

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1691 of 2024

[Arising out of the Impugned Order dated 03.07.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench, Court-V in I.A. No. 2475/2023 in C.P. (IB) No. 2520/MB/V/2018]

In the matter of:

Mr. Harry Dhaul

Successful Resolution Applicant of the
Corporate Debtor
Flat No 4A, Amayand Regency,
No 9 Race Course Road,
Bangalore-560001
Mobile: 9811115171
Email ID: harrydhaul@gmail.com

...Appellant

Versus

Regional Provident Fund Commissioner — II,

Regional Office, Delhi (Central).
Employees Provident Fund Organisation
Bhavishya Nidhi Bhawan, Regional Office,
Delhi (Central), 28 — Wazirpur Industrial Area,
Delhi — 110052
Mobile: 01127376776
Email ID: ro.delhicentral@epfindia.gov.in

.... Respondent

Present:

For Appellant : Mr. Sanjay Ghose, Sr. Adv. with Mr. Pratibhanu Kharola,
Mr. Anindya Mazumdar, Mr. Girish Agarwal, Mr Mohit
Garg, Ms. Ankita, Advocates.
For Respondent : Mr. Gaurav Varma, Advocate.

WITH

Company Appeal (AT) (Insolvency) No. 1752 of 2024

[Arising out of the Impugned Order dated 03.07.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench, Court-V in I.A. No.2475/MB/V/2023 in C.P. (IB) No. 2520/MB/V/2018]

In the matter of:

**REGIONAL PROVIDENT FUND COMMISSIONER
REGIONAL OFFICE, DELHI (CENTRAL)**

EMPLOYEES PROVIDENT FUND ORGANISATION
BHAVISHYA NIDHI BHAVAN, REGIONAL OFFICE,
DELHI (CENTRAL), 28-WAXIRPUR INDUSTRIAL AREA,
DELHI-110052
EMAIL-rodcllegal@epfindia.gov.in

...Appellant

Versus

1. HARRY DHAUL

SUCCESSFUL RESOLUTION APPLICANT
FLAT NO. 4A, AMAYAND REGENCY
NO.9, RACE COURSE ROAD,
BANGLORE-560001
EMAIL- globalenergy@gmail.com

**2. MONITORING COMMITTEE OF
GLOBAL ENERGY PRIVATE LIMITED,**

THROUGH CHAIRPERSON,
207 GERA IMPERIUM II PATTO PLAZA,
PANJIM, GOA, INDIA-403001
EMAIL- rpal@psri.in

.... Respondents

Present:

For Appellant : Mr. Gaurav Varma, Advocate.

For Respondent : Mr. Sanjay Ghose, Sr. Adv. with Mr. Pratibhanu Kharola,
Mr. Anindya Mazumdar, Mr. Girish Agarwal, Mr Mohit
Garg, Ms. Ankita, Advocates.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present two Appeals have been filed against the same impugned dated 03.07.2024 which has been passed by the Adjudicating Authority (National Company Law Tribunal, Court-IV, Mumbai Bench) in I.A No. 2475 of 2023 in CP(IB) No. 2520/MB/V/2018. By the impugned order, the

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Adjudicating Authority has approved the Resolution Plan of the Corporate Debtor. Aggrieved by the impugned order on the terms of payment of EPFO dues by the Successful Resolution Applicant, cross appeals have been filed by the Successful Resolution Applicant and the Employees Provident Fund Organisation.

