

**NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**  
**COURT NO. 1**

ITEM No.201  
IA/2(MP)2026 in IA/449(MP)2025  
in  
TP 174 of 2019 [CP(IB) 426 of 2018]

**Proceedings under Section 60(5) r.w Rule 11**

**IN THE MATTER OF:**

Employees Provident Fund Organization

.....Applicant

V/s

M/s Agrifriend Ventures LLP through its partner Mr. Pankaj  
Dubey

.....Respondent

**Coram:**

Hon'ble Shri Brajendra Mani Tripathi, Member (J)

Hon'ble Shri Man Mohan Gupta Member (T)

**PRONOUNCEMENT OF ORDER**  
**Delivered on 13/05/2026**

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

Sd/-

**MAN MOHAN GUPTA**  
**MEMBER (TECHNICAL)**

**BRAJENDRA MANI TRIPATHI**  
**MEMBER (JUDICIAL)**

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I.A. No. 02 OF 2026 IN I.A. No. 449 OF 2025  
IN  
TP No. 174 OF 2019 [CP(IB) No. 426 OF 2018]  
Date of Order: 13.05.2026

**IN THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL  
INDORE BENCH**

**I.A. No. 02 OF 2026  
IN  
I.A. No. 449 OF 2025  
IN  
TP No. 174 OF 2019 [CP(IB) No. 426 OF 2018]**

*[An application under section 60(5) of Insolvency and Bankruptcy code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016]*

**In the Matter of:**

**Employees' Provident Fund Organisation,**

Through Regional Provident Fund Commissioner-II,

Regional Office Gwalior, Bhavishya Nidhi Bhawan,

Near (ISBT) Morena Link Road, Gwalior (MP) – 474005     **...Applicant**

**VERSUS**

**M/s Agrifriend Ventures LLP,** through its Partner,

**Mr. Pankaj Dubey,**

2, Joy Builders Colony, Old Palasia,

Indore, Madhya Pradesh – 452018     **...Respondent**

**Coram:**

**Hon'ble Mr. Brajendra Mani Tripathi, Member (Judicial)**

**Hon'ble Mr. Man Mohan Gupta, Member (Technical)**

**Appearances:**

For the Applicant (EPFO): Ms. Darshana Baghel, Advocate

For the Respondent: Ms. Soumya Dharwa, Advocate

**Order**

**Delivered on: 13.05.2026**

1. The present application bearing **I.A (I.B.C)/2(MP)2026** has been filed by the **Employees' Provident Fund Organisation ("EPFO")**, through the Regional Provident Fund Commissioner-II, Regional Office Gwalior, under **Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC")** read with **Rule 11 of the National Company Law Tribunal Rules, 2016**, seeking impleadment as a necessary party in **I.A. No. 449 of 2025**, which is the Interlocutory Application filed by **M/s Agrifriend Ventures LLP** ("the Respondent"/"Auction Purchaser") seeking various reliefs and concessions arising out of the liquidation proceedings of the Corporate Debtor, **M/s STL Exports Pvt. Ltd.** (hereinafter "the Corporate Debtor").
2. The Corporate Debtor was ordered to be liquidated by this Tribunal vide Order dated **11.08.2023** in I.A. No. IA/186(MP)2021 in TP 174/2019 [CP(IB)/426/2018]. The Corporate Debtor was subsequently sold as a going concern to **M/s Agrifriend Ventures LLP** by way of asset sale in liquidation proceedings, whereupon the Respondent filed I.A. No. 449 of 2025 seeking reliefs and concessions arising from the said liquidation sale.
3. The Applicant – EPFO – prays that this Hon'ble Tribunal may be pleased to:
  - a. *Allow the present application and implead the EPFO, through the Regional Provident Fund Commissioner, Regional Office Gwalior, as a necessary party in I.A. No. 449 (MP) of 2025;*
  - b. *Permit the EPFO to file its Reply and make submissions on merits in I.A. No. 449 (MP) of 2025; and*

*c. Pass such other or further orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice.*

