



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

IA(IBC)/527/KOB/2024

IN

CP (IBC)/14/KOB/2023

*(Under Section 60(5) of Insolvency and
Bankruptcy Code, 2016)*

In the matter of:

***Regional Provident Fund Commissioner-II
Vs Furnace Fabrica (India) Limited***

MEMO OF PARTIES:

**Regional Provident Fund Commissioner-II,
Regional Office Vashi, Tower No. 6, 5th Floor,
Vashi Rly Station Complex, Vashi,
Navi Mumbai- 400 703**

...Applicant

-Vs-

**Furnace Fabrica (India) Limited,
Represented by Resolution Professional,
Opposite MILMA Dairy, Koonamthai,
Edapally, Kochi 682 024.**

...Respondent No. 1

**Mr. Alok Kumar Agarwal,
Resolution Professional of
Furnace Fabrica(India) Limited,
No. 605, Suncity Business Tower,
Golf Course Road, Sector 54, Gurgaon,
Haryana 122 002.**

...Respondent No. 2



Order delivered on: 15.07.2025

Coram:

HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL
HON'BLE MEMBER(TECHNICAL) : SMT. MADHU SINHA

Appearances:

For the Applicant : Mr. John Mani V, Advocate.
For the Respondent : Mr. Pulkitesh Dutt Tiwari, Advocate.

ORDER

Per Coram:

1. The present Application is filed by the Regional Provident Fund Commissioner II, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, with the following reliefs:
 - i. *To allow the claim under section 7-A, 14-B and 7-Q of the EPF & MP Act, 1952 of the Applicant, being an amount of Rs. 29,68,97,991/- (Rupees Twenty-Nine Crores Sixty-Eight Lakhs Ninety-Seven Thousand Nine Hundred and Ninety-One Only) as per the Letter dated 15.02.2024 filed by the Applicant to the Resolution Professional, and the claim be considered as priority over other dues of the Corporate Debtor and delay if any be condoned;*
 - ii. *Direct the Resolution Professional herein to consider the claim of the Applicant in priority as per the provisions of IBC and EPF & MP Act, 1952;*
 - iii. *To set aside Annexure A5 communication of the 2nd Respondent dated 03/05/2024 issued to the Applicant, be called;*



2. The Brief facts of the case are as follows: -

1. The applicant, EPFO a statutory body constituted under the provisions of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the EPF & MP Act, 1952) submits that the 1st Respondent Corporate Debtor is an establishment covered under the Provisions of EPF & MP Act, 1952 and by virtue of Section 6, 6A, and 6C of the said Act, read with Paragraph 38 of the Employees' Provident Fund Scheme, 1952, Paragraph 3 of the Employees' Pension Scheme, 1995, and Paragraph 8(1) of the Employees' Deposit Linked Insurance Scheme, 1976, the Corporate Debtor is under the statutory obligation to remit the prescribed contributions in a timely manner, failing which they will be liable to pay damages along with its interest.
2. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process by this Tribunal vide order dated 01.11.2023, pursuant to a Company Petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016. The second Respondent herein was appointed as the Interim Resolution Professional and was subsequently confirmed as the Resolution Professional of the Corporate Debtor, in accordance with the provisions of the Code.
3. Resolution Professional made public announcement on 03.11.2023, invited claims from creditors to submit their claims, with the last date for submission being 14.11.2023.



4. Applicant/EPFO filed their claim of Rs. Rs.29,68,97,991/- in respect of regular dues including dues under Section 14B and 7Q of the EPF& MP Act, 1952, belatedly on 15.02.2024.
5. In response to the said claim, the 2nd Respondent Resolution Professional after scrutiny of the claim, vide email dated 18.04.2023 requested the applicant authority to file a revised claim by citing the following reasons.
 - a. Claim was filed in an improper form.
 - b. Applicant has allegedly relied heavily on a Report dated 06.02.2024 prepared by the Enforcement Officer, Vashi, which as per the RP has been prepared on the basis of incomplete/unverified data and assumptions. Further the RP has alleged that several flaws, errors and omissions have crept into the report, which has affected the credibility of the report and the claim amount arrived at on the basis of that report.
6. The applicant vide letter dated 25.04.2024 in response to the RP's email dated 18.04.2023, communicated to the RP that the dues payable to the EPFO are not in the nature of debts but constitute third-party assets, and hence, filing such claims under Form F is improper. It was further pleaded that treating EPF dues as debts would contravene the provisions of the Insolvency and Bankruptcy Code as well as directions issued by the EPFO. Accordingly, the Applicant requested the RP to expedite the processing of the submitted claim and to release the amount due to the EPFO at the earliest.