2. Coming to the factual matrix of the matter which needs to be noticed for consideration of the two Appeals, we find that the Corporate Debtor-Global Energy Pvt. Ltd. was admitted into Corporate Insolvency Resolution Process (“**CIRP**” in short) on 02.12.2019. Moratorium came into effect from the same date i.e. 02.12.2019 with the commencement of CIRP. A public announcement was made on 09.06.2022 inviting claims from creditors of the Corporate Debtor by 22.06.2022. No claims were filed by Employees Provident Fund Organisation (“**EPFO**” in short) within the stipulated time-line of 22.06.2022. Request for resolution plan was issued by the Resolution Professional (“**RP**” in short) on 14.10.2022. The EPFO submitted its claim for the first time on 06.03.2023 based on the Area Enforcement Officer’s Report (“**AEOR**” in short) for an amount of Rs 1,33,19,135/- with the RP. The claim filed by the EPFO in Form-F was rejected by the RP on 09.03.2023. The CoC approved the resolution plan of the Successful Resolution Applicant (“**SRA**” in short) on 23.03.2023. After a lapse of two months, the EPFO filed I.A No. 2332 of 2023 on 23.05.2023 before the Adjudicating Authority challenging the rejection of their claim by the RP. On 08.02.2024 the Adjudicating Authority disposed of I.A No. 2332 of 2023 by directing the RP to consider and verify the claim of EPFO as per law. When the verification of the claims of the EPFO was

underway, the SRA submitted an affidavit on 14.02.2024 before the Adjudicating Authority undertaking to pay principal amount of Rs 77,67,128/- of the EPFO dues in three instalments. By a subsequent affidavit dated 28.06.2024, the SRA again undertook to pay principal amount within 180th day from handover of company besides paying Rs 55,52,007/- being tentative dues claimed by EPFO under Sections 14B and 7Q of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 ("**EPF Act**" in short) in accordance with judgment of this Tribunal in ***Regional Provident Fund Commissioner, Jamshedpur Vs Mamta Binani in CA(AT)/(Ins) No. 245 of 2022*** and subject to the statutory right of appeal available to the Corporate Debtor to challenge the claims made by the EPFO. The RP filed I.A. No. 2475 of 2023 before the Adjudicating Authority seeking approval of resolution plan of SRA. The resolution plan of the SRA indicating above modalities of payment of the claims of EPFO was approved by the Adjudicating Authority on 03.07.2024. Aggrieved by the impugned order, the SRA as well as the EPFO have come up in appeal.

3. The grounds on which the appeals have been preferred by the SRA and EPFO are as captured in the succeeding paragraphs alongwith the prayers of relief sought by both.

4. Assailing the impugned order, the SRA has filed Company Appeal No. 1691 of 2024 on the ground that the Adjudicating Authority has overstepped its jurisdiction and wrongly admitted the belated and untenable claims of the EPFO. It was submitted by the Learned Counsel representing the SRA that the claim of EPFO arose from an assessment process which

commenced on 06.02.2023 and culminated on 01.03.2023 based on AEOR. This assessment process was invalid as it was initiated much after the imposition of moratorium on 02.12.2019 and therefore the claim arising from these assessment proceedings was not tenable. In support of their contention, reliance was placed on the judgment of this Tribunal in ***Employees' Provident Fund Organisation Vs Jaykumar Pesumal Arlani in CA(AT)/(Ins) No. 1062 of 2024*** wherein it had been held that no assessment proceedings can be continued after initiation of moratorium and that claim based on assessment carried out during moratorium period cannot be pressed in the CIRP.

5. Furthermore, contention was raised that the findings in the AEOR did not co-relate to identified employees to whom the claims of EPFO could be distributed besides being based on a non-existent establishment of the Corporate Debtor. In the absence of determinate beneficiaries, the assessment of AEOR was incapable of enforcement. In support of their contention, reliance was placed on the judgement of the Hon'ble Supreme Court in ***Himachal Pradesh State Forest Corporation Vs Regional Provident Fund Commissioner (2008) 5 SCC 756***; judgment of Hon'ble High Court of Patna in ***Assistant Provident Fund Commissioner Vs M/s Nand Lal & Company 2016 SCC Online Pat 2402***; and judgment of the Hon'ble High Court of Delhi in ***Central Board of Trustees (EPFO) Vs Era Infra Engineering Ltd. 2022 SCC Online Del 1643*** wherein it has been held that provident fund dues are to be determined with respect to identified employees whose entitlement can be proved on the basis of records.

