NEWSLETTER

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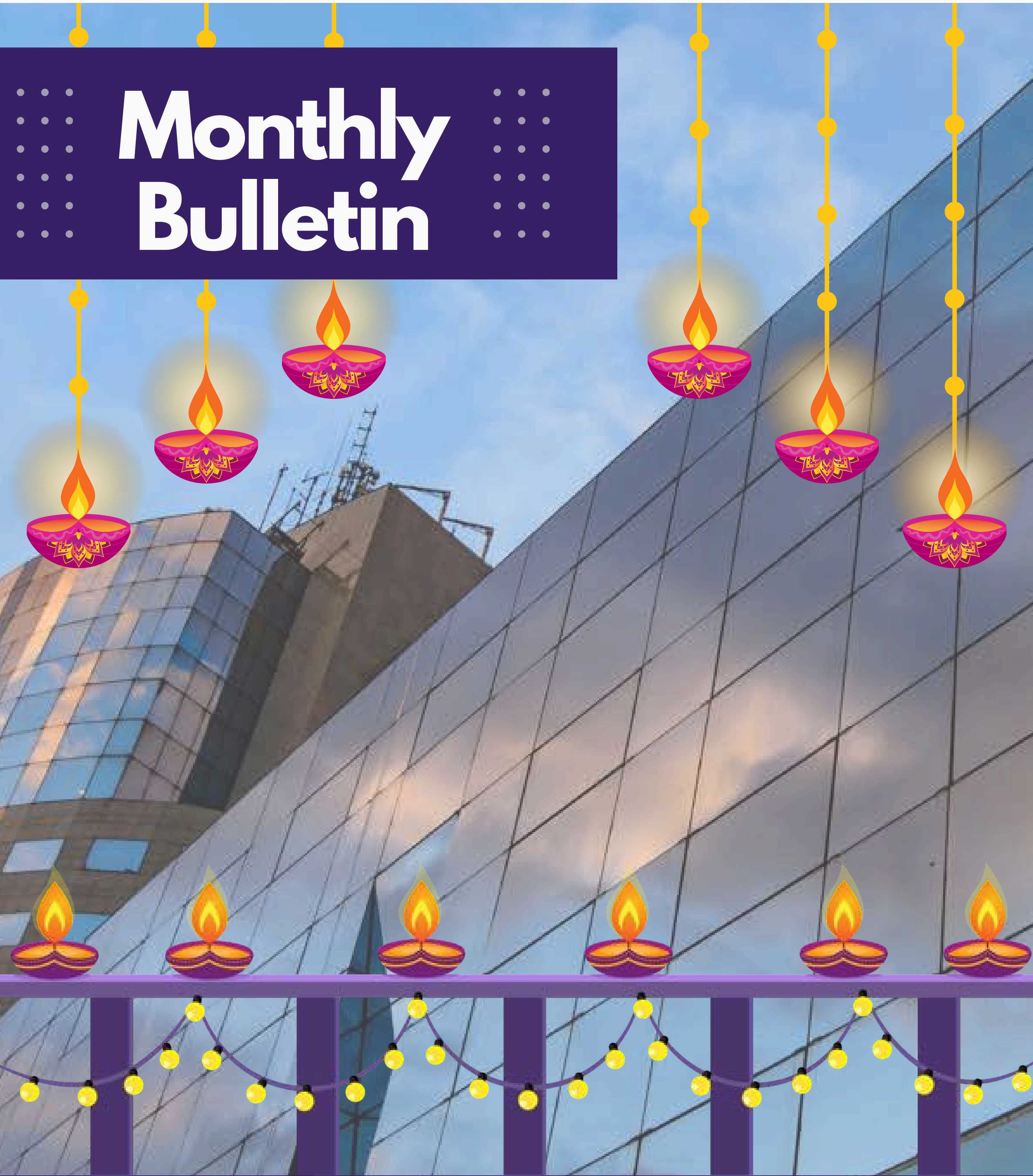

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DOING BUSINESS IN INDIA

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The book intends to give the readers an overview of the various aspects of doing business in India including but not limited to the applicable legislations, compliances and processes.

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FEATURED ARTICLE

Reaffirming Pension Equity for Exempted Establishments: The Madras High Court's Landmark Judgment in D. Chandirasegar & Ors. v. Union of India & Ors.

Written By
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INTRODUCTION

In a significant pronouncement dated 2 September 2025, the Madurai Bench of the Madras High Court in D. Chandirasegar & Others v. Union of India & Others [1]delivered a crucial verdict that redefined the contours of pension equity for employees of exempted establishments under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (**"EPF Act"**).

