NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1412 of 2024

(Arising against the impugned order dated 17.05.2024 passed by the National Company Law Tribunal, Kolkata Bench, Court–II in I.A. (IB) Plan No. 2/KB/2024 in C.P. (IB) No. 104/KB/2022)

IN THE MATTER OF:

Employees' Provident Fund Organisation,
Regional Office – Park Street,
44, Park Street, 7th and 8th Floor, **...Appellant**
Kolkata – 700016.

Versus

Rachna Jhunjhunwala,
Chairperson of the Monitoring Committee of Power Max (India) Pvt. Ltd. **...Respondent No. 1**

Shyam Enterprises,
Successful Resolution Applicant. **...Respondent No. 2**

Present:

For Appellant:	**Mr. Gaurav Varma and Ms. Neeraj Ahirwar, Advocates.**
For Respondents:	**Mr. Pranay Agarwal, Ms. Alisha Khan, Ms. Sweta Majumdar, Advocates for R-1.** **Mr. Kumarjit Banerjee, Mr. Sanchari Chakroborty, Mr. Devanshu, Mr. Aadil Naushad, Advocates for R-2.**

Cont'd..../

J U D G M E N T
(27th January, 2026)

INDEVAR PANDEY, MEMBER (T)

The present appeal has been preferred by the **Employees' Provident Fund Organisation**, being the **Appellant** herein, under Section 61 of the Insolvency and Bankruptcy Code, 2016, (herein after referred to as **'Code'**), assailing the order dated 17.05.2024 passed by the Learned National Company Law Tribunal (Adjudicating Authority) Kolkata Bench, Court–II in I.A. (IB) Plan No. 2/KB/2024 in C.P. (IB) No. 104/KB/2022, whereby the Resolution Plan submitted in respect of *Power Max (India) Pvt. Ltd.* **(Corporate Debtor)** was approved. In the present appeal, **Ms. Rachna Jhunjhunwala**, **Resolution Professional** and Chairperson of the Monitoring Committee of the Corporate Debtor, has been arrayed as **Respondent No. 1**, while Shyam Enterprises, the **Successful Resolution Applicant (SRA)** of the approved Resolution Plan, has been impleaded as **Respondent No. 2**.

2. The appeal arises from the grievance of the Appellant, that despite its statutory provident fund claim of Rs. 22,49,956/- having been duly admitted during the Corporate Insolvency Resolution Process, the approved Resolution Plan provides for payment of only Rs. 73,120/-, amounting to approximately 3% of the admitted provident fund dues, which, according to the Appellant, is contrary to the statutory scheme governing provident fund dues and the settled position of law.

Brief facts of the case

3. The brief facts of the case are as given below:

i. The Corporate Debtor, *Power Max (India) Pvt. Ltd.*, a company incorporated under the Companies Act, 1956, having its registered office at Kolkata, was admitted into Corporate Insolvency Resolution Process based on an application filed by it, under Section 10 of the Insolvency and Bankruptcy Code, 2016, which was admitted by the Adjudicating Authority on 01.05.2023 resulting in initiation of Corporate Insolvency Resolution Process (CIRP).

ii. Upon initiation of CIRP, a public announcement was issued inviting claims from creditors, pursuant to which the Employees' Provident Fund Organisation, being a statutory authority responsible for safeguarding employees' provident fund contributions, submitted its claim in Form-B on for a total amount of Rs. 22,49,956/-, vide letter dated 18.05.2023. The claim comprised of provident fund dues along with amounts payable under Sections 7Q and 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Prior to submission of the claim in Form B, the Regional PF Commissioner sent a letter dated 15.05.2023 wherein he requested the RP to remit the aforesaid amount of Rs. 22,49,956/-, to them in accordance with statutory provisions under the EPF &MP Act 1952.

iii. The aforesaid claim of the Appellant was duly verified and admitted in its entirety by the Resolution Professional and was reflected as an admitted statutory claim in the final list of creditors prepared during the CIRP, thereby acknowledging the full liability of the Corporate Debtor towards provident fund dues payable to the employees.

iv. During the CIRP, the Committee of Creditors (CoC) was constituted with Indian Bank as the sole financial creditor holding 100% voting share. After completion of the resolution process, a resolution plan submitted by *Shyam Enterprises* was approved by the CoC with 100% voting share in the CoC meetings conducted between 27.12.2023 and 02.02.2024.

v. The resolution plan approved by the CoC was thereafter submitted before the Adjudicating Authority by the RP vide I.A. (IB) Plan No. 2/KB/2024 for approval under Sections 30(6) and 31(1) of the Insolvency and Bankruptcy Code, 2016. The Adjudicating Authority approved the same vide the impugned order dated 17.05.2024.

vi. Under the approved Resolution Plan, the total amount proposed to be paid towards the provident fund dues of the Appellant was fixed at Rs. 73,120/-, despite the admitted claim amount being Rs.22,49,956/-, resulting in a payout of merely about 3% of the statutory provident fund dues.

vii. It is an admitted position on record that no prior intimation or consultation was made with the Appellant regarding the drastic reduction in payment of provident fund dues, and the Appellant was informed of the reduced payout only after approval of the Resolution Plan, for the first time, through an email communication dated 07.06.2024 received from the Resolution Professional.

