 897 after construing Rule 179 of the Companies (Court) Rules, 1959 has held that it is only if the company is left with surplus funds after distribution of the dues of the secured creditors and the workers dues both pari passu as per the provisions of sections 529 and 529A of the Act and after distribution of preferential dues under section 530 of the Act, that the question of awarding any interest on the dues of the secured creditors or the workmen's dues for the further period after the relevant date will arise. In my view, the claim for interest for the period subsequent to the date of winding up by the Punjab and Maharashtra Co-operative Bank Ltd. is rightly rejected by the official liquidator. The said claim for interest for the subsequent period made by the Punjab and Maharashtra Co-operative Bank Ltd. is contrary to the law laid down by this Court in the cases of Pravin S. Shah (supra) and Regional Provident Fund Commissioner, Thane (supra) and thus cannot be allowed by this Court.

35. This Court in the case of Engineering Workers Association Vs. Official Liquidator, reported in 2007 (2) Bom.C.R. 445 has rejected the submission of the workers that the liquidator must make good contribution in the fund as far as employer is concerned, as the employee- employer relationship continued till the winding up order was passed. It is held by this Court that the liquidator cannot be expected to make good any short fall or deficit because he is not an employer as is understood by the workers. It is held that when the Provident Fund Act mandates creation of a fund consisting of deductions and contributions from employer-employees, it can never be the intention that a person ppn 18 olr-517.15 in cp-1176.01.doc like liquidator is obliged to forward any contribution from the funds collected by him after disposal of the assets and properties of the company in liquidation. It is held that if the liquidator is not the employer, then merely because he steps in after a winding up order is made, does not mean that after he should go on contributing to the Provident Fund on the basis that the relationship between the company in liquidation and the employee subsists or continues in law.

36. It is held by this Court in the said judgment that the liquidator cannot be expected to deposit any monies in such funds. He has to utilise the monies realised from sale and disposal of the assets and properties of the company in liquidation in the manner directed by the company law. This Court has accordingly rejected the demand of the workers to direct the official liquidator to make contribution of employer's share to the Provident Fund Authorities for the relevant period. This Court also rejected the contention of the workers for an order and direction against the official liquidator to make contribution of employer's share to the Provident Fund Authorities for the relevant period on the ground that the official liquidator does not become an employer. It is held that any amount due from employer in relation to the establishment as contributions towards scheme etc. shall, if the liability therefor has accrued before the order of winding up, be deemed to be included under Section 530 and paid in priority to all other debts. The official liquidator is not expected to make contribution in the funds after he takes charge. The judgment of this Court in the case of Engineering Workers Association (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgment.

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37. In my view, the claim thus made by the Regional Provident Fund Commissioner for employer's contribution as well as towards employees' contribution from the official liquidator is totally untenable and is rightly rejected by the official liquidator. In my view, there is thus no substance in this demand of the Regional Provident Fund Commissioner against the official liquidator and is accordingly rejected.

38. In so far as prayer clauses (c) to (j) are concerned, the learned counsel appearing for the Official Liquidator states that a fresh report in respect of those prayers would be filed before this Court within three weeks from today. In view of the statement made by the learned counsel for the Official Liquidator, those prayers need not be considered by this Court at this stage.

39. In so far as deduction sought by the Official Liquidator against the employees provident fund Kandivali to deposit a sum of Rs.1,12,93,011/- being excess amount paid by the Official Liquidator to that office against their admitted amount of Rs.5,54,64,810/- is concerned, pursuant to the liberty granted by this court on 17th February 2017, the Regional Assistant Provident Fund Commissioner (Legal) on behalf of the Regional Provident Fund Commissioner, Kandivali has filed an affidavit dated 23rd February 2017 in these proceedings.

40. Mr.Suresh Kumar, learned counsel for the Regional Provident Fund Commissioner, Kandivali and for other offices of the Regional Provident Fund Commissioner invited my attention to various averments made in the said affidavit. He submits that on 19th January, 2017, the Regional Provident Fund Commissioner, Kandivali has settled ppn 20 olr-517.15 in cp-1176.01.doc the Provident Fund claims along with pension/death claims in respect of 298 employees for an amount of Rs.4,82,24,677/- and disbursed the said amount to the respective employees. He also invited my attention to the chart annexed at Ex.2 to the said affidavit. He submits that as per annual accounts prepared by his clients in respect of 350 employees, it is observed that an excess amount of Rs.5,05,057/- over and above amount of Rs.6,67,57,281/- is to be paid by the Provident Fund Department to the respective employees of the establishment. He submits that there is thus no excess payment made by the Official Liquidator to the Regional Provident Fund Commissioner, Kandivali as alleged and thus no such direction as prayed in terms of prayer clause (b) can be granted against Regional Provident Fund Commissioner, Kandivali for refund of the said amount.

