

**NATIONAL COMPANY LAW TRIBUNAL**

**COURT ROOM NO. 1**

**MUMBAI BENCH**

**Item No. 35**

**IA(IBC)(PLAN)/ 58(MB)2025 IA(I.B.C)/1670(MB)2025**  
**IN**  
**C.P. (IB)/137(MB)2023**

CORAM:

**SH. PRABHAT KUMAR**                      **SH. SUSHIL MAHADEORAO KOCHEY**  
**HON'BLE MEMBER (TECHNICAL)**      **HON'BLE MEMBER (JUDICIAL)**

ORDER SHEET OF THE HEARING ON **24.07.2025**

NAME OF THE PARTIES: **GOSPELL DIGITAL TECHNOLOGY CO. LTD. V/s**  
**ALTIUS DIGITAL PRIVATE LIMITED**

Section 7 of the Insolvency and Bankruptcy Code, 2016

---

**ORDER**

Adv. Mahcolm VAz i/b Adv. Ravi Rathore for the Applicant in IA 1670 of 2025 are present. Adv. Shadab Jan a/w Adv. Aalisha Sharma i/b Avyaan Legal for the Resolution Professional in IA(IBC)(PLAN)/ 58(MB) of 2025 and Respondent in IA 1670 of 2025 present.

**IA(I.B.C)/1670(MB)2025**

1. This is an Application filed by the Applicant, Regional Provident Fund Commissioner-II under Section 60(5) of the Insolvency and Bankruptcy Code, 2016. The Applicant has made following prayers:

- a. *Delay of Nine months and 13 days in filing the claim of the Applicant before the Respondent, be condoned; (as per public Announcement the last date of filing was 4<sup>th</sup> January, 2024 and the claim was filed on 17/10/2024);*
- b. *Allow the claim u/s 7-A, 14-B and 7-Q of the EPF & MP Act, 1952 of the Applicant, being an amount of Rs.44,73,611/- (Rupees Forty-Four Lakhs*



*Seventy-Three Thousand Six Hundred and Eleven Only) for the period 2017 to 30.11.2023, as per the Letter dated 17/10/2024 (Ex-B) 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;*

- c. Direct the Resolution Professional Respondent herein to consider the claim of the Applicant in priority as per the provision of IBC and EPF & MP Act, 1952;*
- d. Email dated 12/11/2024 issued by the Resolution Professional to the Applicant, be called for and after going into legality and validity of same be pleased to set aside the same and the Resolution Professional be directed to release the amounts due to EPFO in priority over other dues of Corporate Debtor;*
- e. Pending the hearing and final disposal of this Application the Respondents be directed to retain assets of the value of Rs.44,73,611/- (Rupees Forty-Four Lakhs Seventy-Three Thousand Six Hundred and Eleven Only) and not to distribute the same to enable the payment of 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 Tribunal deem fit and proper;*

2. The Applicant is claiming the Provident Fund Dues under Section 7A, 7Q and 14-B which was rejected by the Resolution Professional vide its Letter dated 12<sup>th</sup> November 2024 and insisting upon the applicant to get the delay condoned from NCLT. It is case of the Applicant that it is a Statutory Body constituted under the provisions of EPF & MP Act, 1952 and its dues are to be paid in priority as per Section 11 of EPF & MP Act, 1952 as such dues are excluded from the Liquidation Estate u/s 36(4) of IBC.

3. The Applicant is stated to have sent a letter dated 17.10.2024 to the Respondent for claiming certain dues from the Corporate Debtor on account of Provident Fund for



the period 2017-18 to 2023-24 determined on the basis of Area Enforcement Report dated 22.08.2024 and the provisional amount of damages under Section 14(b), interest under Section 7Q and damages under Section 14-B for the period from 01/2018 to 11/2023. The said report clearly states that “*in the absence of requisite records like Salary register and payment receipts the undersigned calculated the dues on the basis of difference in Balance Sheet booking amount and the wages and remittances as per the establishment ledger (office record) for the period from 2018-19 to 202-23 of quantum of dues of Rs.17,51,718/-*“. It is further stated therein that “*the establishment is liable to pay the interest and damages under 7Q and 14B of the Act an applicable on belated payments*”

4. Heard the Counsel and perused the material on record.
5. In this case the CIRP commenced on 19.12.2023 and the moratorium under Section 14 of the IB Code came into force from that date. Admittedly no order has been passed by the Applicant Department creating the demand and the present Application has been filed on the basis of Area Enforcement Report dated 22.08.2024 which was submitted by Enforcement Officer to Provident Fund Commissioner-II for perusal and further necessary action / orders. Nonetheless, this enforcement report has been filed pursuant to an office order dated 11.03.2024 and 23.04.2024, which falls after the commencement of CIRP, accordingly, there is no dispute that these proceedings have been initiated after commencement of CIRP and during the moratorium period.
6. The Hon'ble NCLAT in the case of ***Employees' Provident Fund Organization Regional Officer, Vashi, Navi Mumbai Through Regional PF Commissioner-II (Legal) V/s Jaykumar Pesumal Arlani Resolution Professional of M/s. Decent Laminates Pvt. Ltd. {Company Appeal (AT) (Insolvency) No. 1062 of 2024*** held that “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.*

7. It is also pertinent to note that the said report itself record the fact that the Corporate Debtor had remitted the dues upto May 2022 and thereafter, minimum administrative charges at the rate of Rs.500 per month upto November 2023. In the case of ***Himachal Pradesh State Forest Corporation V/s Regional Provident Fund Commissioner (2008) 5 Supreme Court Cases 756***, the Hon'ble Supreme Court held at Para 5 "*We have heard the learned counsel for the parties and gone through the record. We do appreciate that the inaction on the part of the Commissioner to initiate proceedings within a reasonable time, has to be deplored. However, as the Corporation has itself submitted that it was covered under the Act and in view of the limited relief granted by the authorities below and by the High Court, we are disinclined to interfere with the matter at this stage. We accordingly dismiss the appeals but reiterate the recommendation that the amounts due from the Corporation will be determined only with respect to those employees who are identifiable and whose entitlement can be proved on the evidence and that in the event the record is not available with the Corporation (at this belated stage), it*



*would not be obliged to explain its loss, or that any adverse inference be drawn on this score. With this very small modification, we dismiss the appeals.*

8. In view of the aforesaid decisions, assessment proceedings before the EPFO could not have been initiated after initiation of CIRP and also cannot be continued during this period. Accordingly, any amount determined payable, which is admittedly provisional, cannot said to be due and recoverable from the Corporate Debtor in its CIRP Process.

9. Accordingly, IA(I.B.C)/1670(MB) of 2025 is **dismissed**.

**IA(IBC)(PLAN)/ 58(MB)2025**

List this matter on Board on **05.08.2025**.

-Sd/-  
**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

Rehan Shaikh

-Sd/-  
**SUSHIL MAHADEORAO KOCHEY**  
**MEMBER (JUDICIAL)**