NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.201

IA/448(MP)2025
in
CP(IB)/3(MP)2024

Order under Section 60(5) r.w Rule 11

IN THE MATTER OF:

Employees Provident Fund Organization **........Applicant**
V/s
Chhaya Gupta RP M/s Greater Kailash Hospitals Pvt. Ltd. **........Respondent**

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 19/08/2026

The case is fixed for pronouncement of the order.

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

Sd/-

MAN MOHAN GUPTA
MEMBER (TECHNICAL)

Sd/-

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

Tomar

THE NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH

I.A. No. 448 OF 2025

in

C.P. (IB) No. 03(MP) OF 2024

[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016]

IN THE MATTER OF:

Employees' Provident Fund Organization, Regional Office Indore

Through Regional Provident Fund Commissioner-II,

Regional Office: IDA Building, 7, Race Course Road

Indore (M.P.) - 452003

...Applicant

Versus

Chhaya Gupta

Resolution Professional, M/s Greater Kailash Hospitals Pvt. Ltd.

911, Apollo Premier, Near Vijay Nagar Square

Indore, MP-452010

...Respondent

C O R A M:

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

Shri Man Mohan Gupta, Hon'ble Member (T)

Order Pronounced on: 19/08/2026

Appearance:

For the Applicant : Ms. Darshna Baghel, Adv.

For the Respondent : Mr. Neeraj Kumar Gupta, Adv

O R D E R

1. The Applicant, Employees' Provident Fund Organization (EPFO), Regional Office, Indore, through the Regional Provident Fund Commissioner-II, has filed the present Interlocutory Application No. 448 of 2025 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, praying for the following reliefs:

   (a) Direct the Respondent to forthwith admit and accept the statutory provident fund claim dated 06.03.2025 amounting to Rs.2,15,69,819/-;

   (b) Declare that the provident fund dues amounting to Rs.2,15,69,819/- constitute a statutory first charge over the assets of the Corporate Debtor and are specifically excluded from the estate of the Corporate Debtor under

Section 36(4)(a)(iii) and Explanation (a) to Section 18(1) of the Insolvency and Bankruptcy Code, 2016;

(c) Direct the Respondent to earmark and disburse the aforesaid provident fund dues on a priority basis;

(d) Restrain the Respondent from distributing any proceeds or assets of the Corporate Debtor to other creditors or stakeholders until the statutory provident fund dues, along with interest, are fully paid and satisfied;

(e) Pass any other order(s) as this Tribunal may deem fit.

II. Submissions made by the Applicant:

2. M/s Greater Kailash Hospitals Pvt. Ltd. ("Corporate Debtor"), having its registered/operational office at 11/2 Old Palasia, Greater Kailash, Indore, is an establishment registered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("EPF Act"), bearing PF Code No. MP/IND/4296.

3. This Tribunal, vide Order dated 30.07.2024 passed in CP(IB)/03/2024, admitted the Corporate Debtor into Corporate Insolvency Resolution Process ("CIRP") and appointed Mr. Mangesh Vitthal Kekre as the Interim Resolution Professional ("IRP"). A moratorium under Section 14 of the Code came into effect from that date.

4. As per the public announcement in the CIRP, the last date for submission of claims was fixed as 15.08.2024. The Applicant filed its claim (No.525) on 14.08.2024, within time, under Sections 7Q and 14B of the EPF Act for an amount of Rs.15,18,216/- (comprising Rs.14,09,858/- towards interest under Section 7Q for the period 01.04.2019 to 31.03.2022 as per RRC No.37 dated

24.04.2023, and Rs.35,335/- towards interest under Section 7Q and Rs.73,023/- towards damages under Section 14B, both for the period 01.10.2023 to 31.07.2024, as per orders dated 14.08.2024). On being asked by the erstwhile IRP to file the claim in the prescribed format, the Applicant resubmitted the same claim of Rs.15,18,216/- in Form B vide letter No.534 dated 22.08.2024.