6. While admitting that the Appellant-SRA had given an affidavit undertaking to pay the principal claim under Section 7A and “tentative dues” under Sections 14B and 7Q, it was submitted that the undertaking had been given because of misrepresentation made before the Adjudicating Authority by the EPFO that a Section 7A adjudication had been carried out by the competent authority while in reality no such Section 7A adjudication order was in existence. Induced by this misrepresentation on the part of EPFO, the SRA had furnished their affidavit. Hence, this undertaking to pay both the principal claim and uncrystallised claim of EPFO under Sections 14B and 7Q ought not to be enforced. The AEOR stood interdicted by the ongoing moratorium and this coupled with the fact that the procedure adopted was ultra vires of the EPF Act for not bearing any nexus with identified beneficiaries, these inherently irregular claims could not be seen to have been validated by acquiescence on the part of the SRA in their affidavit, which in any case had been induced by misrepresentation on the part of the EPFO.

7. Advancing further grounds for feeling aggrieved, it was also submitted that the claim of EPFO came to be admitted after the approval of the resolution plan by the CoC. It was pointed out that once the resolution plan was approved by the CoC, the plan could have been either approved or rejected by the Adjudicating Authority but no alteration or modification of the plan by the Adjudicating Authority was permissible as this was violative of the well settled legal precept of the supremacy of the commercial wisdom of the CoC and fell beyond the scope of IBC.

8. At this juncture, it would be appropriate to notice the reliefs prayed for by the SRA. The prayers made by the SRA in their Appeal Petition in Company Appeal No. 1691 of 2024 reads as under:

21. In view of the facts mentioned in para 7 above, points in dispute and question of law set out in para 8 above, the appellant prays for the following relief(s):

i. Admit the present appeal;

ii. Partially set aside the Impugned Order dated 03.07.2024 in IA. No. 2475/2023 in C.P. (TB) No. 2520/MBN/2018 passed by the Adjudicating Authority, to the tune of the admitted claims of Respondent No. 2, an extract of the same is reproduced verbatim herein:

II. Payment to the Operational Creditors:

iii. Secondly payment towards the EPFO dues, in case of insufficiency of the funds, then the shortfall shall be met by the Resolution Applicant as part of the funds.

22. It is to be noted that IA 2332 of 2023 was filed by the Regional Provident Fund Commissioner-II, Regional Office, Delhi (Central) seeking direction against the Resolution Professional/Respondent to consider the claim of Rs.1,33,19,135/- including the principal claim of Rs. 77,67,128/- and damages & interest amounting Rs. 55,52,007/- of the Employees Provident Fund Organization. The said claim was submitted before the approval of the Resolution Plan and the Successful Resolution applicant vide an additional affidavit dated 28.06.2024 has taken upon himself to pay the said claim within 180 days from the handover of the management of Company to the SRA. The relevant portion of the affidavit is reproduced here under:

"3. I acknowledge and undertake to pay the principal amount Rs.77,67,128/- (Rupees Seventy-Seven Lakhs Sixty-Seven Thousand One Hundred and Twenty-Eight Only) on or before the 180th day from the handover of the company.

4. With respect to the remaining amount of Rs. 55,52,007/- being the tentative dues claimed by the EPFO under Section 14B and 7Q of the Employees' Provident Funds & Miscellaneous Provisions Act 1952, the same shall be paid in accordance with the judgment of the Hon'ble NCLAT in the case of Regional Provident Fund Commissioner, EPFO Regional Office, Jamshedpur v. Mamta Binani Company Appeal (AT) (Ins) No. 245 of 2022.