**PLEADINGS OF THE APPLICANT (EPFO)**

4. The Applicant – EPFO – has, inter alia, submitted as follows:
  - 4.1 The EPFO is governed by the **Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("EPF Act")**. The Corporate Debtor is an establishment covered under the EPF Act bearing Code No. **MP/GWL/0010922000**. The Corporate Debtor committed default in remitting Provident Fund and allied dues for the period **May 1996 to November 2024**. The EPFO, in exercise of its statutory powers, assessed and quantified PF and allied dues at **Rs. 44,10,204/-**, and recovery proceedings were initiated accordingly.
  - 4.2 The Office of the Recovery Officer, EPFO, Regional Office Gwalior, issued a notice dated **20.11.2025** under **Section 17-B of the EPF Act** calling upon the Auction Purchaser/Respondent to discharge the aforesaid PF dues, as the establishment of the Corporate Debtor stood transferred by way of liquidation sale. Section 17-B fastens **joint and several liability** upon the original employer and the transferee of the establishment for contributions and other sums due for the period up to the date of transfer.
  - 4.3 During the hearing of I.A. No. 449 of 2025, the EPFO raised a categorical objection that it is a necessary party, and vide Orders dated **04.11.2025 and 26.11.2025**, this Tribunal was pleased to grant liberty to the EPFO to move an appropriate application for impleadment.

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4.4 PF dues do not constitute assets of the Corporate Debtor during CIRP or liquidation, but are **statutory trust monies belonging to employees**, held by the employer in a fiduciary capacity. Under the IBC's own framework:

**(i) Section 36(4)(a)(iii) IBC** expressly excludes all sums due to any workman or employee from the provident fund, pension fund and gratuity fund from the liquidation estate, mandating that such sums shall not be used for recovery in liquidation.

**(ii) Explanation to Section 18 IBC** excludes from the definition of "assets" any assets owned by a third party and held in trust by the Corporate Debtor — PF contributions, including the employer's contribution, fall squarely within this exclusion.

**(iii) Section 155(2) IBC** similarly excludes all sums due to workmen or employees from PF, pension fund and gratuity from the estate of the bankrupt.

4.5 The code deliberately and expressly does keep Provident fund and Pension Funds arrears away from the clutches of liquidation process. The Hon'ble Supreme Court in ***Moser Baer Karamchari Union v. Union of India & Ors.*** [W.P.(C) No. 421 of 2019] held that such sums cannot be compromised or reduced even in a rehabilitation or revival plan and must be paid in full.

**Judicial Precedents**

- 4.6 The Hon'ble NCLAT in ***Sikander Singh Jamuwal v. Vinay Talwar, Resolution Professional & Ors.*** [Company Appeal (AT)(Ins.) No. 483 of 2019, dated 11.03.2022] has categorically held that there is no inconsistency between Section 17-B of the EPF Act and the IBC, and therefore Section 238 of the IBC does not override the EPF Act in matters of PF dues. Compliance with the EPF Act is a mandatory statutory obligation and not a matter of commercial wisdom of the Committee of Creditors.
- 4.7 The Hon'ble Supreme Court in ***Employees Provident Fund Organisation v. Fanendra Harakchand Munot & Anr.*** [Civil Appeal arising out of Diary No. 25286 of 2023, dated 25.08.2023] held that the impugned judgment does not in any manner affect the substantive rights of the EPFO to proceed in accordance with law, in view of Section 36(4)(a)(iii) of the IBC, thus reaffirming that PF dues are excluded from the assets and liquidation estate of the Corporate Debtor and remain enforceable under the EPF Act.
- 4.8 The Hon'ble Bombay High Court in ***Dalmia Cement (Bharat) Limited v. EPFO*** [2025 SCC OnLine Bom 1754, dated 29.04.2025] has exhaustively held that PF dues are not assets of the Corporate Debtor, cannot be compromised or extinguished through insolvency proceedings, and that even the employer's contribution is held in trust for employees.

