



NCLT Indore Bench  
Order dated 14.05.2026  
I.A. NO. 368 OF 2024 IN  
C.P. (IB) NO. 6 OF 2020

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

**INDORE BENCH**

**I.A. (I.B.C)/368(MP)2024**

**IN**

**C.P. (IB) NO. 6 OF 2020**

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

**In the matter of:**

**Employees' Provident Fund Organization,  
Indore**

Through Regional Provident Fund  
Commissioner,

Address: Regional Office: 7 Race Course  
Road, Indore (M.P.)

**...Applicant**

**Versus**

**1) Ms Teena Saraswat Pandey**

Resolution Professional —

Rajpal Abhikaran Pvt. Ltd.

387F 114 Scheme Part 1, Behind  
Diksha Boys Hostel Sant Nagar,  
Indore, Madhya Pradesh-45201.

**2) Agarwal Real City Private Limited**

Successful Resolution Applicant

Agarwal House, 2nd Floor, 5-  
Yeshwant Colony Y.N. Road, Indore,  
Madhya Pradesh India 452001

**...Respondents**

**Coram:**

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

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



**Appearances:**

Counsel for Applicant: Ms. Darshana Baghel, Advocate  
For the RP/respondent no. 1: Ms. Teena S. Pandey (RP in person)  
Counsel for Respondent No.2: Mr. Praveen N. Surange, Adv.

**ORDER**

**DELIVERED ON: 14 .05.2026**

**INTRODUCTION AND FACTS OF CASE:**

1. The present Interlocutory Application (I.A. (I.B.C)/368(MP)2024) has been filed by the Employees' Provident Fund Organization, Indore ("EPFO" / "Applicant") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC") read with Rule 11 of the National Company Law Tribunal Rules, 2016.
2. The reliefs prayed by applicant is as follows:
  - a. *Allow the Applicant to intervene in the present case;*
  - b. *Allow the claim of the Applicant being an amount of Rs. 5,27,236 (Rs. Five Lacs Twenty-Seven Thousand Two Hundred Thirty-Six only) as per the claim dated 14.09.2021 filed by the Applicant to the Resolution Professional along with further interest as may be awarded, and the claim be considered as First charge over all other dues of the Financial Creditor/ Corporate Debtor.*
  - c. *Direct the Respondent herein to consider the claim of the Applicant in priority as per the provision of IBC and EPF & MP Act, 1952 and Resolution Plan if approved be modified to include the claim of EPF;*



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- d. *Pending the hearing and final disposal of this Application the Respondents be directed to retain assets of the value of Rs.5,27,236/- (Rs. Five Lacs Twenty-Seven Thousand Two Hundred Thirty-Six only) and not to distribute the same to enable the payment of the claim of the Applicant;*
- e. *the Successful Resolution Applicant ("SRA") - Respondent No. 2 herein be directed to make amends in the Resolution Plan to provide for the claim of the Applicant or in the alternative, the SRA may be directed to settle the claim of the Applicant.*
- f. *Interim and ad-interim reliefs in terms of prayer clause (a) to (d) above;*
- g. *Such other and further reliefs as this Hon'ble Court deem fit and proper;*
- 3.** The Corporate Debtor, **M/s Rajpal Abhikaran Pvt. Ltd.** ("CD"), is covered under the EPF Act bearing EPF Code No.MP/IND/12713. The Corporate Insolvency Resolution Process ("CIRP") was commenced against the CD vide Order dated 26.03.2021. Ms. Teena Saraswat Pandey (Respondent No.1) was appointed as Interim Resolution Professional and subsequently confirmed as Resolution Professional.
- 4.** The Resolution Plan submitted by Respondent No.2 was approved by the Committee of Creditors ("CoC") on 11.07.2022 and by this Tribunal on 25.08.2022 in IA/12(MP)/2022 ("Plan Approval Order"). The Resolution Plan has since been fully implemented and Respondent No. 2 has taken over the Corporate Debtor.
- 5.** The following table sets out the complete chronology of events:



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S.No.	Date	Event
1	16.09.2019	Separate orders passed u/s 14B & 7Q EPF Act. PF dues of CD crystallised at Rs. 5,27,236/-.
2	04.06.2020	Revenue Recovery Certificate (RRC) No. 133 issued u/s 8 EPF Act against the CD.
3	26.03.2021	CIRP commenced. Ms. Teena Saraswat Pandey appointed IRP.
4	28.03.2021	Public announcement published.
5	08.04.2021	Last date for claims submission of claims as per public announcement
6	23.06.2021	Extended last date for submission of claims as per regulation 12(2) of CIRP regulations
7	14.09.2021	EPFO submits claim of Rs. 5,27,236/- before IRP — 173 days after CIRP commencement; and also not in prescribed Form under CIRP Regulations, 2016.
8	30.09.2021 & 04.10.2021	RP writes to EPFO pointing out formal/procedural deficiencies. No resubmission by EPFO thereafter.
9	02.10.2021	Form G published — Invitation for Expression of Interest.
10	03.12.2021	Resolution Plan submitted by Respondent No. 2.
11	11.07.2022	CoC approves Resolution Plan with 98.39% votes in its 21st meeting.
12	25.08.2022	This Tribunal approves Resolution Plan vide Order in IA/12(MP)/2022. Plan binding on all stakeholder's u/s 31(1) IBC.
13	08.06.2023	Closure order passed. Resolution Plan fully implemented.
14	19.07.2024	EPFO files present I.A. No. 368 of 2024 seeking payment of Rs. 5,27,236/-, which is 2 years after approval of resolution plan