5. All payments shall be subject to the statutory right of appeal available to the Corporate Debtor to challenge the claims being made by the EPFO. In the event the appellate and revisional authorities (including the High Court & the Supreme Court of India) uphold the demand of EPFO, the Successful Resolution Applicant shall be bound to, and undertakes to, make full and complete payment of the adjudicated amount without protest or demur within 30 days of the exhaustion of legal remedies. Any further claims filed by any employee or Provident Fund Department shall stand extinguished and I shall not be liable to pay any further amounts."

iv. Ad-interim stay in the operations of Impugned Order only to the extent of direction of payment of sums 1,33,19,135/- submitted by the EPFO, till final adjudication of this Appeal;

v. Cost of and incidental to this Appeal be cost in the cause; and

vi. Pass any other further order as this Appellate Tribunal may deem appropriate in the facts and circumstances of the instant case.

9. Next, we come to Company Appeal No. 1752 of 2024 filed by EPFO. The Learned Counsel representing EPFO asserted that the EPFO was entitled to seek payment of both the principal claim of Rs 77,67,128/- as also interest and damages of Rs 55,52,007/- under the EPF Act. Buttressing his arguments, it was submitted that the decision of the Adjudicating Authority directing RP to consider the claim filed by EPFO did not suffer from any infirmity since the resolution plan was not yet approved by the CoC. While the EPFO had submitted their claim on 06.03.2023, the CoC had approved the plan on 23.03.2023. Since the entire EPFO claim of Rs 1,33,19,135/- was depicted as "Amount of claims not admitted" by the RP, the EPFO had rightly contested the rejection of their claim. The order of the Adjudicating Authority dated 08.02.2024 after noting that the "Counsel for Resolution Professional states at bar that the claim was submitted prior to the approval of the Resolution

Plan by the CoC” correctly directed the RP to consider and verify the claims of EPFO.

10. In pursuance of the order of the Adjudicating Authority dated 08.02.2024, the claim of EPFO was admitted by the RP. The updated claim of EPFO was thereafter uploaded and reflected on the CIRP website under the caption “*Amount of claim admitted*” as may be seen at page 233 of the Reply of SRA in Company Appeal No. 1752 of 2024. It was therefore contended that when the claim has been admitted by the RP, the SRA cannot resile from making good these payments qua the admitted claims of EPFO and that too when they had submitted an affidavit wherein the SRA had given an undertaking to pay the EPFO claims. It was also asserted that the allegation made by the SRA that EPFO had made a misrepresentation before the Adjudicating Authority that the claim of EPFO was based on Section 7A order is baseless.

11. Assertion was also made that not only did the RP admit the claim of EPFO in pursuance of the directions of the Adjudicating Authority dated 08.02.2024 but that the SRA had given three affidavits dated 14.02.2024, 27.06.2024 and 28.06.2024 giving an undertaking to pay the claims of the EPFO. The present appeal filed by the SRA challenging the admission of the claims of EPFO is therefore an indirect attempt to challenge the order of the Adjudicating Authority dated 08.02.2024 which the SRA had not challenged. The SRA was now trying to wriggle out of its liability to pay the EPFO claim despite their undertaking to pay on affidavit. This reflects the ulterior and dishonest motive of the SRA of cleverly obtaining the approval of the

Adjudicating Authority to their resolution plan by giving an undertaking to meet the EPFO claim and thereafter go back on their commitment once the plan was approved.

12. Pinpointing their grievance with the impugned order, it was submitted that the Adjudicating Authority while approving the resolution plan had erroneously allowed the SRA to treat the amount of Rs 55,52,007/- under Section 14B and 7Q of the EPF Act as “tentative dues” to be payable in accordance with the ***Mamta Binani judgment*** of this Tribunal. It was strenuously contended that ***Mamta Binani judgment*** was inapplicable to facts of this case and the ratio not being universally applicable, it could have been relied upon by the Adjudicating Authority. The Adjudicating Authority could not have passed the resolution plan providing for partial payment of the EPFO claims as it was violative of settled law that PF dues are to be paid in priority.