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- 4.9 The recovery proceedings under Section 17-B EPF Act operate **independently and dehors** the IBC framework. The present case arises from a liquidation sale under Chapter III of the IBC, not a resolution plan under Chapter II. The doctrine of 'clean slate' under Section 31 IBC has no automatic application to liquidation purchasers in respect of statutory trust dues. Reliance, if any, on **Ghanshyam Mishra & Sons (P) Ltd. v. Edelweiss ARC** is wholly misconceived, as that judgment was rendered in the context of the finality of resolution plans under CIRP and does not deal with PF dues governed by a special welfare legislation. That the present case arises out of a liquidation sale, and not out of a resolution plan under CIRP. Once liquidation is ordered, the regime shifts from Chapter II to Chapter III of the IBC, where assets are sold subject to existing statutory liabilities, unless expressly extinguished by law. That the doctrine of "clean slate" applicable to resolution applicants under Section 31 of the IBC has no automatic application to liquidation purchasers, particularly in respect of statutory trust dues protected under the EPF Act
- 4.10 Any adjudication of I.A. No. 449 of 2025 in the absence of the EPFO would result in grave jurisdictional infirmity, as orders affecting statutory rights, trust obligations and recovery proceedings would be passed without hearing the competent authority.
- 4.11 The EPFO is not a pro-forma party but a **necessary party**, without whose presence no effective, complete or legally sustainable adjudication is possible. No prejudice will be caused to the Respondent by impleadment, whereas grave

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and irreparable prejudice would be caused to the Department and to workmen if such reliefs are granted in its absence.

**PLEADINGS OF THE RESPONDENT (M/s AGRIFRIEND VENTURES**

**LLP)**

5. The Respondent has filed its Reply/Objection to the impleadment application on 07.02.2026, inter alia, submitting as follows:

5.1 The Respondent is the highest bidder and Auction Purchaser of the Corporate Debtor at a bid value of **Rs. 15,00,000/-** on '*as is*', '*whatever there is*', '*as going concern-without liability*' basis, strictly as per **Regulation 32A of the IBBI (Liquidation Process) Regulations, 2016**. After full payment, the Liquidator on **15.01.2025** executed a **Sale Deed** of the Corporate Debtor as a going concern-without liability in favour of the Respondent. **Clause 5 of the Sale Deed** explicitly provides that all previous liabilities of the Corporate Debtor prior to the Sale Deed stand extinguished ('pre-CIRP/Liqd. dues').

5.2 **EPFO's Own Claim Already Extinguished — Order dated 10.12.2025:** It is the admitted case of the Applicant that the EPFO neither filed its claim during the CIRP nor during the liquidation proceedings within the prescribed timelines. The claim of Rs. 44,10,204/- was filed by the Applicant on **14.11.2024** with the Liquidator — post the Liquidation Commencement Date. The Liquidator vide letter dated **25.11.2024** rejected the same, citing non-adherence to prescribed format and time limits, and specifically pointing out that the assessment was done post-Liquidation

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Commencement Date, rendering the claim non-maintainable.

- 5.3 Aggrieved, the Applicant thereafter filed **I.A. No. 219 (MP) of 2025** before this very Tribunal on 05.05.2025, after the Corporate Debtor had already been sold to the Respondent. This Tribunal by its **final Order dated 10.12.2025** in I.A. No. 219 of 2025 decisively rejected the Applicant's claim. The relevant extract of the said order reads:

*"In view of the foregoing discussion, and having regard to the facts and circumstances of the case as well as the judicial precedents cited, it is evident that the Applicant's contentions stand decisively contradicted. The liquidation process of the Corporate Debtor having been conclusively completed, with the sale proceeds from the going concern sale duly distributed and the liquidation bank account closed, it is impermissible in law to permit belated claims that undermine the finality and sanctity of the insolvency resolution process... the claim for an amount of Rs. 44,10,204/- filed on the basis of such post-liquidation assessment is found to be inadmissible and cannot be entertained."*

- 5.4 In light of the above, it is the settled legal position as on date that the Applicant's claim stands **extinguished** qua the Corporate Debtor under the liquidation process under the IBC. No liability pertaining to the pre-CIRP/Liqd. period can be sustained against the Corporate Debtor or the Respondent-Auction Purchaser.
- 5.5 It is submitted that the Respondent received the Section 17-B recovery notice from EPFO on 20.11.2025 for Rs.

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44,10,204/- and the Respondent sent a **reply letter dated 08.12.2025** (Annexure R-2 in the Reply document) denying the liability, informing EPFO of the correct legal position post-purchase as a going concern without liability, and specifically invoking Section 238 of the IBC as overriding the EPF Act.