Demand under section 7Q

Hence you are directed to pay following amount as interest payable under Section 7Q of the EPF & MP Act, 1952.

Sr. No.	Name of Account	A/c No.	Interest u/s 7Q (Amount in Rs.)
1.	The Provider's Fund Contribution	I	23025
2.	Pension Fund Contribution	X	10863
3.	Administrative Charge towards Provident Fund	II	772
4.	Contribution towards Insurance Fund	XXI	672
5.	Administrative Charge towards Insurance Fund	XXII	0
	Total		**35335**

(RUPEES THIRTY FIVE THOUSAND THREE HUNDRED THIRTY FIVE ONLY)

5. It is relevant to note that the order dated 14.08.2024 levying damages of Rs.73,023/- under Section 14B records that the establishment's counsel, Ms. Ashi Gupta, Advocate, appeared on 12.08.2024 and submitted that the establishment had gone under CIRP and that there was a moratorium on all kinds of proceedings, the Regional Provident Fund Commissioner-II held that the moratorium operated only on recovery proceedings and not on assessment, and proceeded to close the enquiry and levy the damages accordingly.

The Regional P.F. Commissioner-II, Amit Jain, assessed damages under Section 14-B for delayed payment of Provident Fund and allied dues.

Applicable rate of damages:

Period of Delay	Rate of damages (Percentage of arrears per annum) as applicable from 26/09/2008 onwards
(a) Less than 2 month	5%
(b) 2 months and above but less than 4	10%
(c) 4 months and above but less than 6	15%
(d) 6 months and above	25%

The account wise damages levied are as under:

Sr. No.	Name of Account	A/c No.	Damages u/s 14B (Amount in Rs.)
1.	The Provident Fund Contribution	I	47603
2.	Pension Fund Contribution	X	22435
3.	Administrative Charge towards Provident Fund	II	1597
4.	Contribution towards Insurance Fund	XXI	1388
5.	Administrative Charge towards Insurance Fund	XXII	0
Total			**73023**

(RUPEES SEVENTY THREE THOUSAND TWENTY THREE ONLY)

6. On 08.10.2024, the Applicant filed a revised claim in Form B before the erstwhile IRP for a consolidated amount of Rs.67,05,609/- (being the original claim of Rs.15,18,216/- together with a further sum of Rs.51,87,393/- said to be assessed under Section 7A vide the order referred to above).

7. Vide email dated 24.01.2025, the erstwhile IRP informed the Applicant that a sum of Rs.58,16,090/- had been admitted for collation, and that the balance of Rs.8,89,519/- was kept under verification with a request for clarification. The Applicant, vide letter No.749 dated 24.01.2025, furnished a detailed break-up of the total demand, remittances made and pending balance.

Details of Dues:

Sr.no	Period of dues	Nature of dues	Total demand	Amount remitted	Balance pending	Attached document
1	01/04/2019 to 31/03/2022	Damage and Interest	23,59,858/-	9,50,000/-	14,09,858/-	RRC no. 37 dated 24.04.2023
2	01/04/2022 to 30/09/2023	Damage and Interest	8,89,519/-	8,89,519/-	0/-	Notice no. 156 dated 25.10.2023
3	01/10/2023 to 30/06/2024	Damage and Interest	1,08,358/-	0/-	1,08,358/-	RRC no. 2 dated 07.10.2024
4	01/03/2019 to 31/12/2019	Dues u/s 7A	51,87,393/-	0/-	51,87,393/-	Final Order dated 09.09.2024
		Total	85,45,128/-	18,39,519/-	67,05,609/-	

8. Vide email dated 24.01.2025, the erstwhile IRP informed the Applicant that the entire claim of Rs.67,05,609/- (Rs.58,16,090/- previously admitted and Rs.8,89,519/- admitted after clarification) stood accepted for collation in accordance with Regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

11. Vide Order dated 03.02.2025, this Tribunal appointed the Respondent, Ms. Chhaya Gupta, as the Resolution Professional in place of Mr. Mangesh Vitthal Kekre.