13. We next note the prayers of the EPFO in their Appeal Petition in Company Appeal No. 1752 of 2024 which reads as under:

- a) *Pass an order setting aside the Order dated 03.07.2024 passed in I.A. No. 2475/MBN/2023 in C.P. (IB) No. 2520/ MB/ V/ 2018 by the National Company Law Tribunal, Mumbai; and*
- b) *Pass such order/further order(s) or direction as this Hon’ble Tribunal may deem fit and proper.*

14. We have exhaustively heard and considered the arguments advanced by the Learned Counsel for the parties in support of their respective appeals and perused the records carefully.

15. Recapitulating the facts of the present case, it is indisputable that moratorium had come into play with effect from 02.12.2019. The last date for

filing claims by the creditors was 22.06.2022. Nothing has been placed on record to show that claims were filed by EPFO on or by 22.06.2022. The claim was submitted by the EPFO on 06.03.2023 which date was however before the approval of the resolution plan by the CoC. It is also pertinent to note that the EPFO claim was premised on the AEOR report and it is admitted by the EPFO that the AEOR report was distinct from Section 7A order. It has also not been denied by the EPFO that the AEOR report was arrived at during moratorium period.

16. Having noted the above facts, we now would like to dwell upon the tenability of claims of EPFO. To arrive at our view, we need to first consider whether assessment proceedings could have been conducted by the EPFO under Sections 7A, 7Q and 14B of the EPF Act after imposition of moratorium under Section 14 of IBC and whether any claim on the basis of such assessment carried out by EPFO during moratorium could have been admitted by the Adjudicating Authority.

17. We are squarely guided by the precedent laid down by this Tribunal in **CA Pankaj Shah Vs Employee Provident Fund Organisation & Anr. in CA (AT) (Ins) No. 17 of 2025** where this issue of whether assessment proceedings can be continued by EPFO after initiation of moratorium under Section 14(1) of IBC has been considered at length after relying on the judgment of the Hon'ble Supreme Court in **Rajendra K. Bhutta Vs Maharashtra Housing and Area Development Authority (2020) 13 SCC 208**.

18. The relevant excerpts of the said judgment are as extracted hereunder:

“7. The demand made by the EPFO on the basis of inspection dated 10.05.2023 is clearly demand from the Corporate Debtor after

commencement of the Moratorium. Similarly, revised claim submitted on 26.09.2023 on the basis of orders passed on 25.09.2023 where demand in pursuance of subsequent to Moratorium. This Tribunal has occasion to examine the consequences of Moratorium on assessment made by EPFO in Company Appeal (AT) (Insolvency) No.1062 of 2024- “Employees’ Provident Fund Organisation Regional Office vs. Jaykumar Persumal Arlani, Resolution Professional of Ms/. Decent Laminates Pvt. Ltd.” with Company Appeal (AT) (Insolvency) No. 1065 of 2024- - “Employees’ Provident Fund Organisation Regional Office vs. Sanjay Kumar Lalit, Resolution Professional of Apollo Soyuz Electricals P. Ltd. & Anr.” decided on 03.01.2025. In the above case also, after commencement of the CIRP, EPFO initiated proceeding under Section 7A and passed an order under Section 7A, 7Q & 14B. Application was filed by EPFO before the Adjudicating Authority seeking a direction to the Resolution Professional to admit the claim which claim to be rejected. This Tribunal in the above case, examined the consequence of Moratorium and held that the assessment proceeding cannot be continued after initiation of CIRP. This Tribunal in the above judgment had framed questions in paragraph 9 which are as follows:-

“9. From the submissions of learned Counsel for the parties, following issues arise for consideration:

(1) Whether after imposition of moratorium under Section 14 of the IBC, assessment proceedings can be carried on by the EPFO under Section 7A, 14B and 7Q of the EPF & MP Act, 1952.

(2) Whether any claim on the basis of assessment, subsequent to imposition of moratorium, can be admitted in the CIRP.

(3) Whether claims, which were filed by the Appellant(s), subsequent to the approval of Resolution Plan by the CoC, could have been admitted in the CIRP.”