- 5.6 It is further submitted that in main IA, only one relief is sought against the applicant at para 14(I) of the IA that the old dues ('pre-CIRP/Liqd. dues') of the EPFO before the acquisition by the respondent shall stand extinguished in light of **“Clean Slate Principal”** profound by ***Hon’ble Supreme Court in the matter of Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited [Civil Appeal No. 1554 of 2021]*** The specific prayer (Para 14(I) of the main IA) which read as follows:

*"I. That the Corporate Debtor not to be subjected to any old dues of its employees by the Employees Provident Fund Organization (EPFO) before the date of sale Certificate.*

- 5.7 The present IA is not maintainable on two independent grounds. **Firstly**, the underlying claim of the Applicant already stands extinguished by Order dated 10.12.2025. **Secondly**, the Applicant is attempting to invoke the same unadmitted liability simultaneously under Section 17-A EPF Act against the Liquidator and under Section 17-B EPF Act against the Respondent, which is impermissible. Section 17-B of the EPF Act **does not apply** to the Respondent, as the acquisition of the Corporate Debtor was executed under the

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provisions of the IBC and not as a simple private sale under the EPF Act. The Respondent is governed by the IBC, and more importantly by **Section 238 of the IBC**, which provides that the provisions of the IBC shall have effect notwithstanding anything inconsistent contained in any other law. The principle that '**what cannot be done directly cannot be permitted to be done indirectly**' squarely applies to the present facts.

### **Judicial Precedents Relied Upon**

- 5.8 The Hon'ble Supreme Court in ***Vaibhav Goel & Anr. v. Deputy Commissioner of Income Tax & Anr.*** [Civil Appeal No. 49 of 2022, (2025 INSC 375)] has upheld the clean slate principle and held that no action can be taken on pre-CIRP dues which do not form part of the CIRP. \The Hon'ble NCLAT in ***Employees' Provident Fund Organisation v. Rachna Jhunjunwala, Chairperson of the Monitoring Committee of Power Max (India) Pvt. Ltd.*** [Company Appeal (AT)(Ins.) No. 1412 of 2024] held that in the absence of final adjudication of interest under Section 7Q and damages under Section 14B of the EPF Act prior to the insolvency commencement date, such claims remained uncrystallised and could not be enforced or provided for in the resolution plan. The moratorium under Section 14 IBC barred continuation or initiation of assessment proceedings during CIRP. *The pendency of an appeal before the Supreme Court does not bar the application of the ratio of the NCLAT judgment unless the Supreme Court has stayed or set aside the same.*

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5.9 In light of the above, the Respondent respectfully submits that no case is made out by the Applicant to be impleaded in the main IA, let alone for acceptance of the Section 17-B notice. The present IA is legally untenable, contrary to the statutory framework and intent of the IBC, and is liable to be rejected.

### **ANALYSIS AND FINDINGS**

6. We have carefully heard the learned counsel for both the parties and the Liquidator-in-Person, perused the pleadings on record, the documents annexed, and the judicial precedents cited at the Bar. The following questions fall for our consideration:

**Question 1:** What is the effect of this Tribunal's prior Order dated 10.12.2025 in I.A. No. 219 of 2025 on the present proceedings?

**Question 2:** Whether EPFO is a necessary party to I.A. No. 449 of 2025 and ought to be impleaded therein?

#### **Finding on Question 1:**

7. Before proceeding to analyse the substantive legal questions raised by both parties, this Tribunal considers it imperative to address the effect of this Tribunal's own final Order dated **10.12.2025** passed in **I.A. No. 219 (MP) of 2025**, which directly adjudicated the very claim of the Applicant-EPFO for Rs. 44,10,204/-.