12. The Resolution Professional, in her submission dated 29.04.2025 pursuant to the Section 14-B and 7-Q enquiry, informed the Applicant that only **Rs. 67,05,609/-** would be admitted as the claim amount. She further stated that no amount exceeding the claim already admitted by the erstwhile IRP could be imposed on the Applicant.

13. It is most respectfully submitted that as on date of the filing of the present application, the legitimate claim of Rs. 2,15,69,819/- raised by the Applicant has not been fully admitted.In these circumstances, the Applicant has approached this Tribunal under Section 60(5) of the Code seeking the reliefs set out in paragraph 1 above, and hence the present application is filed, on the following grounds:

i. The statutory contributions payable under the EPF Act are not debts in the nature of ordinary financial or operational dues, they stand specifically protected under Section 36(4)(a)(iii) of the Code, which excludes "all sums due to any workman or employee from the provident fund, the pension fund, and the gratuity fund" from the liquidation estate.

ii. Section 11(2) of the EPF & MP Act, 1952 provides that provident fund dues constitute the **first charge on the employer's assets** and must be **paid in priority over all other debts**, notwithstanding anything contained in any other law. Thus, the provision gives provident fund arrears a two-fold statutory protection, **first charge over assets and overriding priority in payment**, thereby strengthening their recovery.

iii. Provident Fund dues are amounts payable for the benefit of the Corporate Debtor's employees and must be remitted to the concerned employees. Further, dues under **Section 14-B of the EPF & MP Act, 1952** are in the nature of **damages/penalty imposed for delayed payment of PF dues**, intended to compensate for the loss of interest and other benefits caused by such delay.

iv. The Employees' Provident Fund Organisation (EPFO) is a social security institution established under the EPF & MP Act, 1952, providing provident fund, pension, and insurance benefits to employees. Any interpretation contrary to the

purpose of the EPF legislation and the settled priority of PF dues would undermine the social security benefits of EPFO members, whose provident fund claims are required to be honoured with applicable interest.

v. The Respondent/RP's failure to recognize the **first charge of Provident Fund dues** is contrary to the provisions of the IBC, which expressly exclude provident fund amounts from the **liquidation estate assets**. Thus, PF dues are required to be treated separately and accorded their statutory priority.

(A) Section 36(4)(a)(iii) : The following shall not be included in the liquidation estate assets and shall not be used for recovery liquidation:

(a) Assets owned by a third party which are in possession of the corporate debtor, including-

(i) Assets held in trust for any third party,

(ii) Bailment contracts;

(iii) All sums due to any workman or employee from the provident fund. The pension fund and the gratuity fund;

(iv) Other contractual arrangements which do not stipulated of title but only use of assets;

(B) EXPLANATION to Section 18:

For the purposes of this section, the term "assets"shall not include the following namely:-

a) Assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

b) Assets of any Indian or foreign subsidiary of the corporate debtor; and

c) Such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

(C) Section 155 (2): Estate of bankrupt:

(2) The estate of the bankrupt shall Not include -

(a) excluded assets;

(b) Property held by the bankrupt on trust for any other person;

(c) all sums due to workman or employee from the provident fund, the pension fund and the gratuity: and

(d) such assets as may be notified by the Central Government in consultation with any financial regulator.

vi. The dues under the EPF Act, 1952 are **statutory social security dues belonging to the workers** and are expressly protected under the IBC by excluding provident fund, pension fund, and gratuity fund amounts from the liquidation and bankruptcy estate under Sections 36(4)(a)(iii) and 155. Further, since PF contributions, comprising both employee and employer contributions, are **held by the Corporate Debtor in trust for the employees** and are not assets over which it has ownership or dominion, such dues remain outside the scope of the

IRP's control under Section 18 of the IBC, even if they have not yet been deposited with the PF authorities.