**CONTENTIONS OF THE APPLICANT AS RAISED IN THE PETITION**

**6.** The Applicant has raised the following grounds in its Petition, which are recorded as stated by the Applicant:

- 6.1.** It is submitted that this Hon'ble Tribunal, vide Order dated 26.03.2021 passed in CP (IB)/06/2020, admitted M/s Rajpal Abhikaran Pvt. Ltd. into CIRP and appointed Ms. Teena Saraswat the Interim Resolution Professional, who was thereafter confirmed as the Resolution Professional.
- 6.2.** It is submitted that pursuant to CIRP, the Applicant initiated statutory proceedings under Sections 14B and 7Q of the EPF & MP Act, 1952 for determination of provident fund dues. These proceedings culminated in assessment orders dated 16.09.2019 (Pages 19–21 of IA, Annexure A2). Thereafter, the Applicant submitted a complete and quantified statutory claim of 5,27,236/- on 14.09.2021 (Pages 25–32 of IA, Annexure A4). However, no response was ever furnished by the Resolution Professional to the Applicant's statutory claim.
- 6.3.** The Applicant submitted its claim for the Provident Fund dues on 14.09.2021, much before publication of FORM G on 02.10.2021 and submission of Resolution plan by Respondent No. 2 on 03.12.2021 and on any discussion or final approval of the Resolution Plan by the Committee of Creditors on 11.07.2022. Hence, there is no basis for asserting that the claim was entirely ignored due to tardiness and was received too late, as it was lodged long prior to the CoC's finalization of the plan on 25.08.2022. Even if any nominal delay was perceived, it is well settled



law that such deadlines are subject to just exceptions.  
(Page 4 of Rejoinder 2).

- 6.4.** That under Section 18(1)(b) of the IBC, the Interim Resolution Professional and later the RP is obligated to receive, collate, and verify the claims of all creditors and then reflect them in the Information Memorandum. The failure to incorporate EPFO's legitimate statutory claim into the Information Memorandum stands in contravention of these express obligations, irrespective of the alleged timing or formatting deficiency. The Respondent No 1's refusal to consider the Applicant's dues on account of improper format or place them before the CoC constitutes a breach of these statutory obligations.
- 6.5.** That the period in question, late 2020 through 2021 saw widespread disruptions due to the COVID-19 pandemic. While no specific delay is admitted, it is submitted that, insofar as any delay is construed or inferred in the submission of the claim, such delay, if any, may reasonably be viewed in the context of the extraordinary and unforeseen disruption due to the COVID-19 pandemic. The period in question was marked by significant operational challenges, including restrictions on movement, health related uncertainties, and shifting institutional priorities, which could have had a bearing on procedural timelines.  
(Page 5 of Rejoinder 2).
- 6.6.** That the Respondents' contention that claims that the applicant "slept" over its rights and did not raise any objection before the plan was approved or during the CIRP is baseless and misconceived. It is most respectfully



submitted that the claim of the applicant was indeed filed on 14.09.2021 and the alleged letter from the RP dated 30.09.2021 (and email dated 04.10.2021) merely points out "formal issues," which did not negate the claim of the applicant. It is most respectfully submitted that even if the applicant had not participated further, the statutory exclusion of PF remains unaffected as per Section 36(4)(a)(iii) of IBC. (Page 6 of Rejoinder 2).

- 6.7.** It is submitted that the dues payable under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 enjoy a special statutory protection. Section 11(2) of the EPF and MP Act, 1952 creates a first charge on the assets of the establishment in favour of the provident fund authorities for all amounts due under the Act, and mandates that notwithstanding anything contained in any other law for the time being in force, such debt shall be paid in priority to all other debts. The provident fund dues represent amounts held in trust for the benefit of workmen and are not financial or operational debts in the conventional sense. (Page 7 of IA).
- 6.8.** Further, Section 36(4)(a)(iii) of the IBC explicitly excludes from the liquidation estate "*all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund.*" Thus, provident fund dues are placed on a special pedestal and are not subject to the ordinary distribution waterfall contained in Section 53 of the IBC. (Page 8 of IA).
- 6.9.** That the Responden No 2 's contention that by virtue of the final order approving the plan and the principle in



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**Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss ARC (2021) 9 SCC 657**, all prior claims, including statutory dues, stand extinguished if they are not part of the plan is wholly misconceived and misplaced. The Hon'ble Supreme Court in the aforesaid case specifically addressed the fate of Government/sovereign dues that ordinarily form part of the corporate debtor's assets, such as taxes owed to the state. The judgment does not discuss or decide the status of PF dues, which are categorically excluded from the debtor's liquidation/resolution estate. (Page 7 of Rejoinder 2).