viii. The Appellant contends that provident fund dues constitute employees' hard-earned money and are statutorily protected under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The PF dues are specifically excluded from the liquidation estate under Section 36(4)(a)(iii) of the Insolvency and Bankruptcy Code, 2016, and therefore could not have been subjected to reduction or haircut under the Resolution Plan.

ix. The appellant submits that approval of a resolution plan providing for partial payment of provident fund dues is in violation of mandatory statutory provisions, settled judicial precedents, and the binding nature of provident fund liabilities, rendering the impugned order legally unsustainable.

x. It is in these circumstances, being aggrieved by the approval of the Resolution Plan and the consequential impairment of statutory provident fund dues, that the Appellant has approached this Appellate Tribunal in the present appeal seeking setting aside of the impugned order dated 17.05.2024 to the extent it approves reduced payment of provident fund dues.

Submissions of Appellant/EPFO

4. Ld. Counsel for the Appellant submits that they have preferred the present appeal being aggrieved by the impugned order dated 17.05.2024 passed by the Learned National Company Law Tribunal, Kolkata Bench, wherein the Resolution Plan in respect of the Corporate Debtor was

approved. It is submitted that while approving the said Resolution Plan, the Learned Adjudicating Authority has erroneously approved a plan, which provides for payment of only Rs. 73,120/- towards provident fund dues, against the total admitted claim of Rs. 22,49,956/- filed by the Appellant and duly admitted by the Resolution Professional. It is further submitted that the Learned NCLT has excluded the statutory components of damages under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and interest under Section 7Q of the said Act, without assigning any reasons whatsoever, rendering the impugned order arbitrary, illegal, and contrary to settled law.

5. Ld. Counsel for the Appellant further submits that the Corporate Insolvency Resolution Process of the Corporate Debtor commenced on 01.05.2023 and pursuant thereto, claims were invited by the Resolution Professional in accordance with the provisions of the Code. The appellant submits that the Regional PF Commissioner-II (Legal) wrote a letter to the IRP on 15.05.2023 wherein he gave the details of his total claim of Rs.22,49,956/- and requested to remit the entire claim towards provident fund and allied dues to them immediately as per the statutory provisions of EPF and MP Act, 1952 and relevant judicial pronouncements in this regard.

6. He further submits that the Interim Resolution Professional (IRP) advised EPFO authorities to filed their claim in Form-B. In response, the Appellant duly filed its claim on 18.05.2023 for a total amount of Rs.22,49,956/-. The said claim comprised of three distinct statutory

components, namely: (a) Rs. 73,120/- towards provident fund dues under Section 7A of the EPF & MP Act; (b) Rs. 9,32,805/- towards statutory interest leviable under Section 7Q of the said Act; and (c) Rs. 12,44,031/- towards statutory damages imposed under Section 14B of the said Act. Thus, the total outstanding provident fund dues lawfully payable by the Corporate Debtor stood crystallised at Rs. 22,49,956/-.

7. He submits that the aforesaid outstanding dues were not claimed arbitrarily, but were calculated strictly on the basis of a detailed computation chart placed on record in the appeal. It is further submitted that the claim of the Appellant is based upon the Enforcement Officer's Reports dated 12.05.2023, which are part of the appeal. These reports clearly establish the default committed by the Corporate Debtor in remitting provident fund contributions within time, and form the statutory basis for the levy of contribution, interest, and damages under the EPF & MP Act.

8. Ld. Counsel submits that the Resolution Professional, after due verification, admitted the entire claim of the Appellant towards provident fund dues. The approved list of creditors as on 20.07.2023, placed at page 134 of the appeal, categorically records that the Appellant's claim of Rs.22,49,956/- was fully admitted. The list further reflects that the Appellant, being EPFO, was categorised as an Operational Creditor representing Government dues, with no contingent or disputed component. Thus, there was no ambiguity or dispute regarding either the quantum or nature of the Appellant's claim at any stage of the CIRP.

9. Ld. Counsel further submits that thereafter, the Resolution Plan was approved by the Committee of Creditors and an application was filed by the Resolution Professional before the Learned NCLT, Kolkata Bench for approval of the Resolution Plan. It is evident from the Resolution Plan, that the Resolution Applicant proposed a grossly inadequate payment towards provident fund dues, limiting the payment to only Rs. 73,120/-. The Learned NCLT, while approving the said Resolution Plan, erroneously excluded the statutory damages under Section 14B and the statutory interest under Section 7Q of the EPF & MP Act, without recording any justification or reasoning. The approved plan thus provides for payment of only 1.65% of the total admitted provident fund claim, which is ex facie contrary to law and defeats the mandatory nature of provident fund dues.

10. The Appellant submits that the exclusion of statutory components of provident fund dues is directly contrary to the settled position of law laid down by this Hon'ble Tribunal. Reliance is placed on the judgment of this Hon'ble Appellate Tribunal in '*Anuj Bajpai v. Employees' Provident Fund Organisation*', [Company Appeal (AT) (Ins.) No. 1141 of 2023], as well as in '*Regional Provident Fund Commissioner v. Ashish Chhawchhria (Jet Airways)*', [Company Appeal (AT) No. 752 of 2022]. In both these judgments, it has been categorically held that provident fund dues include not only the principal contribution assessed under Section 7A but also the statutory interest under Section 7Q and damages under Section 14B, all of which are required to be paid in full and cannot be compromised or reduced under a Resolution Plan. It is submitted that the impugned order is in

direct conflict with these binding precedents and, therefore, cannot be sustained.