8. While answering Question Nos.1 and 2, this Tribunal has relied on the judgment of the Hon’ble Supreme Court in **“(2020) 13 SCC 208 – Rejendra K. Bhutta vs. Maharashtra Housing and Area Development and Anr”**. In paragraphs 11, 12 & 13, following was laid down: -

“11. The Hon’ble Supreme Court had occasion to consider effect and consequence of imposition of moratorium. The Hon’ble Supreme Court in (2020) 13 SCC 208 – Rejendra K. Bhutta vs. Maharashtra Housing and Area Development and Anr. held that after the imposition of

moratorium, a statutory freeze takes place. In paragraph 25 of the judgment, following was held:

“25. There is no doubt whatsoever that important functions relating to repairs and reconstruction of dilapidated buildings are given to MHADA. Equally, there is no doubt that in a given set of circumstances, the Board may, on such terms and conditions as may be agreed upon, and with the previous approval of the Authority, hand over execution of any housing scheme under its own supervision. However, when it comes to any clash between MHADA Act and the Insolvency Code, on the plain terms of Section 238 of the Insolvency Code, the Code must prevail. This is for the very good reason that when a moratorium is spoken of by Section 14 of the Code, the idea is that, to alleviate corporate sickness, a statutory status quo is pronounced under Section 14 the moment a petition is admitted under Section 7 of the Code, so that the insolvency resolution process may proceed unhindered by any of the obstacles that would otherwise be caused and that are dealt with by Section 14. The statutory freeze that has thus been made is, unlike its predecessor in the SICA, 1985 only a limited one, which is expressly limited by Section 31(3) of the Code, to the date of admission of an insolvency petition up to the date that the adjudicating authority either allows a resolution plan to come into effect or states that the corporate debtor must go into the liquidation. For this temporary period, at least, all the things referred to under Section 14 must be strictly observed so that the corporate debtor may finally be put back on its feet albeit with a new management.”

12. In (2021) 6 SCC 258 – P. Mohanraj and Ors. Vs. Shah Brothers ISPAT Pvt. Ltd., the Hon’ble Supreme Court had occasion to interpret the expression “proceeding” in Section 14. The object and purpose of moratorium has been captured in paragraph 30 of the judgment, which is as follows:

“30. It can be seen that Para 8.11 refers to the very judgment under appeal before us, and cannot therefore be said to throw any light on the correct position in law which has only to be finally settled by this Court. However, Para 8.2 is important in that the object of a moratorium provision such as Section 14 is to see that there is no depletion of a corporate debtor's assets during the insolvency resolution process so that it can be kept running as a going concern during this time, thus maximising value for all stakeholders. The

idea is that it facilitates the continued operation of the business of the corporate debtor to allow it breathing space to organise its affairs so that a new management may ultimately take over and bring the corporate debtor out of financial sickness, thus benefitting all stakeholders, which would include workmen of the corporate debtor. Also, the judgment of this Court in Swiss Ribbons (P) Ltd. v. Union of India [Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17] states the raison d'être for Section 14 in para 28 as follows: (SCC p. 55)

“28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protect the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.”

13. The plain reading of Section 14, sub-section (1) indicates that expression ‘suits or proceedings against the corporate debtor’ has been used. The word ‘proceeding’ is not qualified, so as to confine it to proceedings before the Civil Court. The proceedings, which have the effect on the assets of the CD are all covered in the expression ‘proceeding’. The question to be answered is as to whether after moratorium has been imposed, it was open for EPFO to proceed with the assessment proceeding. Learned Counsel for the parties state that during moratorium proceeding, no recovery proceeding can be initiated against the CD. However, submissions of the learned Counsel for the Appellant is that assessment proceedings against the CD may continue. Hence, the orders of assessment passed during moratorium

period, were fully permissible and the claim on the basis of the said proceedings had to be admitted in CIRP.”