7. The RP vide email dated 03.05.2024 once again requested the applicant to resubmit the claim in Form B along with the necessary supporting documents, for it to be considered. RP further requested the applicant to consider the facts set out by him while replying to the claim made by the applicant to arrive at the correct figure. RP offered his cooperation to provide information if necessary to facilitate the RP to file a revised claim.
8. The applicant alleged that the RP without proper application of mind erroneously rejected the claim, despite the fact that statutory dues such as provident fund contributions are required to be released with priority. It is stated that, as per 36(4) of the Insolvency and Bankruptcy Code, 2016, such dues constitute third-party assets and are expressly excluded from the liquidation estate of the Corporate Debtor. Therefore, they cannot be used for the recovery of debts of the Corporate Debtor. The applicant has placed reliance on the judgments of the **Hon'ble NCLAT in *Sikandar Singh Jamwal vs. Vinay Talwar(CA(AT) 483/2019, dated 11.03.2022)*** and the **Hon'ble Supreme Court in *Sunil Kumar Jain vs. Sundresh Bhatt (CA 5910 of 2019, dated 19.04.2022)***, which affirm that provident fund dues fall outside the scope of Section 53 of the IBC.
9. The applicant further relied on the judgment of the **Hon'ble Supreme Court in *Greater Noida Industrial Development Authority vs Prabhjit Singh Soni & Anr.*** wherein it was

held that the Form in which a claim is to be submitted under the CIRP Regulations 2016 is directory in nature and not mandatory.

10. It is stated that this Tribunal in ***V-Con Integrated Solutions Pvt. Ltd.*** held that EPF claims are statutory dues with priority and not claims, so need not be filed in Form G before the Liquidator. As per Section 11 of the EPF & MP Act, 1952, EPFO has priority of charge and payment of debts. Similarly, Hon'ble NCLAT Chennai and New Delhi in ***Central Board of Trustees EPF V/s the Liquidator M/s Bunt Solar India Pvt. Ltd.*** and ***Jet Airways Maintenance Engineering v/s Ashish Chawchharia (RP)*** respectively have affirmed that EPF dues are third-party statutory dues with priority over other claims, and non-payment violates Section 30(2)(e) of the IBC, emphasizing the primacy of EPFO's first charge under the EPF Act.
11. The applicant further submits that Section 36(4)(a)(i) of IBC, 2016 excludes EPFO dues, which are considered as third-party dues held in trust, from the assets of the Corporate Debtor. Additionally, Section 11(2) of the EPF & MP Act grants EPFO dues a first charge on the employer's assets, ensuring these amounts are paid with priority over all other debts, thereby providing strong protection for the recovery of provident fund arrears.
12. It is stated that Provident Fund dues with interest are owed to the employees and must be remitted by the Corporate

Debtor to their PF accounts. The Hon'ble Delhi High Court in ***Apex Security and Detective Force Pvt. Ltd. Vs. Central Board of Trustees*** held that Section 7Q of the EPF Act aims to compensate employees for interest loss due to delayed payments, while Section 14B imposes punitive damages as a deterrent, and both provisions can operate simultaneously.

13. The applicant further submits that Section 155 of the IBC, 2016, excludes workmen's dues, including provident fund, pension, and gratuity, from the bankrupt's estate, giving them priority over other claims, including those of secured creditors. Unlike other government dues, statutory dues under the EPF & MP Act do not grant banks or financial institutions a first charge on the borrower's property, meaning secured creditors cannot claim priority over EPF dues despite holding mortgages or security interests.
14. The applicant submits that in the judgement of ***Maharashtra State Co-operative Bank Ltd. v. Asst. Provident Fund Commissioner***, the Hon'ble Supreme Court affirmed that Section 11(2) of the EPF Act grants absolute priority to provident fund dues over all other debts, including secured debts such as mortgages and pledges. The Court clarified that this statutory first charge is not subject to any limitations and prevails over all claims, whether statutory or non-statutory, secured or unsecured. The purpose of Section 11(2) is to ensure that workers'

provident fund dues are not overridden by other creditors.

Therefore, the Applicant's claim must be considered as a priority and released in accordance with the law.