**6.10.** The Respondent No. 2's reliance on **RPS Infrastructure Ltd. vs. Mukul Kumar & Ors. [(2023) 10 SCC 778]** to assert that no claims can "jump in after CoC approval of the Resolution plan. However, that precedent dealt with a commercial creditor who sought to file claims after the resolution plan was fully concluded. The Applicant- EPFO is a statutory authority for social security, recognized as carved out from the estate -Liquidation as well as Resolution estate. Even in cases of procedural delay, the Hon'ble Court as in the case of **EPFO vs. Supreme Fanendra Harakchand Munot [MANU/SCOR/113752/2023]** has clarified PF's separate standing. The Hon'ble Court observed as under:

***Having said so, we are of the opinion that the impugned judgment does not, in any way, affect the rights of the EPFO to proceed in accordance with law, in view of Section 36(4)(a)(iii). (Page 11 of Rejoinder 2).***



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**6.11.** The Applicant places reliance on the landmark judgment of the **Hon'ble Supreme Court in Sunil Kumar Jain & others v. Sundresh Bhatt & others (Civil Appeal No. 5510/19 dated 19.04.2022) (Relevant Paragraph page 13 of Judgment)** wherein it was categorically held that workmen's dues under provident fund, gratuity fund and pension fund are governed by Section 36(4) of the IBC and "are not to be treated as liquidation estate assets and the liquidator shall have no claim over such dues." (Page 10 of IA).

**6.12.** The Hon'ble Supreme Court of India in **Moser Baer Karamchari Union v. Union of India (2023 SCC OnLine SC 547)** (Para 12 & Footnote 9, page 61 of Judgment) held that in terms of Section 36(4)(a)(iii) of the Code, all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund, do not form part and are not to be included in the liquidation proceedings. The legal effect of the exclusion is that, the amount of sums due to any workmen or employee from the provident fund, the pension fund or the gratuity fund cannot be made subject matter of reduction or dilution even in a rehabilitation or revival plan. They are excluded from the waterfall mechanisms and would not be used in recovery on liquidation, and they cannot be shared. (Page 4 & 6 of Rejoinder)

**6.13.** The Hon'ble Supreme Court in **Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni & Anr. (2024) 6 SCC 767 (Relevant para 22 & 30 of Judgment)** has unequivocally held that even if a claim is filed in a



format not strictly conforming to the relevant regulations, the Resolution Professional (RP) is nonetheless duty-bound to examine and consider it on merits. Procedural regulations cannot override the substantive rights of stakeholders, and minor deviations in form or slight delays in submissions do not negate the underlying claim. (Page 5-6 of Rejoinder).

**6.14.** The Hon'ble NCLAT in *Tourism Finance Corporation of India Ltd. vs. Rainbow Handpapers Ltd. (Company Appeal (AT) (Insolvency) No.354 of 2019)* has held that provident fund dues inclusive of penal damages and interest are to be paid in full. The NCLAT observed that no provisions of the EPF & MP Act conflict with any provisions of the I&B Code. The NCLAT directed the resolution professional to release the full amount of provident fund, including the interest thereon, immediately as these dues are not to be included as an asset of the corporate debtor. (Page 13 of Rejoinder).

**6.15.** The Applicant submits that inaction on the part of the Respondent Liquidator in not considering the first charge of Provident Fund dues is contrary to the provisions of the IBC itself which keeps the Provident Fund away from the ambit of the IBC. The legislature in its wisdom has retained the priority of the EPF Act, 1952 by not amending it under the IBC, thereby preserving the statutory first charge.

**6.16.** The Applicant further submits that irreparable harm, loss and prejudice will be caused to the workers whose provident fund contributions represent their fundamental right to social security if this application is not allowed. The



balance of convenience is in favor of the Applicant as these are statutory dues ultimately owed to the workers forming an intrinsic part of their right to life.

**6.17.** In view of the above, the Respondent's rejection is contrary to statutory mandate, judicial precedent and the fiduciary obligations cast under Section 35 of the Code. It is therefore respectfully prayed that this Hon'ble Tribunal direct the admission and remittance of provident fund dues of Rs. 5,27,236/-, along with statutory interest under Section 7Q and damages under Section 14B, into the respective employees' accounts, and pass further orders as may be deemed just in the interest of justice and social welfare.

**PLEADINGS / CONTENTIONS OF RESPONDENT NO.1 (RESOLUTION PROFESSIONAL) AS RAISED IN REPLY**

**7.** Respondent No. 1 — Ms. Teena Saraswat Pandey, Ex-Resolution Professional — has filed an Affidavit-in-Reply opposing the Application in its entirety and raising the following contentions:

**A. Claim time-barred and not in prescribed form**

**7.1** That a public announcement under Regulation 6 of the IBBI (CIRP) Regulations, 2016 was made on 28.03.2021 calling upon all creditors of the Corporate Debtor to submit their claims on or before 08.04.2021. The claim submitted by the Applicant amounting to Rs. 5,27,236/- was made on 14.09.2021 — after a delay of 173 days from the date of CIRP commencement — and was also beyond the extended last date of 23.06.2021 under Regulation 12(2) of the IBBI (CIRP) Regulations, 2016. The claim was therefore time-barred on both counts.