11. Ld. Counsel submits that under the EPF & MP Act, the Appellant is statutorily empowered to recover provident fund contributions, levy interest for delayed payment, and impose damages for default. These powers are not discretionary but mandatory in nature. The failure of the Corporate Debtor to remit provident fund dues within time automatically attracts the levy of interest and damages under the statute. Any Resolution Plan that seeks to waive or dilute these statutory liabilities is contrary to law and liable to be set aside.

12. Ld. Counsel further submits that the Respondents have sought to rely upon the judgment in '*Regional Provident Fund Commissioner, Vatwa, EPFO v. Manish Bhagat'*, [Company Appeal (AT) (Insolvency) No. 808 of 2022], decided on 11.10.2023, to claim exemption from payment of statutory dues. In this regard, Appellant made 3 submissions, the first being, that the said judgment was never relied upon before the Learned NCLT at the time of approval of the Resolution Plan and, therefore, cannot be pressed into service at the appellate stage to justify the illegality of the impugned order. Secondly, without prejudice, even the said judgment grants exemption only with respect to damages under Section 14B and does not exempt payment of statutory interest under Section 7Q. Hence, no exemption from payment of interest can be claimed. Thirdly, the said judgment is per incuriam, being contrary to the binding judgments of this Hon'ble Tribunal in *Anuj Bajpai* and *Jet Airways*.

13. It is submitted that the Respondents have also relied upon the judgment in *'Regional Provident Fund Commissioner, Regional Office, Delhi (Central) v. Harry Dhaul' [Comp. App. (AT) (Ins.) No. 1691 of 2024]* to contend that the Appellant's claim is uncrystallised. In this regard, it is respectfully submitted that a statutory appeal against the said judgment is presently pending before the Hon'ble Supreme Court and, therefore, the said judgment has not attained finality and cannot be treated as binding precedent. It is further submitted that as per the statutory scheme, prior to commencement of assessment proceedings under Sections 7A, 7Q, and 14B, the Enforcement Officer prepares a report based on which a show cause notice is issued, followed by adjudication culminating in a final order. The Appellant cannot be placed in an impossible situation where it is restrained from continuing assessment proceedings during CIRP, prevented from continuing proceedings after approval of the Resolution Plan, and simultaneously denied the right to file its claim based on official records. Such an interpretation would render the statutory framework unworkable and defeat the object of the EPF & MP Act.

14. In view of the above submissions, counsel for the Appellant respectfully prays that this Hon'ble Tribunal may be pleased to direct payment of provident fund dues in entirety, including the principal amount under Section 7A, statutory interest under Section 7Q, and statutory damages under Section 14B of the EPF & MP Act, aggregating to Rs.22,49,956/-, and to set aside the impugned order to the extent it excludes these statutory dues.

Submission of Respondent No. 1/Resolution Professional

15. Ld. Counsel submits that Respondent No. 1 is the Chairperson of the Monitoring Committee of Power Max (India) Private Limited and is fully conversant with the facts and records of the present matter. The Reply Affidavit has been filed on the basis of official records, correspondence exchanged with the Appellant, and orders passed by the Adjudicating Authority, and therefore deserves full evidentiary value.

16. Ld. Counsel respectfully submits that the present appeal filed by the Appellant/Employees' Provident Fund Organisation (EPFO) is misconceived both in law and on facts and deserves outright dismissal. The appeal seeks to reopen issues which already stand concluded under the Code and also attempts to accord priority to claims which were neither crystallised nor finally adjudicated prior to commencement of the Corporate Insolvency Resolution Process.

17. It is the submission of Respondent No. 1 that the appeal is not maintainable either in law or on facts. The Appellant seeks to challenge the approval of a Resolution Plan under Section 31 of the IBC without demonstrating any violation of Section 30(2) of the IBC. The Appellant has failed to establish how the impugned order suffers from any jurisdictional error, material irregularity, or perversity warranting appellate interference.

18. It is his submission that the scope of interference by this Appellate Tribunal against an approved Resolution Plan is extremely limited. The Appellant has not demonstrated any non-compliance with mandatory

statutory provisions, nor has it shown that any admitted statutory dues have been extinguished.

19. It is submitted by the RP that prior to the commencement of CIRP, the Appellant had not passed any final adjudication or determination order under either Section 7A or Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("EPF Act"). The proceedings initiated by the Appellant were admittedly at a preliminary stage. He submits that the summons dated 10.05.2023 issued by the Appellant itself demonstrates that no final assessment, quantification, or determination of liability had been carried out prior to the insolvency commencement date. The issuance of summons merely calling upon the Corporate Debtor to appear cannot, by any stretch of imagination, be equated with a crystallised statutory liability.