The judgment addressed six writ petitions filed by eighty-six retired employees of Bharat Heavy Electricals Limited (**BHEL**), Trichy, seeking to quash the Employees' Provident Fund Organisation ("EPFO") circular dated 18 January 2025 and its consequential rejection orders dated 6 February 2025, which had denied them the option of receiving a higher pension under the Employees' Pension Scheme, 1995 ("EPS").

The ruling holds deep implications for thousands of employees across India working in public and private sector establishments operating under exempted provident fund trusts, particularly following the Supreme Court's landmark rulings in *R.C. Gupta Vs. Regional Provident Fund Commissioner[2] and Employees' Provident Fund Organisation and another Vs. Sunil Kumar B and Others[3].*

BACKGROUND AND LEGAL FRAMEWORK

BHEL, being an "exempted establishment" *under Section 17*[4]of the EPF Act, manages its own provident fund through a private trust approved by the EPFO. This exemption, however, applies only to the Employees' Provident Fund Scheme, 1952 ("EPF Scheme") and not to the EPS, which continues to govern all employees, exempted or otherwise, unless a separate exemption has been granted.

The pension entitlement issue gained prominence after the introduction of **Paragraph 26(6)**[5] of the EPF Scheme and the proviso to Paragraph 11(3) of EPS 95, which permitted employers and employees to contribute based on "actual wages" instead of the statutory ceiling (INR15,000).

In R.C. Gupta, the Supreme Court clarified that there was no cut-off date for exercising this option, holding that where contributions were already made on actual wages, diverting the pension portion (8.33%) was merely an accounting adjustment. Later, in Sunil Kumar B, the Court read down restrictive provisions of the 2014 amendment and allowed eligible employees, including those from exempted establishments, to exercise the joint option within a four-month window, which was later extended by the EPFO up to 31 January 2025.

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Against this backdrop, BHEL retirees who had contributed on actual wages sought to avail of higher pension benefits by filing their joint options within the extended timeline. The EPFO, however, rejected their applications citing two reasons:

(i) Rule 11(b) of BHEL's Provident Fund Trust Rules, limiting employer contributions to wages of INR 15,000 per month; and
(ii) the EPFO circular dated 18 January 2025, which stated that eligibility for higher pension in exempted establishments must align with their trust rules. The petitioners challenged these rejections, arguing that trust rules cannot override statutory entitlements under the EPS.

CORE LEGAL ISSUES

The case presented three fundamental legal questions:

1. Can the trust rules of an exempted establishment restrict employees' rights under a statutory pension scheme?
2. Are employees who retired after 1 September 2014 but before the Supreme Court's Sunil Kumar B decision still eligible to exercise the joint option?
3. Is the EPFO circular dated 18 January 2025, which ties pension eligibility to trust rules, legally sustainable?

COURT'S ANALYSIS AND FINDINGS

The High Court undertook a meticulous examination of the statutory scheme and its interplay with trust regulations. It observed that Section 17 exemption applies only to the EPF Scheme, not to the EPS. Therefore, BHEL's trust rules govern provident fund contributions but do not extend to pension entitlements, which are regulated solely by the statutory EPS.

Relying on Paragraph 39 of the EPS, the Court noted that an exemption from the pension scheme requires a separate notification, which BHEL never obtained. Accordingly, the EPS overrides any conflicting provisions in the trust rules.

The Court placed significant reliance on Condition No. 10 of Appendix "A" to Paragraph 27-AA of the EPF Scheme, which mandates that any beneficial statutory amendment "shall be made applicable automatically pending formal amendment of the Trust Rules." Hence, beneficial provisions like Paragraph 26(6) and Paragraph 11(3) extending contributions on actual wages automatically applied to BHEL employees, even if their trust rules were not updated.

In an emphatic observation, the Court declared: "The conditions imposed while granting exemption to one scheme cannot be kaleidoscope into another scheme for which no exemption has been granted under the statute."

This reasoning dismantled the EPFO's attempt to blend trust-specific restrictions into the statutory pension framework. The Court further rejected the argument that petitioners had "exited membership" or opted for a higher provident fund instead of a higher pension, recognizing that a state of legal uncertainty prevailed between 2014 and 2022 due to evolving judicial interpretations.

THE COURT'S RULING

The Madras High Court set aside the EPFO's circular dated 18 January 2025 and the rejection orders dated 6 February 2025, holding them contrary to the Supreme Court's binding directions in Sunil Kumar B. It directed that:

1. All joint option applications submitted by 31 January 2025 must be accepted.
2. Upon the deposit of the differential contribution with interest, EPFO shall compute and disburse enhanced pension based on actual salary from the month following the remittance.