**7.2** That the claim submitted by the Applicant was also not in the prescribed form as required under the IBBI (CIRP) Regulations, 2016. Respondent No. 1 duly intimated the Applicant of these deficiencies vide letter dated 30.09.2021 and email dated 04.10.2021 along with speed-post receipt (Annexure R-1 Colly.). Despite this communication, the Applicant took no corrective steps whatsoever.

**B. Inaction on part of the Applicant — acted as silent spectator**

**7.3** That the communication from Respondent No. 1 clearly establishes that the Applicant was in complete knowledge of the ongoing CIRP proceedings of M/s Rajpal Abhikaran Private Limited. Despite this knowledge, the Applicant acted as a mute/silent spectator throughout the CIRP, failed to raise any grievance, did not participate in CoC meetings, and did not raise any objection at the stage of plan approval. The Applicant has now filed the present Application at a belated stage after the full implementation of the Resolution Plan of Respondent No. 2 and the submission of the Closure Report — with the intent to defeat the very object of the Code and abuse the process of law.

**C. Resolution Plan approved in accordance with Information Memorandum — CIRP closed**

**7.4** That upon admission of CIRP vide Order dated 26.03.2021, Respondent No. 1 was appointed as IRP and subsequently confirmed as RP. Form G (Invitation for Expression of Interest) was published on 02.10.2021 under Regulation 36A(1) of the IBBI (CIRP) Regulations, 2016 and the Information Memorandum along with the Evaluation Matrix and Request



for Resolution Plan was shared with Respondent No. 2. The Information Memorandum specified the details of claims received and provisionally admitted. The Respondent No. 2 submitted its Resolution Plan on 03.12.2021 entirely in reliance upon the said Information Memorandum.

**7.5** That the Resolution Plan was approved by the CoC with 90.41% votes in the 17th CoC Meeting (17.12.2021) and subsequently with 98.39% votes in the 21st CoC Meeting (11.07.2022). This Tribunal approved the Resolution Plan vide Order dated 25.08.2022 in IA No. 12/2022, thereby discharging Respondent No. 1 as Resolution Professional. The closure report was subsequently taken on record vide Order dated 08.06.2023 in IA No. 160/2023, discharging the Monitoring Committee. The SRA is presently in possession and control of the Corporate Debtor.

**7.6** That the present Application is barred by limitation. The tabular presentation of the delay is as under:

<b>S.No.</b>	<b>Event</b>	<b>Date</b>	<b>Delay in filing present Application (19.07.2024)</b>
1	Date of rejection of claim by RP	04.10.2021	1020 days
2	Date of approval of Resolution Plan by AA	25.08.2022	695 days
3	Date of closure order passed by AA	08.06.2023	408 days



**7.7** That the Applicant has provided no justification or reason whatsoever for approaching this Tribunal at this belated stage when the Resolution Plan is fully implemented, the Monitoring Committee discharged, and the CIRP of the Corporate Debtor closed. Allowing the present Application would amount to unscrambling a concluded resolution process at the instance of a belated claimant, which ought not to be countenanced.

**D. Section 238 IBC has overriding effect**

**7.8** That Section 238 of the IBC expressly provides that the provisions of the Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. The Supreme Court in *Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes (Civil Appeal No. 7667/2021)* held that in case of any conflict, the IBC overrides other laws. Similar positions were affirmed in *Innoventive Industries Ltd. v. ICICI Bank (Civil Appeal No. 8337-8338/2017)*, *Rajendra K. Bhutta v. Maharashtra Housing and Area Development Authority (Civil Appeal No. 12248/2018)*, and *Principal Commissioner of Income Tax v. Monnet Ispat and Energy Ltd. (SLP(C) 6483/2018)*. Hence the EPF Act cannot override IBC procedures.

**E. Application not maintainable in light of Regulation 12 IBBI (CIRP) Regulations, 2016**

**7.9** That the present Application is not maintainable in light of Regulation 12 of the IBBI (CIRP) Regulations, 2016 which mandates that a creditor who fails to submit claim within the time stipulated in the public announcement may do so on or



before the ninetieth day of the insolvency commencement date. The Applicant admittedly filed its claim on 14.09.2021 — well past the ninetieth day (23.06.2021) from the CIRP commencement date of 26.03.2021. The present Application filed after full implementation of the Resolution Plan and submission of Closure Report is on this ground alone not maintainable and liable to be dismissed.

**F. Damages under Section 14B EPF Act not covered under Section 36(4)(a)(iii) IBC**

- 7.10** That the claim of the Applicant is largely based on proceedings under Section 14B of the EPF Act pertaining to damages. The NCLT Mumbai Bench in ***EPFO v. Rajat Mukherjee (IA No. 2428/2021, decided 28.02.2024)*** has held that damages under Section 14B of the EPF Act are not covered under the exclusion stipulated by Section 36(4)(a)(iii) of the IBC and are not required to be excluded from the liquidation estate.
- 7.11** Hence the Applicant has improperly attempted to bring its claim within the Section 36(4)(a)(iii) exclusion, which is not available to it.
- 7.12** Further, the Respondent No. 1 submits that she has been discharged as Resolution Professional vide Order dated 25.08.2022 and as Chairperson, Monitoring Committee vide Order dated 08.06.2023. She is no longer a necessary party to the present proceedings and prays that her name be deleted from the array of parties. The present Application is a clear abuse of the process of law and is liable to be dismissed with exemplary costs.