20. It is the submission of Respondent No. 1 that after commencement of CIRP, the IRP and subsequently the Resolution Professional ("RP") repeatedly requested the Appellant to furnish complete details of employees, contribution period-wise breakup, computation methodology, and final quantified amounts. Copies of emails dated 26.07.2024, 07.08.2024, and 23.08.2024 exchanged between the parties are annexed to the Reply Affidavit.

21. It is submitted that despite repeated follow-ups, the Appellant failed to furnish any final adjudication order or conclusive computation of interest and damages. The Appellant merely forwarded copies of summons

and incomplete annexures, which were insufficient to treat such claims as final or enforceable.

22. It is further submitted that the IRP and RP acted strictly in accordance with law and admitted only such claims, which were supported by undisputed records and final computation. There was no occasion to admit speculative, contingent, or unadjudicated claims for interest and damages.

23. Ld. Counsel submits that after completion of the entire CIRP process, including verification of claims, constitution of Committee of Creditors, evaluation of resolution plans, and compliance with Section 30 of the IBC, the Resolution Plan submitted by the Successful Resolution Applicant was approved by the Hon'ble NCLT, Kolkata Bench vide order dated 17.05.2024.

24. He submitted that once a Resolution Plan is approved under Section 31 of the IBC, it becomes binding on all stakeholders, including statutory authorities such as the EPFO. The Appellant cannot be permitted to circumvent the binding effect of the Resolution Plan by belatedly asserting claims which were neither final nor crystallised.

25. Respondent No. 1 submits that the allegation that the Resolution Plan violating Section 30(2) of the IBC is wholly erroneous. The Resolution Plan does not extinguish any admitted provident fund dues and fully complies with statutory requirements. It is submitted that Section 30 does not mandate inclusion of contingent or unadjudicated statutory claims.

The Appellant's attempt to treat interest and damages, without final adjudication, as mandatory dues is legally unsustainable.

26. Ld. Counsel places reliance on the judgment of the Hon'ble Appellate Tribunal in '*Regional Provident Fund Commissioner v. Shri Menish Kumar Bhagat & Anr.*', dated 11.10.2023, wherein it has been categorically held that damages under Section 14B of the EPF Act are discretionary in nature and subject to waiver. It is submitted that with the repeal of the Sick Industrial Companies (Special Provisions) Act, 1985 and the advent of the IBC, the insolvency framework now governs corporate rehabilitation. The power to recommend waiver of damages, earlier vested with BIFR, can now be exercised within the insolvency regime.

27. Respondent No. 1 submits that in absence of any final order under Sections 7Q or 14B of the EPF Act, the Appellant's claim remains uncrystallised and cannot be accorded priority treatment under the IBC framework. It is submitted that priority under the IBC arises only in respect of dues which are legally enforceable as on the insolvency commencement date. Pending proceedings do not create vested rights.

28. Respondent No. 1 further submits that the impugned order dated 17.05.2024 is well-reasoned, legally sound, and based on correct appreciation of facts and law. The Adjudicating Authority rightly concluded that there was no final EPFO determination prior to CIRP and therefore no violation of statutory provisions.

29. Ld. Counsel submits that if the reliefs sought by the Appellant are granted, the Corporate Debtor would be placed in a severely prejudicial position. The entire resolution process would be rendered uncertain, defeating the very object of the IBC, which is timely resolution and revival of stressed entities.

30. In view of the aforesaid facts, submissions, documents, and settled legal position, counsel for Respondent No. 1 prays for dismissal of the appeal with costs.

Submission of Respondent No. 2/ SRA

31. Ld. Counsel for Respondent No.2 submits that M/s Shyam Enterprises (SRA), participated in the CIRP in accordance with law and submitted its Resolution Plan dated 26th December, 2023. The said Resolution Plan was placed before the Committee of Creditors for consideration, along with all other statutory compliances as required under the IBC and the CIRP Regulations.

32. Ld. Counsel submits that after due deliberation, the Committee of Creditors, in its 9th meeting held on 27th December, 2023, approved the Resolution Plan submitted by Respondent No.2. The voting process was conducted through e-voting between 29th December, 2023 and 02nd February, 2024, and the Resolution Plan was approved with 100% voting share, resulting in Respondent No.2 being declared as the Successful Resolution Applicant. He further submitted that the approved Resolution Plan was thereafter placed before the Learned Adjudicating Authority,

which, after examining the plan under Section 31 of the Code and being satisfied that the plan met all statutory requirements, approved the Resolution Plan by order dated 17th May, 2024.

33. Ld. Counsel submits that under the approved Resolution Plan, a sum of Rs. 73,120/- was specifically earmarked and provided towards provident fund dues payable under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. This amount represented 100% of the principal provident fund dues as determined under Section 7A of the EPF & MP Act.

34. Ld. Counsel further submits that the present appeal has been filed by the Employees' Provident Fund Organisation assailing the approval order dated 17th May, 2024 on an entirely misconceived and erroneous understanding of both facts and law. The Appellant has alleged that purported dues under Section 14B (damages) and Section 7Q (interest) of the EPFMP Act amounting to Rs. 21,76,836/- were not provided for in the Resolution Plan.

35. It is his submission that this allegation is wholly misleading and untenable, as the Resolution Plan categorically provides for payment of the entire principal provident fund dues amounting to Rs. 73,120/-, being the complete amount crystallised under Section 7A of the EPFMP Act. The relevant provisions of the Resolution Plan clearly reflect compliance with statutory obligations.