IMPLICATIONS FOR EMPLOYERS AND EMPLOYEES

This decision carries profound implications for both employers and employees of exempted establishments:

1. **For Employees:** The ruling opens the door for thousands of retirees from exempted entities public or private to claim higher pensions if they have contributed on actual wages.
2. **For Employers:** Trust rules must be aligned with the statutory schemes to avoid inconsistencies and potential litigation. Employers cannot rely on unamended trust provisions to deny statutory rights.
3. **For the EPFO:** The judgment underscores the need for uniform, legally compliant circulars consistent with Supreme Court directives. Any administrative instruction that restricts statutory entitlements is ultra vires and unenforceable.

CONCLUSION

The D. Chandirasegar decision stands as a reaffirmation of pension equity and statutory supremacy. It ensures that employees of exempted establishments are not unfairly deprived of benefits available under the EPS merely due to outdated trust rules.

By rejecting the EPFO's restrictive interpretation, the Madras High Court has restored parity and reinforced the principle that statutory rights cannot be overridden by administrative circulars or contractual instruments. The judgment reaffirmed that contractual or trust-based limitations cannot dilute statutory pension entitlements, and any contrary clause is void in law.

FOOTNOTES :

[1] W.P(MD)Nos.29573 to 29578 of 2024
[2] (2018) 14 SCC 809
[3] (2023) 12 SCC 701
[4] Section 17 - Power to exempt
EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952
[5] Para 26(6)- THE EMPLOYEES' PROVIDENT FUNDS SCHEME, 1952

Unremitted TDS Amounts Deducted Prior to Liquidation deemed to be held in trust, hence excluded from liquidation estate.

Introduction

In a recent decision[1], The National Company Law Tribunal (NCLT), Bengaluru Bench, comprising Shri Sunil Kumar Aggarwal (Judicial Member) and Shri Radhakrishna Sreepada (Technical Member), has held that unremitted Tax Deducted at Source (TDS) amounts collected by a corporate debtor prior to liquidation constitute assets held in trust for the Government. Consequently, such amounts do not form part of the liquidation estate under Section 36 of the Insolvency and Bankruptcy Code, 2016 (IBC). The Tribunal further allowed the Government's delayed claim and directed the liquidator to verify and remit the unremitted TDS amounts directly to the Income Tax Department.

Brief Facts

The liquidation proceedings were initiated against Bhuvana Infra Projects Pvt. Limited **(Corporate Debtor)** on December 10, 2019. The Income Tax Department ("Department") filed its claim as an operational creditor, which was admitted. Subsequently, based on revised assessments and TRACES demands, the Department submitted an updated claim in November 2023. The liquidator, however, rejected the claim citing delay and the advanced stage of the liquidation process.

The Department submitted that the TDS deductions constitute public money held in trust for the Government and therefore are excluded from the liquidation estate. It was further submitted that the delay in filing the claim was on account of pandemic disruptions and absence of communication. Per contra, the Respondent submitted that the liquidation is at the advanced stage and belated claims can disrupt the time bound process under the IBC. It was further submitted that government does not get priority under section 53 of the IBC.

Observations of the Court

The Tribunal drew a distinction between the TDS liabilities arising before the liquidation and those arising during the liquidation. It held that *"Section 36(4)(a)(i) of the IBC expressly excludes from the liquidation estate 'assets held in trust for any third party.' Where unremitted TDS amounts are deducted prior to liquidation, the company acts as a trustee for the Government and not as beneficial owner of those funds."* Relying on the *Official Liquidator, High Court, Madras v. N. Chandranarayanan[2]*, the Tribunal further held that property held in fiduciary capacity does not constitute assets of the corporate debtor and therefore must be dealt with separately.

However, the Tribunal clarified that *"For any other tax/government dues or for additional liabilities relating to periods after commencement of liquidation, no deviation can be allowed from the priorities and distribution prescribed under Section 53 of the IBC."* Accordingly, the liquidator was directed to consider the updated claim of the department and remit the TDS amounts deducted not remitted before the liquidation.

Conclusion

The ruling reinforces that unremitted TDS amounts deducted before liquidation are trust monies belonging to the Government and hence excluded from the liquidation estate. By distinguishing these from ordinary tax liabilities, the Tribunal reaffirmed that funds held in a fiduciary capacity cannot be subjected to distribution under Section 53 of the IBC. This decision offers clarity on the treatment of statutory trust obligations in liquidation proceedings and underscores the need for liquidators to treat such government dues distinctly while adhering to the IBC's structured and time-bound framework.