**PLEADINGS / CONTENTIONS OF RESPONDENT NO. 2**  
**(SUCCESSFUL RESOLUTION APPLICANT)**

**8.** Respondent No. 2 has filed a detailed Reply raising the following contentions:

8.1 That the present Application is barred by time, is not maintainable, and is liable to be dismissed. The contentions raised by the Applicant gravely suffer from Suggestio Falsi and Suppressio Veri. The Application is aimed at harassing and arm-twisting Respondent No. 2 and the Applicant has suppressed material facts.

**A. Resolution Plan approved in accordance with Information Memorandum**

8.2 That CIRP was admitted vide Order dated 26.03.2021. Form G was published on 02.10.2021. Respondent No. 2 submitted its Expression of Interest on 11.10.2021 within time. The Information Memorandum and Evaluation Matrix were received on 27.10.2021. The claim of Rs. 5,27,236/- of the Applicant was not included in the details of claims provided in the Information Memorandum. Respondent No. 2 submitted its Resolution Plan on 03.12.2021 entirely in reliance upon the Information Memorandum.

8.3 That the Resolution Plan was approved by the CoC with 90.41% votes in its 17th meeting (17.12.2021) and with 98.39% votes in its 21st meeting (11.07.2022) and was approved by this Tribunal vide Order dated 25.08.2022. The plan was fully implemented and the closure report was taken on record vide Order dated 08.06.2023.



8.4 That under the Plan Approval Order, this Tribunal itself held: "In view of the above, all past claims would stand extinguished. However, as far as various statutory rights vested with the corporate debtor in form of various licenses, leases, and other alike matter, we make it clear that the successful resolution applicant has to approach the concerned statutory authority for those concessions and those authorities will consider the same as per their established procedure." The Resolution Plan of Respondent No. 2 stands allowed as per Section 30(6) of the IBC.

**Clean slate principle — Ghanashyam Mishra (supra) — all claims extinguished**

8.5 That once the Resolution Plan is approved by the Adjudicating Authority under Section 31(1) IBC, all claims not forming part of the plan stand extinguished. Reliance is placed on the Hon'ble Supreme Court in **Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss ARC (2021) 9 SCC 657**: "Once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan." Further: "Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished...".



**B. Claim time-barred and not in prescribed form — Regulation  
12 IBBI (CIRP) Regulations, 2016**

8.6 That the Public Announcement was made on 28.03.2021 with last date of 08.04.2021. Under Regulation 12(2) of the IBBI (CIRP) Regulations, 2016, the extended last date was 23.06.2021. The Applicant submitted its claim on 14.09.2021 — much beyond the prescribed period and not in proper prescribed form. The RP duly communicated the deficiencies vide letter dated 30.09.2021 and email dated 04.10.2021. The present Application is not maintainable on this ground alone.

**C. Applicant acted as silent spectator throughout CIRP**

8.7 That despite being in complete knowledge of the ongoing CIRP proceedings (since the RP communicated to the Applicant in September/October 2021), the Applicant acted as a mute/silent spectator, abstained from raising any grievance during CIRP, and has now woken from slumber after the successful implementation of the Resolution Plan of Respondent No. 2 — just to defeat the very objective of the Code by abusing the process of law. Reliance is placed on *RPS Infrastructure Ltd. v. Mukul Kumar & Ors.* [(2023) 10 SCC 778]: "the mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process...the Court cautioned against allowing claims after the resolution plan has been accepted by the CoC."

**D. Resolution plan was approved by CoC and Commercial  
Wisdom of CoC is paramount**

8.8 That the Resolution Plan was approved by the CoC in exercise of its commercial wisdom. Section 21 IBC constitutes the CoC of financial creditors for proper and unbiased distribution under the



Section 53 waterfall. The Supreme Court in **K. Sashidhar v. Indian Overseas Bank (2019) 12 SCC 150** held the commercial wisdom of the CoC has been given paramount status without any judicial intervention. In **Vallal RCK v. Siva Industries (2022 SCC Online SC 756)**, the Supreme Court held interference is warranted only when the CoC's decision is "**wholly capricious, arbitrary, irrational and dehors the provisions of the statute.**" The Adjudicating Authority cannot interfere on merits with the commercial decision of the CoC.

**E. Section 238 IBC overrides other laws**

8.9 That Section 238 IBC gives the Code an overriding effect over all other laws. The provision specifies: "The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force." Reliance is placed on: (i) Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes (2022 SCC OnLine SC 1101) — IBC overrides in case of conflict; (ii) Innovative Industries Ltd. v. ICICI Bank [2017 SCC OnLine SC 1025] — Section 238 non-obstante clause prevails; (iii) Rajendra K. Bhutta v. Maharashtra Housing (2020 SCC OnLine SC 292) — IBC must prevail over other laws; (iv) Principal Commissioner of Income Tax v. Monnet Ispat [2018 SCC OnLine SC 3465] — Code overrides Income Tax Act. Hence the EPF Act cannot operate to override IBC procedures.