36. Ld. Counsel submits that the Appellant's claim towards damages and interest under Sections 7Q and 14B was based solely on a Form-B dated 18th May, 2023, wherein the Appellant relied upon a summon dated 10th May, 2023 accompanied by a calculation sheet for the period from 21st February, 2014 to 01st May, 2023.

37. It is submitted that the said summon dated 10th May, 2023 is not a final adjudication or assessment order. The summon merely initiated proceedings and granted an opportunity of hearing to the Corporate Debtor. No final determination of liability had been made prior to commencement of CIRP.

38. Ld. Counsel submits that in absence of any final order under Sections 7Q and 14B, the alleged claim remained uncrystallised. An uncrystallised claim cannot be treated as an admitted or enforceable liability in CIRP and cannot be mandatorily provided for in a Resolution Plan.

39. It is further submitted that this Hon'ble Appellate Tribunal has consistently held that claims under Sections 7Q and 14B based merely on calculation sheets, summons, or enforcement officers' reports, without final adjudication, are uncrystallised and liable to be rejected.

40. Ld. Counsel submits that it is an admitted position on record that the Appellant sought to initiate proceedings under Sections 7Q and 14B by issuing a summon dated 10th May, 2023. However, the Corporate Debtor had already been admitted into CIRP on 01st May, 2023, and the

moratorium under Section 14 of the IBC had come into force from that date. It is submitted that the moratorium remained in operation till approval of the Resolution Plan on 17th May, 2024. During this period, the Appellant was statutorily barred under Section 14(1)(a) of the Code from initiating or continuing any proceedings against the Corporate Debtor.

41. Ld. Counsel further submits that in absence of any final assessment order having been passed prior to commencement of CIRP, the Appellant cannot, during moratorium, seek to create fresh liabilities on the Corporate Debtor under the guise of assessment proceedings under Sections 7Q and 14B of the EPFMP Act. It is submitted that Section 14 of the Code clearly prohibits continuation or initiation of any proceedings which have the effect of depleting the assets of the Corporate Debtor or creating new liabilities. Assessment proceedings before the EPFO, if permitted during moratorium, would directly violate the object and mandate of Section 14.

42. It is his submission that this legal position stands conclusively settled by several judgments of this Hon'ble Appellate Tribunal, which have consistently held that no assessment proceedings under the EPFMP Act can be initiated or continued once moratorium is imposed.

43. In support of his submissions, Ld. Counsel places reliance on the following judgments:

(i) *'Employees Provident Fund vs. Jaykumar Pesumal Arlani'*, [Company Appeal (AT)(Ins.) No. 1062 of 2024], order dated 03rd January, 2025, wherein this Hon'ble Tribunal held that uncrystallised EPF claims cannot be enforced during moratorium.

(ii) *'Regional Provident Fund Commissioner vs. Harry Dhaul & Ors.'*, [Company Appeal (AT)(Ins.) No. 1752 of 2024], order dated 18th September, 2025, reiterating that assessment proceedings during moratorium are impermissible.

(iii) *'The Regional Provident Fund Commissioner II vs. Vineeta Maheswari, RP of Bloom Dekor Ltd.'*, [Company Appeal (AT)(Ins.) No. 1618 of 2024], order dated 08th September, 2025, wherein it was held that claims under Sections 7Q and 14B must crystallise prior to insolvency commencement.

(iv) *'Regional Provident Fund Commissioner, Vatwa, EPFO vs. Shri Manish Kumar Bhagat & Ors.'*, [Company Appeal (AT)(Ins.) No. 808 of 2022], order dated 11th October, 2023, affirming that moratorium bars EPFO assessment proceedings.

44. Ld. Counsel submits that in light of the above settled legal position, the provision of Rs. 73,120/- under the approved Resolution Plan towards provident fund dues is fully consistent with law. The claims for damages and interest under Sections 7Q and 14B had not crystallised prior to insolvency commencement and were therefore incapable of being provided for.

45. Summing up Ld. Counsel submits that the approved Resolution Plan is in strict consonance with the EPF & MP Act and does not violate Section

30(2)(e) of the IBC in any manner whatsoever. The present appeal is devoid of merit, proceeds on an erroneous understanding of law and facts, and deserves to be dismissed in limine.

Analysis and findings

46. We have heard the parties, gone through the records of the case and written submissions of Appellant and Respondent No.2. The Respondent No.1 has not filed his written submissions.

47. The Appellant, Employees Provident Fund Organisation contends that the liability to pay interest under Section 7Q and damages under Section 14B of the EPF Act arises automatically upon default in remittance of provident fund contributions. It is submitted that these liabilities are statutory in nature and do not depend upon any discretionary adjudication. According to the Appellant, once default occurs, interest and damages follow as a matter of law, and therefore the entire claim amounting to Rs. 22,49,956/- should have been treated as fully payable under the Resolution Plan. It is further argued that the Resolution Professional had admitted the entire claim, and hence there was no justification for approving a plan which provided payment only of Rs. 73,120/-. The Appellant asserts that exclusion of Sections 7Q and 14B dues defeats the protective intent of the EPF Act and violates settled judicial precedents holding that provident fund dues must be paid in full.