vii. The Code deliberately and expressly keeps Provident Fund and Pension Fund arrears outside the liquidation process, as protected under Section 36 of the Code, and as recognised by the Hon'ble Supreme Court in Moser Baer Karamchari Union v. Union of India, W.P.(C) No.421 of 2019, and in Sunil Kumar Jain v. Sundaresh Bhatt, (2022) 7 SCC 540, holding that such sums cannot be made subject to reduction or dilution even in a resolution or revival plan, and that Section 53(1) of the Code has no application to such dues.

viii. The Hon'ble NCLAT in Anuj Bajpai v. EPFO, 2024 SCC OnLine NCLAT 886, has affirmed that dues under Sections 7A, 7Q and 14B of the EPF Act are fully governed by the ratio in Maharashtra State Cooperative Bank Ltd. v. Assistant Provident Fund Commissioner, and that such dues are protected under Section 36(4) and cannot be claimed by a liquidator as part of the liquidation estate.

xi. The Hon'ble Bombay High Court (Nagpur Bench) in Dalmia Cement (Bharat) Ltd. v. Central Board of Trustees, EPFO, W.P. No.693/2022, decided on 29.04.2025, has held that since the employer's provident fund contribution cannot be included within the definition of "assets" under Explanation (a) to Section 18(1) of the Code, there is no obligation on the provident fund department even to lodge a claim with the IRP for such dues to be included in a resolution plan.

x.The Hon'ble Kerala High Court in Deputy Commissioner (Works Contract), Kerala State Goods and Services Tax Department v. National Company Law Tribunal & Vinod Balachandran, W.P.(C) No.39185/2022, decided on

30.01.2024, following Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes & Customs, (2023) 1 SCC 472, has held that once moratorium is imposed under Sections 14 or 33(5) of the Code, the concerned authority retains a limited jurisdiction to assess/determine the quantum of dues, though it cannot initiate recovery by sale or confiscation; and that the NCLT has no jurisdiction to declare such an assessment order void ab initio.

xi. On this basis, the Applicant submits that the RP's inaction in not admitting the revised claim of Rs.2,15,69,819/- is contrary to the settled legal position, and that the entirety of the claim ought to be admitted and paid in priority before any distribution is made to other stakeholders.

III. Submissions of the Respondent (Reply Affidavit dated 08.11.2025, filed in I.A. No. 448 of 2025)

14. In a Reply Affidavit dated 08.11.2025, filed on behalf of the Resolution Professional in I.A. No. 448 of 2025, the Respondent has submitted that, subject to reconciliation with audited records and subject to the provisions of Section 14 of the Code, she is agreeable to admit part of the claim of the Applicant/EPFO, subject to the following conditions:

(i) dues under Section 7A of the EPF Act are admissible only to the extent verifiable from the audited records of the Corporate Debtor,

(ii) dues under Section 7Q of the EPF Act, being interest for delayed payment of dues under Section 7A, are admissible only to the extent verifiable from the audited records and,

(iii) dues under Section 14B of the EPF Act are damages in the nature of penalty, which are discretionary and not mandatory, and cannot be determined or imposed during the moratorium, as the same require an opportunity of representation from the Corporate Debtor, which proceedings are barred under Section 14 of the Code.

15. The Respondent has accordingly invited the Applicant/EPFO to reconcile the amount claimed with the audited records of the Corporate Debtor, submitting that the erstwhile IRP had **admitted certain claims without collating them** with the audited records, and that some of the admitted claims do not match the audited records, making a fair reconciliation necessary.

16. The Respondent reiterates that the amount claimed towards damages/penalty under Section 14B of the EPF Act is not admissible, being in the nature of penalty and not ordinary dues under Section 7A or interest under Section 7Q.

17. The Respondent submits that the present Application ought to be adjudicated upon due consideration of Sections 7A, 7Q and 14B of the EPF Act, subject to the overriding provisions of the Code, in particular Section 14 thereof.

***[7A**. Determination of moneys due from employers.[(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,-*

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the [Pension] Scheme or the Insurance Scheme, as the case may be,

and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary];

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:-

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses;

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(3) No order shall be made under sub-section (1), unless [the employer concerned] is given a reasonable opportunity of representing his case.