FOOTNOTES :

[1] C.P.(IB) No.122/BB/2017
[2] 1972 SCC Online Mad 158

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1. SEBI Framework for Co-Investment Facilities under AIF Regulations

Securities and Exchange Board of India **('SEBI')** has released a framework for Category I and II Alternative Investment Funds (AIFs) to offer co-investment facilities to accredited investors through a separate Co-Investment Vehicle (CIV) scheme under the SEBI (AIF) Regulations, 2012. Managers may facilitate co-investment either through the existing PMS route or the new CIV scheme, which will have separate bank and demat accounts with ring-fenced assets. Investor co-investments in an investee company across CIV schemes are capped at three times their contribution in the AIF scheme, except for specified government and multilateral entities. CIV schemes cannot borrow or use leverage, and expenses will be shared proportionately with the AIF scheme. Investors will have pro-rata rights in investments and proceeds, subject to carried interest. Implementation standards will be framed by the Standard Setting Forum of AIFs in consultation with SEBI. Compliance will be monitored through the Compliance Test Report under the Master Circular for AIFs. The circular is effective immediately.

2. SEBI Revised Disclosure Document Format for Portfolio Managers

SEBI has released a circular prescribing a revised and simplified format of the 'Disclosure Document' for Portfolio Managers under the SEBI (Portfolio Managers) Regulations, 2020. The new format, provided in Annexure I, is divided into static and dynamic sections. Portfolio Managers must certify only the updated pages, highlight changes to clients, and submit the revised pages to SEBI within seven working days, while also updating their website. The provisions are effective immediately.

3. SEBI Amendments to Delisting of Equity Shares Regulations – Special Provisions for PSUs

SEBI issued amendments to the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021, which have come into effect 3 September 2025. A key amendment to the Regulations, it includes the insertion of a new Part F – Special Provisions for Delisting of Public Sector Undertakings (PSUs), excluding banks, Non-Banking Financial Companies (NBFCs), and insurers. These provisions are specifically designed to facilitate the delisting process for eligible PSUs. Under the revised framework, the acquirer or related PSUs must hold at least 90% of the equity shares of the concerned class to initiate delisting. The delisting must be carried out through a fixed price mechanism, with the offer price being at least 15% above the determined floor price to ensure fair compensation for remaining shareholders. Additionally, in cases where the PSU undergoes a voluntary strike-off within the prescribed period, any unclaimed proceeds belonging to dissenting shareholders are to be credited to a designated account or the Investor Education and Protection Fund (IEPF), to enable future recovery by entitled shareholders.

4. IFSCA Payments Regulatory Board Regulations, 2025

IFSCA issued IFSCA (Payments Regulatory Board) Regulations, 2025 to establish a regulatory framework for the Payments Regulatory Board within the IFSCA to ensure effective oversight, governance, and supervision of payment and settlement systems in International Financial Services Centres (IFSCs). The regulations define the Board's composition, powers, procedures, ethical standards, and enable the smooth functioning of the digital payment ecosystem in line with international best practices.

5. IFSCA Clarification on Listing of Convertible Debt Securities in IFSC

IFSCA issued a circular to provide a clarification on the listing of convertible debt securities on recognised stock exchanges in the IFSC. IFSCA clarified that the procedure, manner, and conditions specified for the listing of debt securities in the Listing Regulations shall mutatis mutandis apply to convertible debt securities which are in the nature of foreign currency convertible bonds (FCCBs) or similar instruments, until their conversion, for the purpose of listing on recognised stock exchanges in the IFSC.

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WORLD MENTAL HEALTH DAY

World Mental Health Day was observed on 10 October 2025, marking a vital moment to reflect on the importance of mental well-being, particularly in times of crisis. The global theme this year was "Access to Services – Mental Health in Catastrophes and Emergencies" which focused on supporting individuals and communities affected by natural disasters, conflict, and other humanitarian emergencies.

This observance reminded us that there is no health without mental health. In the wake of emergencies, one in five people experiences a mental health condition. Emotional distress during such events can be overwhelming, and access to timely, compassionate, and effective support can be life saving. This year's campaign emphasized the need to strengthen mental health services not just for those directly impacted, but also for frontline workers and support providers who serve under extreme stress.

Around the world, including at organizations, the United Nations, October saw events, campaigns, and conversations aimed at promoting psychological resilience, challenging stigma, and advocating for equitable access to mental health care.

World Mental Health Day 2025 called on all of us, governments, institutions, communities, and workplaces to act with empathy, invest in support systems, and recognize mental health as a universal human right. As we reflect on the day, we are reminded that mental well-being must be a collective priority, especially in moments of adversity.

Notable Recognitions & Accolades

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