48. On the other hand, Respondent No.1/RP submits that the Resolution Plan has been approved strictly in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016. It is contended that as on the date

of commencement of CIRP, i.e., 01.05.2023, the only amount which stood finally determined under the EPF Act was the provident fund contribution under Section 7A. It is submitted that the Appellant's claim towards interest under Section 7Q and damages under Section 14B was based only on a summons issued for initiation of proceedings and not on any final adjudicatory order. Respondent No.1 asserts that proceedings under EPFO Act had not culminated into any final determination prior to the imposition of moratorium and, therefore, the said amounts could not be treated as crystallised dues. It is further contended that once moratorium came into force, no assessment proceedings could legally continue, and the Resolution Professional was justified in recognising only those statutory dues which had attained finality.

49. It is the submission of the Respondent No.2/Successful Resolution Applicant that the Resolution Plan consciously and lawfully provides for 100% payment of provident fund contributions as determined under Section 7A of the EPF Act, thereby fully safeguarding employees' statutory rights. It is contended that the Appellant is seeking to impose liability towards interest and damages which had not been adjudicated or quantified prior to CIRP and which, therefore, remained contingent in nature. Respondent No.2 submits that fastening such undecided liabilities upon a Resolution Applicant would defeat the core objective of the IBC, which is to provide finality and certainty to resolution. It is further contended that the Resolution Applicant cannot be burdened with liabilities arising from proceedings which were neither concluded nor capable of being concluded due to the statutory moratorium. On these grounds,

Respondent No.2 submits that exclusion of Sections 7Q and 14B amounts from the Resolution Plan is legally justified and does not render the plan non-compliant.

50. Based on the contention of the parties, we now proceed to frame the issue involved in the present appeal:

(i) Whether the amounts claimed by the Appellant towards interest under Section 7Q and damages under Section 14B of the EPF Act, in the absence of any adjudication by the EPFO authorities, can be treated as crystallised dues payable under the Resolution Plan?

51. This issue has to examined in the context of timelines of various events in this CIRP proceedings. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process on 01.05.2023. The appellant filed its total claim of Rs. 22,49,956/- on 18.05.2023, before the Resolution Professional which included claim under Section 7A relating to employees and employers' contribution; claim under Section 7Q towards interest; and damages under Section 14B of EPF & MP Act, 1952. The Resolution Plan approved by the Adjudicating Authority on 17.05.2024 provides only for payment of Rs. 73,120/-, being the provident fund contribution determined under Section 7A of the EPF Act.

52. The dispute is only in relation to the amount claimed by the Appellant towards interest under Section 7Q and damages under Section 14B, forming part of the total claim of Rs. 22,49,956/-. Whether these amounts had legally crystallised as payable dues as on 01.05.2023, i.e. the CIRP commencement date.

53. The sequence of dates assumes significance in the present case. The Corporate Debtor entered CIRP on 01.05.2023. The Appellant's own record shows that proceedings relating to interest and damages were initiated by issuance of a summons dated 10.05.2023, that is, after commencement of CIRP. A copy of summons dated 10.05.2023 is extracted below:

EMPLOYEES' PROVIDENT FUND ORGANISATION
44 PARK STREET,
7TH - ~~8TH~~ FLOOR,,KOLKATA
WEST BENGAL,700016

Summons to appear for hearing u/s 14B of the EPF and MP Act, 1952 (and order for payment of interest u/s 7Q) for belated remittance made during the period
21/02/2014 to 01/05/2023

No.: WB/PRB/0024427/000/Enf 501/Damages/ Date :10/05/2023

[Please quote this reference number in your reply]

M/s POWER MAX (INDIA) PRIVATE LIMITED,
STEPHEN COURT,18A, PARK STREET (5TH FLOOR),
KOLKATA,
433'
700071.

NOTARY KOLKATA
ASIS KR SEN
NOTARY
Regn. No.-13802/18
EXPIRY DATE
31.12.28
Govt. of India

Sir/Madam,

Whereas, M/s POWER MAX (INDIA) PRIVATE LIMITED is an establishment covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (herein after referred to as the Act), with Establishment ID WBPRB0024427000.

And whereas, under the provisions of the section 6, 6A and 6C of the Act read with Para 38 of the Employees' Provident Fund Scheme 1952, 3 of Employees' Pension Scheme 1995 and 8(1) of Employees Deposit Linked Insurance Scheme 1976, the employer of the establishment is required to remit the contributions along with the administrative charges within 15 days of the close of every month.