[(34) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.]

[(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation. Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order.

(3) A Tribunal shall send a copy of every order passed under this section to the parties to the appeal.

(4) Any order made by a Tribunal finally disposing of an appeal shall not be questioned in any court of law.

***7Q**. Interest payable by the employer. The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:*

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.]

***14B**. Power to recover damages. Where an employer makes default in the payment of any contribution to the Fund [3][, the [Pension] Fund or the Insurance Fund] or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 [or sub-section (5) of section 17] or in the payment of any charges payable under any other provision of this Act or of '[any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, [the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf] may recover [from the employer by way of penalty such damages, not exceedingthe amount of arrears, as may be specified in the Scheme:]*

[Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard]:

"[Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985, subject to such terms and conditions as may be specified in the Scheme.]

18. The Respondent submits that the Resolution Plan has already been approved by the Committee of Creditors, and that the Respondent is in the process of filing an application under Section 30(6) read with Section 31 of the Code.

Section 30. Submission of resolution plan.

(6) *The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.*

Section 31. Approval of resolution plan.

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [1][including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

[2][Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan. (3) After the order of approval under sub-section (1),--

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

[2][(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.]

19. The Respondent reiterates the settled position that the liability of the Corporate Debtor has to be ascertained as on the insolvency commencement date, and that any claim in respect of a period after that date is not admissible.

20. The Respondent reserves the right to refer to and rely upon the contents of the documents relied upon by the Applicant/EPFO in the present Application, including the Respondent's own reply dated 29.04.2025 annexed by the Applicant as Annexure A/9.

21. The Respondent places reliance on the judgment of the Hon'ble Supreme Court in Mohammad Enterprises (Tanzania) Ltd. v. Farooq Ali Khan & Ors., 2025 INSC 25, for the proposition that the Adjudicating Authority and Appellate Tribunal, and not the High Courts, constitute the appropriate forum for interference in matters arising under the Code.The copy of the Judgement is annexed herewith as Annexure-2.

V. REJOINDER OF THE APPLICANT (dated 22.01.2026, filed in I.A. No. 448 of 2025)

22. The Applicant, Employees' Provident Fund Organization (EPFO), has filed a Rejoinder dated 22.01.2026 to specifically address the objections dated 25.08.2025 raised by the Resolution Professional, with regards to the present IA under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC).

23. The Respondent’s assumption that the Applicant’s statutory dues require reconciliation with the Corporate Debtor’s audited records and are subject to the Section 14 moratorium is erroneous. Provident fund dues are held in trust for employees, do not form part of the Corporate Debtor’s assets, and are therefore expressly excluded from the insolvency estate.

24. It is denied that the Applicant's claim requires reconciliation with the audited records of the Corporate Debtor. The Applicant submits that the dues claimed are not accounting claims but statutory liabilities adjudicated and determined through quasi-judicial proceedings under the EPF Act, and that the Resolution Professional has no authority in law to reopen, reassess or dilute statutory determinations by comparing them with internal audited records of the Corporate Debtor.

25. It is further submitted that the alleged discrepancies in claims admitted by the erstwhile IRP are wholly irrelevant to the Applicant's statutory claim, since provident fund dues are governed by a special welfare legislation and are not dependent upon admission or rejection by the IRP/RP in the manner applicable to financial or operational creditors.

26. The Applicant submits that the admission of its claim to the extent of Rs.67,05,609/- was made by the erstwhile Resolution Professional after due verification, as communicated vide email dated 28.01.2025, and that the said admission was never withdrawn, reviewed or set aside in accordance with law and has therefore attained finality. It is submitted that once a claim stands admitted by the Resolution Professional during CIRP, the same cannot be reopened, revisited or questioned by a subsequent Resolution Professional save on cogent grounds such as fraud or material suppression, none of which have been pleaded or established. The Code does not vest any power in the Resolution Professional to suo motu review or undo a concluded admission of a claim. The present Resolution Professional, it is submitted, is bound by the admission made by her predecessor and can only examine the balance disputed portion of the claim.