15. The applicant submits that the legislative intent and judicial interpretation of the IBC, 2016 establish that Provident Fund, Pension Fund, and Gratuity Fund dues are statutory obligations owed to workers and must be given priority over all other debts, including those of secured creditors. These dues, protected under Section 36(4) of the IBC, 2016, and forming part of workers' fundamental rights under Article 21 of the Constitution, are excluded from the liquidation estate. The RP's act of denying and withholding these payments is without legal authority, unjust, and contrary to settled law.
16. In this case, the applicant has prayed for priority of their claim over the other dues of the Corporate Debtor and the Resolution Professional has acknowledged the super-priority of the Applicant's claim. However, RP vehemently disputes the quantum of the claim amount, which as per the RP has been arrived at on the basis of incomplete/unverified data and assumptions. Further the RP has alleged that several flaws, errors, omissions several discrepancies in the claim amount, especially with regard to Rs. 17,82,90,176/-
17. RP submits that he considers the applicant as an operational creditor and wants the applicant to submit

their revised claim in Form B, along with supporting documents. However, the applicant has ignored his request to submit a revised claim by following provisions of the code.

18. RP has requested the applicant to submit a revised claim after considering the available facts and figures from the Corporate Debtor's records and factual records provided by the RP.
19. In response to the applicant's allegation that necessary documents were not provided during the inspection, the RP submitted that all information available at the time of the Enforcement Officer's visit was duly handed over to facilitate the inspection, although the RP was in the process of collecting records from March 2021 to the date of commencement of the Corporate Insolvency Resolution Process. Corporate Debtor had ceased operations post-March 2021, records from 01.04.2021 to 01.11.2023 were incomplete at that time. Despite this, the RP extended full cooperation and shared all available information during the EO's inspection. There was no subsequent request from the applicant for any additional information.
20. Vide email dated 18.04.2024, the Resolution Professional furnished detailed facts, documents, and calculations related to the PF liability, determining the admissible claim amount as Rs. 1,46,83,296/-, with head-wise details and supporting worksheets to the applicant.

21. It is the case of the RP that the report of the Enforcement Officer on which the applicant department has heavily relied has ignored several critical elements and also relied on assumptions which as per the RP is not correct. The report erroneously includes ineligible categories such as trainees and retainer contract workers, miscalculates subcontracting amounts, and incorrectly applies FY 2020-21 figures to subsequent years without accounting for the Corporate Debtor's declining financial and operational status. The Enforcement Officer also failed to consider PF payments already made and disregarded data and clarifications provided by the Resolution Professional. Hence, the claim, being based on presumptive and inconsistent calculations on the report, can only be partially admitted.
22. RP alleges that the applicant has failed to explain as to who will get the amounts, once the due is paid. Applicant has failed to provide a list of employees and distribution rates of the due amount. It is stated that although the Applicant has claimed a sum of Rs. 29,68,97,991/- crores towards PF dues, however has failed to specify the beneficiaries of the amount or explain how the dues would be distributed among the employees. No list of employees or distribution methodology has been provided by the Applicant to support the claim. In contrast, the Resolution Professional has submitted a detailed, employee-wise breakdown of the

PF dues, thereby ensuring clarity, transparency, and accuracy in the determination and allocation of the claim amount.

23. RP has also offered his assistance through his email communication dated 03.05.2024 for applicant's perusal and consideration to arrive at a proper revised claim in order to avoid loss to the exchequer. However, such repeated requests were not considered by the applicant.
24. The sum and substance of the RP's allegation is that the applicant has failed to comply with the procedural requirements of the Insolvency and Bankruptcy Code, 2016 and their arrival at the claim amount on the basis of unverified, presumptive figures and primary information from the Corporate Debtor's records.
25. The Applicant has denied the allegation of the submission of the RP that the claims submitted are presumptive and hypothetical. Applicant submitted that they have followed the due procedure laid down under their Legal Framework Document to conduct the inspection. The Area Enforcement Officer with due information to the Corporate Debtor and Interim Resolution Professional visited the premises of the Corporate Debtor and upon request, IRP provided Audited Financial Statements for the year, 2020-21, Salary sheets for the year 2020-2022, copy of email send to MSED requesting them for re-connection and unsigned statement of date of exit in respect of 37 employees.