And whereas, under section 14B of the Act, where an employer makes default in payment of the contributions or any charges, the Commissioner is required to recover by way of penalty such damages, not exceeding the amount of arrears and the rates of Damages at rates specified in Para 32A of the EPF Scheme 1952, Para 5 of EPS 1995 and 8A of EDLI Scheme 1976 (as given below)

Period of Delay	Rate upto 25/09/2008	Rate from 26/09/2008
Less than 2 months	17%	5%
2 months and above, and less than 4 months	22%	10%
4 months and above, and less than 6 months	27%	15%
6 months and above	37%	25%

Now the scrutiny of the records maintained by this office for the remittances made by you during the period from 21/02/2014 to 01/05/2023 shows that there are certain payments which were made after the respective due dates and the total amount by way of penalty and the amount of interest on such belated payments are as under: (Details in Annexure A)

	Amount of Damages ##(Rs.)	Interest (Rs.)	Total (Rs.)
EPF Contributions in A/c 1	810829	602517	1413346
EPS Contribution in A/c 10	371256	279228	650484
EPF Administration/Inspection charges in A/c 2	32443	24762	57205
EDLI Contribution in A/c 21	23080	17266	40346
EDLI Administration/Inspection charges in A/c 22	794	549	1343
Total	1238402	924322	2162724

TRUE COPY

You are entitled for an opportunity of being heard before the Damages are levied. You may therefore avail this opportunity before the Damages are levied and in such case may appear either in person or through your representative duly authorised by you to do so, before the undersigned on ______________ day of _______, __________ at _______AM/PM. If you had made the payments within the respective due dates, the supporting documents of proof of the such remittances within the respective due dates may be produced on the date of hearing.

In case you have already made the payment of the Damages/Interest, please reply immediately quoting the reference number mentioned above with proof of such remittance.

In case you do not wish to make any representation and agree with the details mentioned in the Annexure A, you may remit the same through a Challan generated on the ECR Portal by log in to the portal and using the Challan Entry option. Please enter the details in the fields provided for Penal Damages in the Challan format using the miscellaneous payment option.

Please note that in the event of your failure to attend the hearing in person or through a person duly authorised by you to represent you, the undersigned shall proceed to hold the inquiry in the above matters and decide on the levy of damages on the basis of the records available.

You are also liable to pay the amount of interest @ 12% per annum, as mentioned above, and the same should be paid within 15 days of receipt of this summon/order. The payment should be made using the Challan generated on the ECR Portal by login to the portal and using the Challan Entry option. The details of the interest should be entered in the fields for miscellaneous payment and the option should be selected as Interest u/s 7Q for each account.

NOTARY KOLKATA
ASIS KR SEN
NOTARY
Regd. No. 13802/18
EXPIRY DATE
31.12.28
Govt. of India

Issued under my signature and seal on this _______ day of _______, ______.

ASSISTANT / REGIONAL PROVIDENT FUND COMMISSIONER
SRO PARK STREET

54. We note that the said summons granted opportunity of hearing to the Corporate Debtor and did not determine any liability. No final order quantifying interest under Section 7Q or damages under Section 14B, passed prior to 01.05.2023, has been produced before this Tribunal. In fact, no such order passed by EPFO Authorities during the CIRP Process has been brought to our notice.

55. Subsequently, the appellant filed its claim before the IRP vide letter dated 15.05.2023. In this letter break up of PF claim under Section 7A; interest under Section 7Q and damages under Section 14B were specially

mentioned. The total claim of PF dues was Rs. 22,49,956/-. The same amount was later filed in Form-B. The letter dated 15.05.2023 is extracted below:

128

कर्मचारी भविष्य निधि संगठन
EMPLOYEES'PROVIDENT FUND ORGANISATION
श्रम एवं रोजगार मंत्रालय, भारत सरकार
Ministry of Labour and Employment
Government of India

Azadi Ka Amrit Mahotsav

No. EPFO/RO/PRB/LEGAL/NCLT/WB/PRB/24427/ 721

Date: 15.05.2023.

To
Shri Tarun Kumar Ray
IRP of M/s Power Max(India) Pvt Ltd,
IBBI Reg No.(IBBI/IPA-001/IP/P-01411/2018-19/12228)
29C, Bentinck Street,
2nd Floor,
Kolkata:700069

Sub: Submission of claim in respect of Provident Fund dues in r/o M/s Power Max(India) Pvt ltd(WB/PRB/24427)- regarding.

Sir,

Please refer to order of Hon'ble National Company Law Tribunal in petition number IA(I.B.C) No. 825/KB/2022, IA(I.B.C) No. 58/KB/2023 & C.P (IB)No. 104/KB/202 dated 01.05.2023 directing your appointment as Interim Resolution Professional in respect of M/s Power Max(India) Pvt Ltd.

From the records held by this office, it is seen that the establishment is in default of remittance of the following dues:-

Dues	Period	Amount	Document
Dues of Provident Fund	01.07.2022 to 30.04.2023	Rs 73120/-	Enforcement Officer report dated 12.05.2023
Damages u/s 14B	01.07.2022 to 30.04.2023	Rs 5629/-	Enforcement Officer report dated 12.05.2023
Interest u/s 7Q	01.07.2022 to 30.04.2023	Rs 8483/-	Enforcement Officer report dated 12.05.2023
Damages u/s 14B	21.02.2014 to 01.05.2023	Rs 1238402/-	Dues u/s 14B & 7Q of EPF & MP Act'1952 for the period 21.02.2014 to 01.05.2023

ई. पी. एफ. ओ., क्षेत्रीय कार्यालय, पार्क स्ट्रीट 44 पार्क स्ट्रीट, 7 & 8 फ्लोर, कोलकाता – 700016	ই.পি.এফ.ও, আঞ্চলিক কার্যালয়, পার্ক স্ট্রিট ৪৪ পার্ক স্ট্রিট, ৭ & ৮ তলা, কলকাতা - ৭০০০১৬	E.P.F.O., Regional Office, Park Street, 44, Park Street, 7th & 8th Floor, Kolkata - 700016
ro.parkstreet@epfindia.gov.in	www.epfindia.gov.in	Phone: (033) 22831949/22801244

T.C.