27. The Applicant categorically submits that the statutory dues were ascertained after due and proper enquiries conducted under Sections 7A, 7Q and 14B of the EPF Act, strictly in accordance with law. Statutory notices were duly issued and full opportunity of hearing was afforded to the Corporate Debtor, the erstwhile IRP and the present Resolution Professional, and no legally sustainable objection was raised despite such opportunity, so that the statutory orders determining the dues have attained finality.

28. It is denied that the dues levied under Section 14B of the EPF Act are not admissible. The Applicant submits that Section 14B damages are statutory adjudicatory proceedings forming an integral part of provident fund enforcement, intended to compensate for delayed remittances and ensure compliance with a social welfare legislation, and cannot be equated with private contractual penalties capable of waiver or dilution at the discretion of the Resolution Professional.

29. The Applicant submits that the plea that damages under Section 14B could not have been imposed during moratorium is factually incorrect and legally untenable, as the moratorium under Section 14 of the Code restrains coercive recovery alone and does not bar assessment, adjudication or determination of statutory dues. Reliance is placed on Sundaresh Bhatt, Liquidator of ABG Shipyard v. Union of India, (2023) 1 SCC 472, wherein the Hon'ble Supreme Court held, following V.M. Deshpande, that the concerned authority can only initiate assessment or reassessment of duties or other levies and cannot transgress that boundary to initiate recovery in violation of Sections 14 or 33(5) of the Code,

while the Resolution Professional/Liquidator retains the power to question any assessment found to be excessive.

"47. Therefore, this Court in V.M. Deshpande case held that the authorities can only take steps to determine the tax, interest, fines or any penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium. We are of the opinion that the above ratio squarely applies to the interplay between the IBC and the Customs Act in this context."

"48. From the above discussion, we hold that the respondent could only initiate assessment or reassessment of the duties and other levies. They cannot transgress such boundary and proceed to initiate recovery in violation of Sections 14 or 33(5) of the IBC. The interim resolution professional, resolution professional or the liquidator, as the case may be, has an obligation to ensure that assessment is legal and he has been provided with sufficient power to question any assessment, if he finds the same to be excessive."

"57.1 Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act."

30. It is submitted that the attempt of the Resolution Professional to subject dues under Sections 7A, 7Q and 14B of the EPF Act to Section 14 of the Code is

legally misconceived, since Section 36(4)(a)(iii) of the Code expressly excludes all sums due to any workman or employee from the provident fund, pension fund and gratuity fund from the liquidation estate, once such dues are excluded from the estate itself, the embargo of Section 14 has no application to their determination or admissibility. Reliance is placed on Anuj Bajpai v. EPFO, 2024 SCC OnLine NCLAT 886, and on Maharashtra State Cooperative Bank Ltd. v. Assistant Provident Fund Commissioner, 2009 15 (Addl.) SCR 1, as also on Moser Baer Karamchari Union v. Union of India, W.P.(C) No.421 of 2019, for the proposition that sums due to workmen/employees from the provident fund, pension fund or gratuity fund cannot be made subject to reduction or dilution even in a rehabilitation or revival plan.

31. It is submitted that the approval of the Resolution Plan by the CoC, or the proposed filing of an application under Sections 30(6) and 31 of the Code, does not extinguish or dilute the statutory provident fund dues, it being settled law that such dues cannot be compromised, reduced or waived through a resolution plan and must be paid in full in accordance with law.

32. It is submitted that the Respondent's reliance on Mohammad Enterprises (Tanzania) Ltd. v. Farooq Ali Khan & Ors., 2025 INSC 25, is misplaced, as the said judgment relates to the scope of writ jurisdiction of High Courts in IBC matters and has no bearing on the jurisdiction of this Tribunal under Section 60(5) of the Code to adjudicate statutory claims such as the present one.