**F. Application is Not Maintainable In lieu of Regulation 12 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016**

8.10 In the present matter the Insolvency Commencement date was 26.03.2021 and Public Announcement was made on 28.03.2021, wherein creditors were called upon to submit their claims on or



before 08.04.2021 and the last date of submission of claim as per the said Regulation was 23.06.2021, whereas the claim of the Applicant was submitted on 14.09.2021, i.e. beyond the prescribed period, that too without the proper form prescribed under the regulations.

8.11 ***The Hon'ble NCLAT, New Delhi in Provident Fund Organization V/s. Fanendra Harakchand Munot and Anr. [MANU/NL/0988/2023]*** held that since there was an inordinate delay in filing the claim and the resolution plan was approved, no claim can survive. (Para 4 and 5) Later the said observation was upheld by the Hon'ble Apex Court in ***Employee Provident Fund Organisation V/s. Fanendra Harakchand Munot and Anr. [MANU/SCOR/113752/2023]*** and held that the Commissioner and employees of the EPFO must take steps to ensure that there is compliance with the timelines provided under the Insolvency and Bankruptcy Code, 2016, Failure may have legal consequences.

8.12 Respondent No. 2 prays that the Application be dismissed with heavy costs.

#### **ISSUES FOR DETERMINATION AND FINDINGS**

9. Having regard to the pleadings of all parties and the judicial precedents placed before this Tribunal, the following issues arise for determination:
10. **ISSUE I:** *Whether the EPF dues of Rs. 5,27,236/- are excluded from the Corporate Debtor's resolution estate under Section 36(4)(a)(iii) of the IBC and constitute a first charge under Section 11(2) of the EPF Act, and whether they can be extinguished by an approved Resolution Plan?*



**11. FINDING ON ISSUE I:** The legal position is well settled and is accepted in principle by this Tribunal. Section 36(4)(a)(iii) of the IBC mandatorily excludes all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund from the liquidation/resolution estate. Section 11(2) of the EPF Act creates a first charge on the assets of the establishment and mandates priority of payment notwithstanding anything contained in any other law for the time being in force. As a matter of statutory law, PF dues cannot be reduced or diluted even in a revival or rehabilitation plan. Since PF dues are expressly excluded from the estate by the IBC itself, the question of Section 238 of the IBC overriding the EPF Act does not arise — there is no conflict between the two enactments on this issue.

**12.** The legal principle urged by the Applicant is fully acknowledged by this Tribunal. However, the acknowledgement of this legal principle does not by itself entitle the Applicant to the reliefs claimed in this Application. A right, however strong in law, must be asserted at the proper time and through the proper mechanism. The failure of the Applicant to do so is what defeats this Application, as elaborated in Issue II below.

Issue I is answered in favour of the legal principle in the abstract, but not in favour of the Applicant on the question of relief.

**13. ISSUE II:** *Whether, in light of EPFO's failure to file its claim in prescribed form and time the present Application is maintainable and Respondent No. 2 can be burdened with EPFO's claim at this stage?*

**FINDING ON ISSUE II:**

**14.** The answer is an unequivocal NO. This Application is not maintainable on multiple independent and concurrent grounds, each sufficient by itself to warrant dismissal.



15. The claim was filed on 14.09.2021 — after the prescribed last date of 08.04.2021 and the extended outer limit of 23.06.2021 under Regulation 12(2) of the IBBI (CIRP) Regulations, 2016, which permits late filing only up to the ninetieth day of CIRP commencement. The claim was filed 173 days after CIRP commencement and admittedly not in the prescribed form. The Resolution Professional specifically and formally notified EPFO of these deficiencies on two separate occasions — vide letter dated 30.09.2021 and email dated 04.10.2021. EPFO - chose complete inaction in response. Not a single corrective step was taken.
16. Thereafter, the EPFO did not raise any objection or grievance during the CIRP, did not approach the Resolution Professional to resubmit its claim, and did not file any application before this Tribunal at the stage of consideration of the Resolution Plan under Section 31 of the IBC.
17. Respondent No. 2 argues that the Resolution Plan once approved by this Tribunal under Section 31(1) of the IBC confers a clean slate upon the Successful Resolution Applicant and all claims not forming part of the plan stand extinguished, placing reliance on ***Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss ARC (2021) 9 SCC 657***. The Applicant on the other hand urges that PF dues, being trust property excluded from the resolution/liquidation estate under Section 36(4)(a)(iii) of the IBC, are outside the scope of any such extinguishment, and that the said judgment is inapplicable to PF dues inasmuch as the Hon'ble Supreme Court in that case specifically addressed the fate of government and sovereign dues that ordinarily form part of the assets of the Corporate Debtor — such as taxes owed to the State — and the judgment does not discuss or



decide the status of PF dues which are categorically excluded from the debtor's estate by the IBC itself.