8. It is an admitted and undisputed fact on record that the Applicant – EPFO – filed a claim for PF dues of **Rs. 44,10,204/-** for the period **May 1996 to November 2024** with the Liquidator on 14.11.2024. The Liquidator rejected the same on 25.11.2024 as time-barred, procedurally deficient and based on a post-

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Liquidation Commencement Date assessment. Aggrieved, the Applicant filed I.A. No. 219 of 2025 before this very Tribunal, which was heard and decided by this Tribunal vide **final Order dated 10.12.2025**. This Tribunal in the said order held that the claim was **inadmissible and cannot be entertained**, specifically finding that:

(i) *the liquidation process had been conclusively completed and the liquidation bank account closed; (ii) the sale proceeds from the going concern sale had been duly distributed; (iii) permitting belated claims would undermine the finality and sanctity of the insolvency resolution process; and (iv) the assessment on which the claim was based was initiated post-Liquidation Commencement Date and was therefore impermissible under Section 33(5) of the IBC.*

9. The present application for impleadment in I.A. No. 449 of 2025 is based on the very same claim of Rs. 44,10,204/-. An application for impleadment in proceedings that seek, inter alia, a declaration extinguishing the very same EPFO dues — when those dues have already been held inadmissible — would serve no productive legal purpose.
10. We are conscious of the Applicant's argument that PF dues occupy a special status under the IBC by virtue of Section 36(4)(a)(iii) and the Explanation to Section 18, and that they cannot be extinguished through insolvency proceedings. We have carefully considered the authoritative judgments cited by the Applicant — namely, **Moser Baer Karamchari Union, Fanendra Harakchand Munot, Sikander Singh Jamuwal, and Dalmia Cement (Bharat) Limited v. EPFO**. There is no quarrel with the

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general legal proposition that PF dues represent statutory trust monies belonging to employees and are, as a matter of substantive law, not amenable to extinguishment through a resolution plan. However, the application of this salutary principle is subject to a critical prerequisite: the EPFO must participate in the insolvency/liquidation process within the prescribed timelines and in the prescribed manner to protect its rights and those of the workmen.

11. In the present case, the EPFO admittedly did not file its claim during the CIRP or within the liquidation timelines. The claim for Rs. 44,10,204/- was filed **post the Liquidation Commencement Date** and was based on an assessment initiated after that date — a course of action expressly impermissible under Section 33(5) of the IBC, which bars institution of suits or the continuation of pending suits or proceedings against the Corporate Debtor after the liquidation order. This Tribunal, in its Order dated 10.12.2025, has already applied the law to these specific facts and found the claim inadmissible.
12. We find force in the Respondent's submission that **'what cannot be done directly cannot be permitted to be done indirectly.'** The Applicant's claim having been directly rejected by this Tribunal, attempting to revive the same liability through impleadment in a parallel proceeding and pressing the Section 17-B notice against the Auction Purchaser — for the same amount, for the same period is impermissible. The main IA (I.A. No. 449 of 2025) contains, as the only relief concerning EPFO, a prayer to the effect that old dues before the Sale Deed stand extinguished in light of the clean slate principle. Since this Tribunal has already held the EPFO's claim inadmissible, the said prayer is effectively

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infructuous vis-à-vis the EPFO, and there is no live controversy that necessitates the EPFO's presence as a party.

**Finding on Questions 2:**

13. In our findings view, for a party to be impleaded as a necessary party, its presence must be **indispensable** for a complete and effective adjudication of the controversy in the litigation, and the orders passed must directly and necessarily affect its rights. Given that: (i) the EPFO's claim stands unenforceable by Order dated 10.12.2025 in I.A. No. 219 of 2025; (ii) no claim or right of the EPFO survives against the Corporate Debtor or the Respondent in the present proceedings; and (iii) there is no relief pending in I.A. No. 449 of 2025 that requires the EPFO's participation for it to be effectively adjudicated, it follows that the EPFO is **not a necessary party** within the meaning of the applicable procedural law and the principles governing impleadment.
14. In view of the foregoing discussion and findings, the I.A. No. 02 of 2026, being the application filed by the Employees' Provident Fund Organisation seeking impleadment as a necessary party in I.A. No. 449 of 2025, is hereby **DISMISSED AND DISPOSED OF.**

Sd/-

Sd/-

**MAN MOHAN GUPTA**  
**MEMBER (TECHNICAL)**  
Chandni -LRA

**BRAJENDRA MANI TRIPATHI**  
**MEMBER (JUDICIAL)**