33. In view of the above, the Applicant submits that the present Rejoinder is filed to place on record that the Reply Affidavit filed by the Respondent is devoid of merit and deserves to be rejected, and that the Application deserves to be allowed

in toto, directing the Respondent to admit and give effect to the Applicant's entire statutory provident fund claim in accordance with law.

VI. OBSERVATIONS AND ANALYSIS

Having heard the parties and perused the record, including the Reply Affidavit dated 08.11.2025 and the Rejoinder dated 22.01.2026, the following questions arise for consideration:

(i) Whether the sums claimed by the Applicant under Sections 7A, 7Q and 14B of the EPF Act stand excluded from the estate of the Corporate Debtor and are protected from dilution under the Code;

(ii) Whether the moratorium under Section 14 of the Code barred determination of such dues;

(iii) Whether the admission of Rs.67,05,609/- by the erstwhile IRP is final and binding on the Respondent; and

(iv) The extent to which the balance of the claim, up to Rs.2,15,69,819/-, is liable to be admitted.

34. On the first question, Section 36(4)(a)(iii) of the Code expressly excludes "all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund" from the liquidation estate, and Explanation (a) to Section 18(1) similarly excludes third-party trust assets from the definition of "assets" over which the IRP/RP exercises control during CIRP. Provident fund dues, comprising both employer and employee contributions, are held by an establishment in trust for its employees and do not vest in the Corporate Debtor as beneficial owner. This position is reinforced by Section 11(2) of the EPF Act, which confers a first charge on such dues over the employer's assets notwithstanding any other law. The

consistent line of authority relied upon Moser Baer Karamchari Union, Sunil Kumar Jain v. Sundaresh Bhatt, Anuj Bajpai v. EPFO, and Dalmia Cement (Bharat) Ltd. supports the position that such dues cannot be subjected to the waterfall under Section 53 or diluted through a resolution or revival plan. The Tribunal is inclined to accept this position as correctly stating the law.

35. On the second question, the ratio in Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes & Customs, (2023) 1 SCC 472, is that the moratorium under Section 14 restrains the initiation or continuation of recovery proceedings, but does not oust the jurisdiction of a statutory authority to assess or determine the quantum of dues, what is barred is enforcement of recovery by sale, confiscation or similar coercive means. Applying this to the present facts, the orders passed under Sections 7A, 7Q and 14B of the EPF Act during the currency of the moratorium cannot be treated as void merely for having been passed during that period, provided the requirements of Section 7A(3) a reasonable opportunity of representation to the employer were in fact complied with. The Applicant has asserted, and it stands unrebutted on record, that notices were issued and hearing afforded at each stage, including specifically in respect of the Section 14B order dated 14.08.2024, where the Corporate Debtor's counsel appeared and raised the very objection of moratorium, which was considered and answered by the Regional Provident Fund Commissioner-II before the order was passed.

36. On the third question, the material on record indicates that the admission of ₹67,05,609/- by the erstwhile IRP was made pursuant to verification and collation of the claim submitted by the EPFO. The said amount comprises the earlier admitted amount of ₹58,16,090/- and the additional amount of ₹8,89,519/-, which was admitted after the Resolution Professional received and verified the documents furnished in support thereof.

Accordingly, the total Provident Fund claim of ₹67,05,609/- was accepted for the purposes of collation under Regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Regulation 13 requires the IRP/RP to verify claims and maintain an updated list recording, inter alia, the amount claimed and the amount admitted. The list is also subject to updation where further information or clarification becomes available. Therefore the claim of ₹67,05,609/- is to be finally admitted for the purpose of collection.

The claim relating to interest and damages is required to be considered separately for the pre-CIRP and post-CIRP periods. The claim attributable to the pre-CIRP period, having been verified and admitted, shall be treated as finally admitted for the purpose of collation and consideration in the CIRP. The post-CIRP component, however, shall remain subject to examination and verification in accordance with the applicable provisions of the EPF law and the IBC framework. Filing or admission of an EPFO claim during CIRP does not substitute the statutory adjudication required for determining interest or damages .