26. Contrary to the IRP's claim that the company ceased operations in 2021, the Enforcement Officer found workers present during a visit on 04.01.2024 and noted ongoing PF remittances, indicating active status. However, no document in support of the claim that company has ceased its operations from 2021 has been produced. Applicant submitted that the dues were calculated on the basis of the information provided by the IRP and hence the same is legal and authentic.
27. Applicant submitted that the Enforcement Officer, relied on the records provided and applicable legal provisions and rightly treated contractual employees and trainees as employees under Section 2(f) of the EPF & MP Act, 1952 and calculated dues accordingly. For subcontracted labour, the Enforcement Officer reasonably estimated wages at 25% of Rs. 13.92 crore based on ESIC guidelines due to the non-submission of supporting documents by the IRP.
28. It is stated that the Corporate Debtor is statutorily liable under Paragraph 30(3) of the EPF Scheme, 1952, to ensure provident fund compliance not only for its regular employees but also for contractual workers and all persons engaged in connection with its work, whether employed directly or through contractors. The responsibility of the principal employer to remit both the employer's and employee's contributions, including for contractors' workers, is clearly mandated and cannot be avoided. The

IRP's contentions regarding discrepancies in salary statements and the exclusion of certain wage components are unfounded, as he failed to produce complete records during inspection. The Area Enforcement Officer has rightly relied upon the Supreme Court's ruling in **Regional Provident Fund Commissioner vs. Vivekanand Vidyamandir (Civil Appeal No. 6221 of 2011)**, affirming that all "universally, necessarily and ordinarily" paid emoluments constitute basic wages. Hence, the Enforcement Officer has correctly calculated PF dues for all eligible employees, including contract workers, within the statutory wage limit of Rs. 15,000/-, in accordance with law.

29. Applicant alleges that the IRP failed to submit complete and accurate records during inspection, and even admitted in the counter reply that four employees were working up to October 2023, contradicting earlier claims. The IRP deliberately withheld material information to evade correct PF liability. In the absence of full records, the Enforcement Officer rightly calculated dues based on the available documents to ensure no loss of statutory PF benefits to workmen. The dues were computed in accordance with the EPF provisions and figures booked in the Corporate Debtor's accounts for FY 2020-21, evidencing non-remittance of PF and allied dues for eligible employees. Applicant submits that the IRP failed to produce complete

records despite being granted a reasonable time within the time-bound CIRP process, compelling the Enforcement Officer to calculate dues based on the available records. As per the Legal Framework Document, the Enforcement Officer duly informed the IRP of the comprehensive dues, including damages and interest, through the report dated 06.02.2024, along with supporting documents.

30. Applicant submits that the EPFO has duly considered the IRP's concerns regarding unidentified beneficiaries and further stated that, as per settled law, it is the employer's statutory obligation to provide employee details for PF compliance. **The Hon'ble Supreme Court in *M/s S.K. Nasiruddin Beedi Merchant Ltd. and Panther Securities Services vs. EPFO*** has affirmed that the absence of such details does not absolve the employer of liability, and EPFO is empowered to assess dues based on available records using the best judgment method. In such cases, EPFO follows the Disbursement Scheme approved by the Central Board of Trustees in its 193rd meeting and formalized via HO Circular dated 23.05.2012, ensuring that dues calculated by the Enforcement Officer are ultimately credited to the rightful beneficiaries.
31. Applicant submits that the contentions raised by the Resolution Professional may be rejected and prays to this Tribunal to direct the Resolution Professional to release the entire claim amount of Rs. 29,68,97,991/- (Rupees Twenty

nine crores sixty eight lakhs ninety seven thousand nine
Hundred and ninety one only) on priority basis.

Findings and Analysis.

3. We have heard both the sides and also gone through the material available on record.
4. In this case, the applicant department has filed a claim of Rs. 29,68,97,991/- (Rupees Twenty-Nine Crore Sixty-Eight Lakh Ninety-Seven Thousand Nine Hundred Ninety-One Only) before the Resolution Professional on 15.02.2024, which is after the last date of submission of claim, i.e., 14.11.2023.
5. A detailed breakup of the claim made by the applicant Department is reproduced below for ready reference: -

Dues	Period	Amount	Document
Dues of Provident Fund.	04/2020 to 10/2023	17,82,90,176/-	EO Report dated 06.02.2024.
Damages u/s 14B	05/2001 to 02/2010	2,82,082/-	1) 14B Order No. 9957 dated 13.04.2023.
	03/2010 to 08/2020	1,90,724/-	2) 14B Order No. 9959 dated 13.04.2023
	09/2020 to 10/2023 on subsequent belated remittances	1,52,499/-	Statement of damages calculated as per prescribed rate under Paragraph 32A of EPF Scheme 1952, Paragraph 5 of EPS Scheme, 1995 & Paragraph 8A of EDLI Scheme, 1976
	04/2020 to 10/2023 on receivable	7,87,02,290/-	Statement of damages calculated as per prescribed rate under

