

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1643 of 2025

IN THE MATTER OF:

Employees Provident Fund Organisation **...Appellant**

Versus

Arun Kishanlal Bagaria **...Respondents**

Present:

For Appellant : **Mr. Kaushal Gautam, Advocate.**

For Respondents : **Mr. Himanshu Satija and Ms. Anshul Rao, Advocates.**

ORDER
(Hybrid Mode)

28.04.2026: This appeal has been filed against an order dated 24.07.2025, passed by the adjudicating authority (National Company Law Tribunal, Court Room No. 1, Mumbai Bench), by which I.A. No. 1670/2025 filed by the appellant has been dismissed.

2. The appellant has filed the claim with 9 months delay before the Resolution Professional (RP) and has further prayed that claim under 7A, 7Q and 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 be admitted. Adjudicating authority heard the parties and noticed the fact that claim of the appellant was filed on basis of Area Enforcement Report dated 22.08.2024 and Corporate Insolvency Resolution Process (CIRP) has commenced on 19.12.2023, on the said ground, the adjudicating authority rejected the application. Following observations have been made in paragraphs 5 to 7 of the order:

“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."

3. Learned counsel for the appellant submits that by acceptance of the claim, the assets of the corporate debtor were not going to be affected in any manner, hence the claim ought to have been accepted. It is submitted that the claim of the appellant is third-party asset and corporate debtor has only fiduciary capacity with regard to claims of the EPFO.

4. Learned counsel for the respondent submitted that issue raised in the appeal is fully covered by the judgment of this Tribunal in '**Harry Dhaul' Vs. 'National Company Law Tribunal Mumbai'** in [Comp. App. (AT) (Ins.) No. 1691/2024], where in paragraph 15, the claim was also on the basis of AEOR Report, which is the same as in the present case. Paragraph 15 of the judgment is as follows:

"15. Recapitulating the facts of the present case, it is indisputable that moratorium had come into play with effect from 02.12.2019. The last date for filing claims by the creditors was 22.06.2022. Nothing has been

placed on record to show that claims were filed by EPFO on or by 22.06.2022. The claim was submitted by the EPFO on 06.03.2023 which date was however before the approval of the resolution plan by the CoC. It is also pertinent to note that the EPFO claim was premised on the AEOR report and it is admitted by the EPFO that the AEOR report was distinct from Section 7A order. It has also not been denied by the EPFO that the AEOR report was arrived at during moratorium period.”

5. We have heard the counsel for the parties and perused the records.
6. The facts as noticed in paragraph 5 of the order makes it clear that CIRP commenced on 19.12.2023 and on basis of Area Enforcement Report dated 22.08.2024, claim was submitted. It is clear that claim under 7A was never crystallised before submitting the claim by the appellant by filing an application before the adjudicating authority that claim was also filed with delay.
7. Adjudicating authority has rightly taken the view in paragraphs 6 & 7, following the earlier judgment of this Tribunal. Further the reliance of the appellant on the judgment of this Tribunal in **‘Harry Dhaul’ (supra)** fully supports the submission.
8. We have also decided the appeal filed by the appellant being Comp. App. (AT) (Ins.) No.662/2026, by our judgment dated 27.04.2026, where also the claim was based on Area Enforcement Report which was not accepted. We have affirmed the said decision of the adjudicating authority.
9. We are of the view that in view of the aforesaid, no grounds have been made out to interfere with the order impugned.

The appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Indevar Pandey]
Member (Technical)**

himanshu/md