Referring to the case of Employees Provident Fund Organization v. Ashok Kumar Gulla, ***(2026) ibclaw.in 1984 NCLT***

"This Tribunal therefore holds, in accordance with binding precedent, that interest under Section 7Q and damages under Section 14B of the EPF Act are integral components of the EPF dues of the Corporate Debtor, are statutory in nature, constitute the first charge under Section 11(2) of the EPF Act, and are fully admissible as claims in the CIRP. The Respondent's rejection or exclusion of these components from the admitted claim is contrary to law and is set aside."

37. On the fourth question, Upon conjoint reading of the above questions, we reached the following conclusions: -

(i) The EPFO claim includes the principal amount, interest and the damages.

(ii) Only pre-CIRP claims are to be considered in CIRP proceedings.

(iii) The claim is to be decided above in priority of all other dues and shall not be subject to the Section 53 mechanism.

Now we come to the facts of the present case and the claims made by the Applicant during the CIREP proceedings. It has been pleaded by the Ld. Counsel for the Applicant that the claim to the tune of Rs. 67,05,609/- was admitted by the previous RP and that cannot be made subject to further verification and collation as it has been placed by the Respondents. On the contrary, the Respondent has placed in its reply that the claiming amount to Rs. 67,05,609/- was subject to verification on the basis of the audited balance-sheet and other document. It has also pleaded by the Ld. Counsel for the Respondent that even the previous RP had also not admitted the claim and it was kept subject to collation.

We have considered the rival contentions made by the Ld. Counsel for the parties. The Ld. Counsel for the Applicant has paced the reliance on Anenxure-7 which is an email sent to the Applicant by the Respondent placing reliance upon this document, Ld. Counsel for the Applicant has underscored that the claim to the tune of Rs. 67,05,609/- were admitted by the previous RP but same document goes to show that the email contains the fact that the claim was admitted for collation, therefore it cannot be said that the entire claim of Rs.67,05,609/- were finally admitted for consideration. Ld. Counsel for the Respondent has stated in its reply that they are ready to admit the claim of the Applicant and to examine the same as per the audited balance-sheet and other documents.

38.The Tribunal observed that the Applicant's claims of **₹67,05,609 and ₹2,15,69,819** require examination by the Respondent/Resolution Professional before admission. Although the Applicant relied on an email suggesting that the earlier RP had admitted the ₹67,05,609 claim, the Tribunal noted that the email merely stated that the claim was **"admitted for collation"** and did not amount to final admission. Therefore, the Applicant cannot claim that the entire ₹67,05,609 had been finally admitted, and the claim must be independently examined by the RP.

39. As regards the reliance placed by the Respondent on Mohammad Enterprises (Tanzania) Ltd. v. Farooq Ali Khan & Ors., 2025 INSC 25, the Tribunal finds this judgment inapposite to the present controversy, which concerns adjudication of a claim under Section 60(5) of the Code before this Tribunal and not the writ jurisdiction of a High Court.

40. The fact that the Resolution Plan has been approved by the Committee of Creditors, and that an application under Sections 30(6)/31 of the Code is under preparation, does not affect the above conclusions. Provident fund dues excluded under Section 36(4)(a)(iii) stand outside the resolution process and cannot be compromised, reduced or made subject to the terms of a resolution plan; any distribution to other creditors or stakeholders, or implementation of the Resolution Plan, must accordingly account for the PF dues finally admitted in terms of this Order.

ORDER

41. Considering the facts and circumstances of the present we pass the order as follows: -

(i) The Respondent/RP is directed to admit the claim of the Applicant to the tune of Rs. ₹67,05,609 - and the claim which has said to be arisen during the CIRP proceedings and to verify and collate the same as per the observation made in this order within 15 days.

(ii) Accordingly, the IA 448 of 2025 stands allowed and disposed of in above terms.

Sd/-

MAN MOHAN GUPTA
MEMBER (TECHNICAL)

Sd/-

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

Anushka Rawat- L.R.A.