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	dues as calculated by AEO vide his reported dated 06/02/2024 (Date of payment is considered before the date of Initiation of CIRP, i.e. 31.10.2023		Paragraph 32A of EPF Scheme 1952, Paragraph 5 of EPS Scheme, 1995 & Paragraph 8A of EDLI Scheme, 1976
Interest u/s 7Q	05/2001 to 02/2010	1,42,754/-	1) 7Q Order No 9957 dated 13/04/2023 2) 7Q Order No 9959 dated 13/04/2023
	03/2010 to 08/2020	2,31,573/-	
	09/2020 to 10/2023 on subsequent belated remittances	2,71,343/-	Statement of damages calculated as per prescribed rate under Paragraph 32A of EPF Scheme 1952, Paragraph 5 of EPS Scheme, 1995 & Paragraph 8A of EDLI Scheme, 1976
	04/2020 to 10/2023 on receivable dues as calculated by AEO vide his reported dated 06/02/2024 (Date of payment is considered before the date of Initiation of CIRP, i.e. 31.10.2023	3,86,34,550/-	Statement of damages calculated as per prescribed rate under Paragraph 32A of EPF Scheme 1952, Paragraph 5 of EPS Scheme, 1995 & Paragraph 8A of EDLI Scheme, 1976
Total		29,68,97,991/-	



6. The vital facts gathered from the material available on record can be read as under: -

Date	Subject Matter.
01.11.2023	Application under Section 7 of IBC, 2016 was allowed and Corporate Debtor was admitted into Corporate Insolvency Resolution Process.
03.11.2023	RP made public announcement under Form A, for inviting claims from the creditors.
14.11.2023	Last date of Submission of claims.
15.02.2024	EPFO belatedly filed claim before the RP for Rs. 29,68,97,991/-, in respect of regular dues including dues under Section 14B and 7Q of the EPF & MP Act, 1952.
18.04.2024	RP through email raised concerns about the claim form used and the calculation of claim amount.
25.04.2024	Annexure A4 response to the above referred email of RP dated 18.04.2024 was sent, and urged RP to process the claim in toto as per the provision.
03.05.2024	RP informed that claim is liable to be rejected unless it is resubmitted in Form B.
13.08.2024	Date of filing this application.

7. In response to the claim of Rs. 29,68,97,991/-made by the applicant department, the Resolution Professional, via email dated 18.04.2024, informed the applicant that the total admissible claim, as per his assessment, amounts only to Rs. 1,46,83,296/-, and that the remaining/balance claim is inadmissible.
8. Further, Resolution Professional, upon scrutiny of the claim, raised certain concerns regarding the claim submitted by



applicant department. The essence of this communication is summarized as under:

- a. The EPFO's calculation has heavily relied on the report submitted by the Enforcement Officer, which, in turn, relies on incomplete and unverified documents, is founded on assumptions and certain critical aspects have not been adequately considered. Further no clarifications were sought, nor were any discussions held with the Resolution Professional while arriving at the claim amount.
 - b. The claim has been filed in an incorrect Form. As per the Resolution Professional, EPFO qualifies as an Operational Creditor and must submit the claim using the appropriate Form designated for such creditors.
9. RP vide his e-mail dated 18.04.2024, provided a detailed breakdown of the claim amounting to Rs. 1,46,83,296/-, which he considers to be the only portion eligible for admission out of the total claim amount of Rs. 29,68,97,991/-. Head-wise details along with supporting worksheet references provided to EPFO through e-mail dated 18.04.2024 is reproduced below for ready reference:

Financial Year.	Particulars	EPF Liability as per.		Worksheet Reference On CONSO-PF Details File
		EPFO	CD	
	Cont., Trainees	4,65,504	16,606	194]+Trainee +

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2020-21	Wages			Wages - Summary
	Sub Contract	3,48,00,000		CONSO-PF Details 2020 to 2021
	Difference In Salary Statement And BS	1,67,00,000		CONSO-PF Details 2020 to 2021
2021-22	Cont., Trainees Wages	6,66,284	18,999	194J+TRAINEE + WAGES- SUMMARY
	Sub Contract	3,48,00,000	21,09,219	CONSO - PF Details 2021 to 2022
	Difference In Salary Statement And BS	1,67,00,000	61,61,928	CONSO -PF Details 2021 to 2022'!CN18+'K OL KATA LIAB- SUMMARY- ANIL
2022-23	Cont., Trainees Wages	6,66,284	8,727	194J+TRAINEE + WAGES - SUMMARY
	Sub Contract	3,48,00,000	34,321	CONSO - PF Details 2022 to 2023
	Difference In Salary Statement And BS	1,67,00,000	51,46,695	CONSO PF Details 2022- 2023' C115+'KOLK ATA LIAB - SUMMARY- ANIL