9. *After considering the submission of the parties, this Tribunal came to the conclusion that after initiation of the CIRP, assessment proceedings cannot be continued. In paragraphs 23 & 24, following was laid down:*

“23. In the present case, admittedly assessment has been completed after initiation of the moratorium. We, thus, are of the view that once order of liquidation is passed, moratorium under Section 14 comes to an end and moratorium under Section 33(5), which is differently worded, comes into play. Under Section 33(5), the expression used are “suit or other legal proceeding”, which occurs in Section 446 of sub-section (1) noticed above. Thus, bar is only against suit or legal proceeding and there is no bar against assessment proceeding to be conducted by statutory Authorities, including the EPFO. Thus, after the liquidation, it is open for EPFO to carry on the assessment. Section 33(5), cannot be held to apply on assessment proceedings. However, while looking to the expression used in Section 14(1), assessment proceedings before the EPFO, cannot be continued after initiation of CIRP.

24. In view of the aforesaid, we answer Question Nos. (1) and (2) in following manner:

(1) We hold that after initiation of moratorium under Section 14, sub-section (1), no assessment proceedings can be continued by the EPFO. If after an order of liquidation is passed, Section 33, subsection (5), does not prohibit initiation or continuation of assessment proceedings.

(2) No claim on the basis of assessment carried during the moratorium period, which is prohibited under Section 14(1) can be pressed in the CIRP.”

10. *The above judgment clearly indicates that after initiation of the CIRP, no assessment can be initiated or continued against the Corporate Debtor so as to pass any pecuniary liability on the Corporate Debtor. In the present case, the EPFO has made demand on the basis of an alleged inspection report dated 10.05.2023 and assessment order dated 25.09.2023 which both were subsequent to initiation of CIRP on 17.02.2023. When no demand can be made on the basis of any inspection or assessment, we do not find any ground to allow the application IA No.409 of 2024 which was filed by EPFO where direction was sought to allow the entire claim of Rs.1,37,17,837/-.”*

19. When we look at the above judgment, it is unequivocally clear that demand made by the EPFO on the basis of an inspection report made after initiation of moratorium is not enforceable as Section 14(1) of the IBC prohibits the initiation or continuation of assessment during the moratorium period.

20. Applying the ratio of the above judgment to the facts of the present case, even though the claim of EPFO was submitted before the approval of the CoC, this claim was not entertainable since the claim arose out of proceedings which were prohibited under Section 14(1) of IBC. The SRA has therefore successfully made out a case that the claim of EPFO is clearly unenforceable having been based on AEOR report which had commenced after initiation of moratorium. Hence the order passed by the Adjudicating Authority allowing the principal claim under Section 7A and “tentative dues” claimed by EPFO under Sections 14B and 7Q of the EPF Act cannot be sustained. Merely because the SRA had given an affidavit undertaking to pay these claims, this undertaking does not render the claim valid as it violates the law enshrined in Section 14(1) of the IBC. Any undertaking given which is repugnant to statutory provisions are invalid and therefore such undertakings are inherently unenforceable. Mere submission of an affidavit by the SRA was not sufficient to displace the statutory freeze which is placed on the conduct of assessment proceedings during moratorium. Hence the undertaking given in the affidavit being contrary to law and therefore *ab initio* invalid cannot be made enforceable by an order of the Adjudicating Authority.

21. In result, we do not find any merit in the Appeal being Company Appeal No. 1752 of 2024 filed by the EPFO and dismiss the same. We allow the Appeal being Company Appeal No. 1691 of 2024 filed by the SRA and hold that the order of the Adjudicating Authority passed in I.A. No. 2475 of 2023 at para 22 regarding the payment of claim of Rs 1,33,19,135/- of the EPFO under Sections 7A, 14B and 7Q as unsustainable and accordingly set aside the same. Company Appeal No. 1691 of 2024 is disposed of on the above terms. No costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Place: New Delhi

Date: 18.09.2025

Abdul/Harleen