41. Mr.Engineer, learned counsel appearing for the Official Liquidator and Mr.Naidu learned counsel appearing for 2963 employees invited my attention to various documents and would submit that it is an admitted position that the Official Liquidator has paid Rs.6,67,57,281/- so far to the Provident Fund Authorities. The Official Liquidator vide report dated 31st July 2013 has adjudicated the claim in the sum of Rs.5,54,64,810/- under Section 529A of the Companies Act, 1956 i.e. against the preferential claim of Rs.20,60,61,287/- made by the Provident Fund Authorities and has rejected the balance claim. It is submitted that it is thus clear that the Official Liquidator has made excess payment of Rs.1,12,93,011/- to the Regional Provident Fund Commissioner, Kandivali.

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42. My attention is invited to paragraph 8 of the affidavit filed by the Regional Provident Fund Commissioner, Kandivali admitting that as on 19th January 2017, the Provident Fund Office has settled the Provident Fund claim alongwith pension/death claim in respect of 298 employees for an amount of Rs.4,82,24,677/- and had disbursed the said amount to the respective employees. They also invited my attention to page 27 of the said affidavit filed by the Regional Provident Fund Commissioner, Kandivali thereby annexing the list of the employees (members) and the amount sanctioned and disbursed to 298 employees in the sum of Rs.4,82,24,677/-. Learned counsel invited my attention to Annexure 1 to the affidavit dated 23 rd February, 2017 filed by the Regional Provident Fund Commissioner, Kandivali and would submit that the claims made by the Kandivali Office is made in respect of 350 employees for distribution of Provident Fund dues along with allied dues to the employees. It is submitted that in the said Ann.1, the Regional Provident Fund Commissioner, Kandivali has claimed various amounts towards employees shares as well as employers share of provident fund which claims are rightly rejected by the Official Liquidator.

43. A perusal of Ann.1 to the affidavit dated 23 rd February 2017 filed by the Regional Provident Fund Commissioner, Kandivali clearly indicates that the claim of the said office included claim towards the employees as well as employers share of provident fund in respect of 350 employees and also various other claims which were dealt with by the Official Liquidator and also by this court in this judgment. The learned Official Liquidator has rightly rejected some of the claims and has rightly adjudicated the claims in the sum of Rs.5,54,64,810/- vide report dated ppn 22 olr-517.15 in cp-1176.01.doc 31st July, 2013 under Section 529A of the Companies Act, 1956 as against the claim of Rs.20,60,61,287/-.

44. A perusal of paragraph 8 of the said affidavit indicates that the Regional Provident Fund Commissioner, Kandivali has settled the provident fund claims along with pension/death claims as on 19 th January 2017 in respect of 298 employees for an amount of Rs.4,82,24,677/- and has only disbursed the said amount to the respective employees out of the amount of Rs.6,67,57,281/- paid by the Official Liquidator to the Provident Fund Authorities as against the amount of Rs.5,54,64,810/- which was adjudicated amount in the said report dated 31 st July 2013. I am thus not inclined to accept the submission of Mr.Sureshkumar, learned counsel for the Regional Provident Fund Commissioner, Kandivali that excess amount of Rs.5,05,057/- over and above the amount of Rs.6,67,57,281/- is to be paid by the Department to the respective employees and establishment. The said statement made in paragraph 7 of the affidavit is contrary to the other paragraphs of the said affidavit and also contrary to the details furnished in Ann.2 to the said affidavit. In my view, it is thus clear that the Official Liquidator has made excess payment of Rs.1,12,93,011/- to the Regional Provident Fund Commissioner, Kandivali which is liable to be refunded by the Regional Provident Fund Commissioner, Kandivali to the Official Liquidator.

45. I therefore pass the following order :-

(i) Official Liquidator' Report is made absolute in terms of prayer clause (a).

(ii) Statement of the learned counsel for the Provident Fund Authorities that upon receipt of payment in terms of prayer clause (a) of the ppn 23 olr-517.15 in cp-1176.01.doc Official Liquidator's

Report, the amount shall be disbursed amongst the employees in accordance with law expeditiously is accepted. The Provident Fund Authorities are directed to disburse the payment to the employees as stated aforesaid expeditiously.

(iii) The official liquidator's report is made absolute in terms of prayer clause (b). Employees Provident Fund Office, Kandivali is directed to deposit the said amount with the official liquidator within four weeks from today.

- (iv) There shall be no order as to costs.
- (v) Parties to act on the authenticated copy of this judgment.

R.D. DHANUKA, J.