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	Complainant Dues	7,16,250		INCLUDED IN LIABILITY CALCULATED BY FFIL
2023-24	Difference In Salary Statement And BS		3,39,668	CONSO PF Details 2023-2024!AV5+'CONS O-PF Details 2023-2024!AV6+'CONS OPF Details 2023-2024
	Complainant Dues	93,750		INCLUDED IN LIABILITY CALCULATED BY FFIL
	Sub Contract	2,03,00,000		NIL
Suspense	Difference Of Total In EPF Table	8,82,104		Difference Of Total In EPF TABLE
	Total Liability as per EO report dated 06/02/2024	17,82,90,176	1,38,36,163	
Damages u/S 14B	05/2001 to 02/2010	2,82,082	2,82,082	Order dated 13.04.23
	03/2010 to 08/2020	1,90,724	1,90,724	Order dated 13.04.23
	03/2020 to 10/2023	1,52,499		Overlapping with AEO report period
Interest u/s 7Q	05/2001 to 02/2010	1,42,754	1,42,754	Order dated 13.04.23

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	03/2010 to 08/2020	2,31,573	2,31,573	Order dated 13.04.23
	09/2010 to 10/2020	2,71,343		Overlapping with AEO report period
Interest u/s 14B	As per AEO report.	7,87,02,290		
Interest u/S 7Q	As per AEO report.	3,86,34,550		
Total		29,68,97,991	1,46,83,296	

10. It is evident from the above table that the Resolution Professional has duly considered the legally admissible claims submitted by the applicant department. Appropriate weightage has been given to all claims that were established in accordance with the law prior to the commencement of the Corporate Insolvency Resolution Process. The only area of dispute pertains to claims made under Section 7A of the EPF and MP Act, 1952, and a portion of the damages claimed under Section 14B for a period that overlaps with the Enforcement Officer's report. It is noteworthy that there is no dispute regarding the claim for interest under Section 7Q of the EPF and MP Act, 1952, or the claim for damages under Section 14B, except for the aforementioned overlapping period.

11. The Applicant has placed significant reliance on the Report dated 06.02.2024 prepared by the Enforcement Officer, Vashi. However, according to the Resolution Professional, the said Report is based on incomplete and unverified data, as well as unsupported assumptions. The RP has further identified

several flaws, inaccuracies, and omissions within the Report, which have materially impacted its credibility. Consequently, the Report cannot be considered reliable or accurate in its current form.

12. Before proceeding further, we would like to place reliance on the judgement passed by the Hon'ble NCLAT, Principal Bench in ***Employees' Provident Fund Organization Vs. Jaykumar Pesumal Arlani, Resolution Professional of M/s. Decent Laminates Pvt. Limited.-Company Appeal (AT) (Insolvency) No. 1062 of 2024*** and ***Employees' Provident Fund Organization vs. Sanjay Kumar Lalit, Resolution Professional of Apollo Soyuz Electricals P. Ltd. & Anr.-Company Appeal (AT) (Insolvency) No. 1065 of 2024*** which dealt with similar issues concerning assessments under Sections 7A, 14B, and 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, which have been completed after the initiation of moratorium period and whether claims made during such period can be admitted or not. The Hon'ble NCLAT considered the scope of Section 14 and 33(5) of IBC, 2016 in the light of various judgements of the Hon'ble Supreme Court in ***(2020) 13 SCC 208 – Rejendra K. Bhutta vs. Maharashtra Housing and Area Development and Anr., (2021) 6 SCC 258 – P. Mohanraj and Ors. Vs. Shah Brothers ISPAT Pvt. Ltd. and Sundresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs, (2023) 1 SCC 472*** and made certain observations,

which are relevant and applies squarely to the present case. Paragraphs 23, 24 & 26 of the said order passed by the Hon'ble NCLAT Principal Bench is reproduced below for ready reference: -

“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, sub-section(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.