18. This Tribunal notes the rival contentions on this legal question. However, this Tribunal is of the considered view that it is not necessary on the facts of this case to enter into a final determination of this contested legal question, because the Application fails on a more fundamental and decisive ground — the complete and irrevocable finality of the Plan Approval Order itself — as elaborated hereinafter.
19. The Plan Approval Order dated 25.08.2022 was passed by a competent Adjudicating Authority and was never challenged by the Applicant before the National Company Law Appellate Tribunal under Section 61 of the IBC within the statutory period of 45 days — or at any point thereafter. It has therefore attained complete and irrevocable finality. A Closure Order was further passed by this Tribunal on 08.06.2023, formally and conclusively bringing the CIRP to an end. The present Application was filed on 19.07.2024 — approximately 1020 days after rejection of its claim, 695 days after the Plan Approval Order, and 408 days after the Closure Order — without any explanation whatsoever for this extraordinary delay.
20. The Hon'ble Supreme Court in ***EPFO v. Fanendra Harakchand Munot [MANU/SCOR/113752/2023]*** — a case on materially identical facts where the EPFO similarly delayed its claim and the Resolution Plan was approved in the interim — specifically directed that the Commissioner and employees of the EPFO must take steps to ensure compliance with the timelines provided under the IBC, that failure may have legal consequences, and that in case of dereliction of duty, action should be taken against erring employees in accordance with law. The Hon'ble Supreme Court declined to interfere with the



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NCLAT's dismissal of EPFO's claim in that case. This binding direction and the outcome of that case apply squarely to the conduct of the Applicant-department in the present proceedings.

21. The Successful Resolution Applicant — Respondent No. 2 — bid for and acquired the Corporate Debtor entirely on the basis of the liabilities disclosed in the Information Memorandum. No verified EPF claim existed on record at any relevant stage. To now impose upon the SRA an additional liability that was never part of the approved plan would retroactively alter the fundamental economics of the transaction, gravely prejudice a bona fide acquirer who acted in complete and legitimate reliance upon a judicially approved and finally concluded order, thereby undermining the very certainty and integrity of the resolution framework that the IBC was enacted to create and sustain.
22. The observation of the Hon'ble Supreme Court in EPFO v. Fanendra Munot that the rights of EPFO to proceed in accordance with law remain unaffected must be correctly understood as preserving EPFO's right to pursue recovery through the EPF Act's own independent statutory enforcement machinery — not as a licence to burden a bona fide Successful Resolution Applicant under a finally approved, fully implemented, and formally closed resolution plan.

**Issue II is answered against the Applicant and in favour of Respondent No. 2.**



**RECOMMENDATION TO THE INSOLVENCY AND BANKRUPTCY  
BOARD OF INDIA (IBBI)**

- 23.** This Tribunal, in its capacity as an Adjudicating Authority functioning under the Insolvency and Bankruptcy Code, 2016, deems it appropriate and necessary to place the following observations and recommendations before the Insolvency and Bankruptcy Board of India for its consideration and appropriate regulatory action. These observations arise from the experience of this Tribunal in dealing with a recurring pattern of cases involving EPF claims during CIRP proceedings, and are made in the larger public interest with the singular objective of ensuring that the social security entitlements of workers are not rendered illusory on account of systemic and procedural gaps in the present regulatory framework.
- 24.** While working as an Adjudicating Authority under the IBC, this Tribunal has come across a significant number of petitions filed by the EPFO wherein the claim of the department is rejected by the Resolution Professional on the ground of delay or non-compliance with prescribed format. More concerning is the pattern that petitions challenging such rejection are themselves filed before this Tribunal after inordinate and unexplained delay — sometimes running into years after the Resolution Plan has been approved and implemented — with the result that the application is rendered infructuous at the threshold. In this entire legal process, it is the innocent employees — the very persons for whose benefit the EPF Act was enacted — who ultimately emerge as the silent victims, with their deducted wages gone unrecovered and unprotected.
- 25.** Provident fund dues are not merely statutory dues in the conventional sense. They are not a debt owed to the Government or



to a regulator. They are a part of the wages of the employees — deducted from their salaries each month, held by the Corporate Debtor in the capacity of a trustee, and payable to the employees and their dependents as a matter of social security and dignified retirement.

- 26.** The EPF Act is a beneficial piece of social legislation enacted to protect the working class, and provident fund contributions constitute an integral component of the livelihood of every contributing employee. Wages of employees are an integral part of their livelihood and represent a dimension of the right to life and personal liberty guaranteed under Article 21 of the Constitution of India.
- 27.** The Hon'ble Supreme Court has, through a course of progressive judicial interpretation and welcome legislative action, recognised the rights of home buyers as partaking of the character of a fundamental right. In the considered opinion of this Tribunal, the Employees' Provident Fund — representing deductions from the wages of the working class — is equally an integral part of the right to live with dignity and the right to personal liberty under Article 21. It deserves at least the same degree of protection and proactive institutional attention. The IBC itself acknowledges this by expressly excluding PF dues from the liquidation/resolution estate under Section 36(4)(a)(iii), placing them in the category of third-party trust assets that do not belong to the Corporate Debtor and cannot be swept away in any insolvency proceeding. This statutory recognition must be given practical effect through regulatory action.
- 28.** Having observed the above, this Tribunal is of the respectful opinion that the payment of EPF dues and the protection of EPF claims



should not be made entirely dependent upon a claim being filed by the EPF department within the prescribed procedural timelines of the CIRP. The following specific recommendations are made to IBBI for its careful consideration:

- a. Resolution Professionals are qualified, educated, and experienced insolvency professionals — they constitute, in the truest sense, the third pillar of the IBC framework, entrusted with the responsibility of managing the affairs of the Corporate Debtor in the interest of all stakeholders including employees. Once CIRP is initiated against a Corporate Debtor, the RP is in possession of the books of accounts, statutory records, and all relevant documents of the company. The RP is therefore best placed to ascertain at the very outset whether the EPF Act is applicable to the Corporate Debtor. It is the considered opinion of this Tribunal that once the RP forms a prima facie opinion that the EPF Act is applicable to the Corporate Debtor, the RP must forthwith notify the jurisdictional EPF authorities and invite their claim — without waiting for the department to independently file one. The RP must not remain a passive recipient of claims alone; the RP's duty of collation under Section 18(1)(b) of the IBC is an active, not a passive, duty.
- b. This Tribunal has observed that the public announcement inviting claims is most often either overlooked or lost to the sight of the EPF department, particularly given the operational challenges faced by government departments. The regulatory framework must account for this ground reality and place an affirmative duty on the RP.
- c. The analogy of the ***Hon'ble NCLAT's decision in Puneet Kaur v. K.V. Developers Pvt. Ltd.*** is instructive and is commended to



IBBI's attention. In that case, the NCLAT observed that where the RP, on examination of the books of accounts and other relevant documents, finds that the right of a home buyer may exist, the RP should consider the claim and include it in the Information Memorandum — the RP should not wait for a formal claim to be filed before it. On the same reasoning and principle, it is the opinion of this Tribunal that where the RP finds that the EPF Act is applicable to the Corporate Debtor, the RP must examine the potential EPF dues and immediately notify the jurisdictional EPF department to file its claim. The Corporate Debtor itself — being fully and personally aware of its own obligations under the EPF Act, having deducted contributions from the wages of its employees month after month — bears a co-extensive responsibility to proactively disclose its EPF liability to the RP at the very inception of the CIRP, rather than remaining silent and allowing its own employees' dues to be buried in the insolvency proceedings.

- d.** Ignorance of law is no excuse — and this principle applies with equal force to professionals entrusted with statutory duties and to Corporate Debtor as it does to common persons.
- e.** An additional and complementary measure that can be taken is that while admitting the Corporate Debtor into CIRP, the Adjudicating Authority should issue specific directions in the admission order itself for issuance of notice to the jurisdictional EPF department — as well as to ESIC, gratuity fund authorities, and other social security regulators — so that these departments are directly informed of the CIRP commencement and do not miss the public announcement process. Such a direction at the admission stage would cost the system nothing and would go a long way in ensuring that workers' dues are not lost simply



because a government department missed a newspaper publication.

- f. This Tribunal would also like to underscore and place on record the important legal and conceptual distinction between EPF dues and other statutory dues — a distinction which has significant regulatory implications. EPF dues represent amounts which the Corporate Debtor holds as a trustee on behalf of its employees — they are third-party assets, they do not belong to the Corporate Debtor, they are not part of its estate, and they cannot be included within the CIRP estate or treated under the waterfall mechanism of Section 53 of the IBC. Other statutory dues — such as taxes, GST, royalties, and government levies — are payable to the Government from the Corporate Debtor's own resources and are therefore rightly treated as part of the corporate estate subject to the Section 53 waterfall. This distinction is expressly recognised in Section 36(4)(a)(iii) of the IBC but is not adequately reflected in the existing IBBI Regulations. IBBI is therefore respectfully requested to incorporate a specific regulation in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the IBBI (Liquidation Process) Regulations, 2016 explicitly recognising this distinction, and imposing a statutory duty on the RP/Liquidator to ascertain the applicability of the EPF Act, notify the EPF authorities, and incorporate potential EPF claims into the Information Memorandum — independently of whether a formal claim has been filed by the department.

29. This Tribunal requests IBBI to carefully analyse the pros and cons of the above proposals keeping in view the ground realities of CIRP administration and the paramount objective of protecting employees'



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social security. Resolution Professionals, as qualified insolvency professionals entrusted with significant statutory responsibilities under the IBC, must be held to a standard of proactive and diligent compliance insofar as workers' social security dues are concerned. The present regulatory gap, as vividly illustrated by the facts of this very case, results in the systematic non-protection of employees' deducted wages — an outcome that is inconsistent with both the letter and the spirit of the IBC and the EPF Act.

- 30.** In view of the findings recorded hereinabove on Issues I to II, the present application **I.A. (I.B.C)/368(MP)2024 DISMISSED AND DISPOSED OF** accordingly. No order as to costs.
- 31.** A copy of this Order shall be forwarded by the Registry to the Insolvency and Bankruptcy Board of India, 7th Floor, Mayur Bhawan, Shankar Market, Connaught Circus, New Delhi – 110001, For information and appropriate regulatory consideration, with a request to treat this order as a formal recommendation and should not be considered as binding direction.

Sd/-

Sd/-

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

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

*Chandni -LRA*