Question No.(3)

25. It is an admitted fact that claims were filed by the Appellant subsequent to approval of Resolution Plan by the CoC. The Adjudicating Authority has relied on



*the judgment of the Hon'ble Supreme Court in **RPS Infrastructure Ltd. Vs. Mukul Kumar &Anr. – Civil Appeal No. 5590 of 2021** decided on 11.09.2023, which judgment squarely applies to the facts of the present case. More so, when the claim on the basis of assessment, which has been made subsequent to initiation of moratorium is hit by Section 14, sub-section (1) of the IBC, we are of the view that no such claim can be admitted in the CIRP.*

Question No.(3) is answered accordingly.”

13. It is well-established law that only claims existing as on the date of commencement of Corporate Insolvency Resolution Process period are admissible. Such claims must be filed within the time period specified by the Resolution Professional, as announced publicly after the commencement of CIR Process, or within any extended period granted thereafter. In the present case, claim of the applicant was not filed within the timeline prescribed by the Resolution Professional for submitting the claims.
14. Since, the proceedings under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 are quasi-judicial in nature and not mere assessment proceedings, once the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 is initiated, it would affect and apply to such proceedings conducted during the moratorium period. Therefore, any proceedings that may have severe repercussions are prohibited during this period.
15. We would like to refer to Section 14 of IBC, 2016, which describes the effect of the moratorium.



“Section 14: Moratorium

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (b)”*
- (c)*

16. Therefore, it is clear that Section 14(1)(a) of the Insolvency and Bankruptcy Code prohibits the institution of any suit or proceedings. Since the proceedings under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 are quasi-judicial in nature, they should not have been conducted after initiation of CIRP. However, in this case, such proceedings were carried out and orders were passed at the CIRP stage. Thus, the proceedings/assessment post the CIRP commencement date will be hit by the provisions of Code, more particularly Section 14(1)(a) of IBC, 2016.

17. In the present case, applicant department has claimed Rs. 17,82,90,176/- as dues of provident fund on the strength of report of the Enforcement Officer dated 06.02.2024. Though no specific provision has been mentioned, it appears that the same has been claimed under Section 7A of the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952. The said claim is not admissible due to the following reasons: -



- a. Moratorium as per Section 14 of IBC, 2016 commenced on 01.11.2023, during which no proceedings can be initiated against the Corporate Debtor. So, on that account, the claim becomes inadmissible.
- b. Even otherwise, the alleged calculation has been made on the basis of hypothetical assumptions ignoring real hard ground realities as RP has placed on record financial data which reflects that business turnover was in declining mode and applicant department has considered the statements of a period for alleged calculations when company was working with its normal strength. We concur with the submissions made on behalf of the RP that the alleged claim is an inflated one, and is not sustainable in the eyes of law. There should have been a balanced approach.
- c. Further, all other claims have been submitted after the permissible time and last date of submission of claims and applicant department has levied interest, penalty and damages in a routine and casual manner without caring for proviso to Section 14B and 7Q of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The Proviso to Section 14B of EPF and MP Act, 1952 reads as under: -

“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. Although the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) has been repealed, the initiation of the Corporate Insolvency Resolution Process (CIRP), a significant decline in turnover, and the presence of only a few employees at the time of inspection were crucial factors for the applicant department to consider in reaching a right conclusion to pass various orders for recovery under different provisions of EPF and MP Act, 1952. It is apparent that department has failed to appreciate and consider all such facts in right prospect. We would like further place reliance on the judgment passed by the Hon’ble High Court of Kerala in ***The Central Board of Trustees Employees’ Provident Fund Organisation in Sastha Enterprises and Anr. (W.P.(C) No.17077 of 2015)***. The relevant portions of the said order are reproduced below for ready reference: -

“8. The petitioner impugns the appellate order passed by the learned Tribunal thereby quashing and setting aside the order passed under Section 7A of the Act by which the Regional Provident Fund Commissioner had determined the amount due and payable by the 1st respondent-employer under the provisions of the Act. Bare perusal of the order passed in enquiry under Section 7A of the Act makes it clear that no enquiry as



contemplated by Section 7A of the Act was in fact conducted by the Regional Provident Fund Commissioner. The proceedings under Section 7A of the Act are quasi-judicial proceedings and statutory obligation is cast upon the Regional Provident Fund Commissioner while performing his duties under Section 7A of the Act. He is bound to make a detailed fact finding enquiry to arrive at a correct state of affairs about the liability and obligation of the employer. Section 7A of the Act contemplates conducting full-fledged enquiry for determining the liability of the employer regarding the amount payable by them under the provisions of the Act as well as the Schemes framed thereunder. This can be seen from the powers conferred on the Regional Provident Fund Commissioner under sub section 2 of Section 7A of the Act. This provision reads thus:

“The officer conducting the inquiry under subsection (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)”.



9. *It is thus clear that the enquiry which the Regional Provident Fund Commissioner supposed to conduct for determining the dues payable by the employer is deemed to be a judicial proceeding in which incriminating material is required to be collected. The evidence, oral as well as documentary, is required to be collected during the course of such enquiry.*

10. *In the case in hand, in paragraph 7 of the order passed by the Regional Provident Fund Commissioner, it is stated thus:*

“I also examined the Inspection Report of the Enforcement Officer. It is a well-crafted report. All the non-enrolled employees have been well identified with their address, age, signature and their wages. It vividly brings out the quantum and nature of evasion practiced by the establishment in suppressing the wages and thereby denying social security benefits to poor cashew employees to make an extra profit”

This makes it clear that the Regional Provident Fund Commissioner has only considered the Inspection Report of the Enforcement Officer by accepting the same as evidence. A perusal of paragraph 6 of the above order shows that without there being any evidence on record, the Regional Provident Fund Commissioner branded the Wage Register perused by the employer as fabricated and not genuine. The order does not show that any evidence was collected by the Regional Provident Fund Commissioner for determining the amount due and payable by the 1st respondent towards short payment of contribution payable under the Act. It is seen that on 11.05.2010 the



enquiry commenced and the same was concluded on the very same day by obtaining sample of Wage Register from the Managing Partner of the 1st respondent.

11. On this background, it is categorically averred in his appeal memorandum by the 1st respondent that the appellant, 1st respondent herein, had not given an opportunity to file objections against the report of the Enforcement Officer and the maker of the report was not available for cross examination despite oral request from the appellant i.e. 1st respondent. The counter affidavit filed before the Tribunal by the petitioner herein is conspicuously silent on these aspects. On this background, the following are the observations by the Tribunal found in paragraph 7 of the impugned order allowing the appeal filed by the 1st respondent.

“The Appellant has agitated that the Appellant Establishment was not provided fair opportunity of hearing. The copy of the report by the Inspector, which made the basis of the PF liability, was not provided to the Appellant to formulate its defence. It is the responsibility of the Ld. Commissioner to determine the outstanding PF liability by fairly conducted the enquiry. The report prepared by the Enforcement Officer regarding the dues in respect of non-enrolled employees, omitted wages and holiday wages were not on the basis of any documents or records. In this case, no labour had been done by the Ld. Commissioner to indicate that dues have been determined by



conducting an enquiry as contemplated under Sec.7A of the Act. Accordingly, the impugned order is not sustainable and is set aside. The Appeal is allowed...”.

In the light of the observations made hereinbefore, I find no illegality or perversity in the reasoning given by the learned Tribunal while allowing the appeal filed by the 1st respondent. The learned Tribunal rightly came to the conclusion that no efforts were taken for determining the dues by conducting an enquiry as envisaged under Section 7A of the Act. This Court cannot act as a Court of Appeal over the finding given by the learned Tribunal in allowing the appeal filed by the employer. No case for interference in a writ jurisdiction of this Court is made out by the petitioner as the decision of the learned Tribunal is within the limits of law. It is not seen that the learned Tribunal has either misdirected itself on facts or law.

In the result, this writ petition fails and the same is dismissed.”

19. It is also pertinent to note that Hon’ble Higher Courts have, in various judgments, held that where the default is not wilful, waiver of damages and interest can be considered. But the applicant department has failed to consider such aspects and in a mechanical manner levied such damages and interest. Such type of approach is in fact against the spirit of resolutions under IBC, 2016.



20. So, the claim as made by EPFO being belated cannot be entertained, but we do admit the legal proposition raised by both the parties that the employees' funds and dues are having their priority charge over the assets. So, in order to balance the case, we feel it fair and judicious to say that the Respondent/Resolution Professional would be bound to give full benefits of Rs. 1,46,83,296/- (One crore forty-six lakh eighty-three thousand two hundred ninety-six rupees) calculated by him to EPFO as per provisions of IBC, 2016.
21. With the above findings and observations, this application is **disposed of.**
22. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps.
23. Let the certified copy of the order be issued upon compliance with requisite formalities.
24. File be consigned to records.

SD/-
MADHU SINHA
(MEMBER TECHNICAL)

SD/-
VINAY GOEL
(MEMBER JUDICIAL)

Signed on this the 15th day of July, 2025.

Athira. N. R/LRA

Arun