Interest u/s 7Q	21.02.2014 to 01.05.2023	Rs 924322/-	vide order no. WB/PRB/0024427/000/Enf501/Damages/ dt 10.05.2023
Total		Rs 22,49,956/-	

129

But the above said dues are not final and may increase as the inspection of the establishment could not be completed . Therefore final demand can be raised only after the completion of the inspection.

Your attention is drawn to section 36(4) of the insolvency and Bankruptcy Code,2016, which predicates that dues towards provident fund, pension and gratuity constitute third-party assets, and in the consequence thereof, are excluded from the liquidation estate of the corporate debtor and cannot be utilized for making any recovery from him.

Your attention is also drawn to the judgment of Hon'ble NCLAT in Sikandar Singh Jamwal Vs Vinay Talwar[CA(AT) 483/2019]; judgment dt 11.03.2022] and Hon'ble Supreme Court in Sunil Kumar jain Vs Sundresh Bhatt[CA 5910 of 2019; decided on 19.04.2022] declaring the dues of Provident Fund as third-party assets and falling outside of the proceedings under section 53 of the IBC.

In view of explicit provisions of law, you are requested to kindly remit an amount of **Rs 22,49,956/-(Rupees Twenty two lakh forty nine thousand nine hundred and fifty six only)** towards provident fund and allied dues immediately as per the mandate of law.

Encl: As above.

Yours faithfully

(Suraj Gupta)
Regional P.F. Commissioner-II (Legal)
RO, Park Street

T.C.

ई. पी. एफ. ओ., क्षेत्रीय कार्यालय, पार्क स्ट्रीट 44 पार्क स्ट्रीट, 7 & 8 फ्लोर, कोलकाता - 700016	ই.পি.এফ.ও, আঞ্চলিক কার্যালয়, পার্ক স্ট্রিট 88 পার্ক স্ট্রিট , ৭ & ৮ তলা, কলকাতা - ৭০০০১৬	E.P.F.O., Regional Office, Park Street, 44, Park Street, 7th & 8th Floor, Kolkata - 700016
ro.parkstreet@epfindia.gov.in	www.epfindia.gov.in	Phone: (033) 22831949/22801244

56. We note from the aforesaid letter that

(i) the dues of Provident Fund for the period 01.07.2022 to 30.04.2023 amounted to Rs. 73,120/- as per the report of Enforcement Officer dated 12.05.2023. The balance amount of the claim related to Interest under Section 7Q and Damages under Section 14B.

(ii) The EPFO has further stated that the above said dues are not final and may increase, as the inspection of the establishment could not be completed. They have further stated that the final demand can be raised only after the completion of the inspection.

57. It is the admitted position from the documents that the claims of appellant under Section 7Q and Section 14B had not been adjudicated prior to the date of initiation of CIRP and therefore the claims were not crystalized.

58. While the Appellant filed its claim in Form-B on 18.05.2023, filing of a claim during CIRP cannot substitute the requirement of a statutory adjudication under the EPF Act. Admission of a claim by the Resolution Professional is for the purpose of collation and does not amount to final determination of liability, particularly where the statute itself contemplates an adjudicatory process.

59. It is also material that the moratorium under Section 14 of the IBC remained in force from 01.05.2023 till the approval of the Resolution Plan on 17.05.2024. During this entire period, no proceedings could lawfully continue, which would have the effect of creating or enhancing liabilities of the Corporate Debtor. Determination of interest and damages would necessarily result in enhancement of liability beyond what stood determined on the insolvency commencement date.

60. We also note that the Resolution Plan, approved on 17.05.2024 ensures full payment of the provident fund contribution of the employees

under Section 7A amounting to Rs. 73,120/-, for the period prior to initiation of CIRP. Thus, the plan fully protects the employee-related dues under the EPF Act. In contrast, interest and damages, which require adjudication and quantification, had not crossed the threshold from potential liability to enforceable debt as on 01.05.2023**.**

61. The insolvency framework places emphasis on certainty as on the insolvency commencement date. Allowing unadjudicated statutory claims, initiated after commencement of CIRP, to be treated as crystallised dues would blur this certainty and expose resolution applicants to indeterminate liabilities arising from incomplete proceedings.

62. The appellant has placed reliance on the Judgment of this Tribunal in Anuj Bajpai (supra) and Regional Provident Fund Commissioner v. Ashish Chhawchhria (Jet Airways) (supra). We now have a look at aforesaid Judgments.

63. In the Anuj Bajpai (supra), the EPFO had filed their claims before the IRP of the Corporate Debtor. Subsequently, the Corporate Debtor was ordered to be liquidated. The appellant Anuj Bajpai, the Liquidator in the case, asked the respondents (EPFO Authorities) to file their claims during the liquidation period. The appellant's contention in the liquidation was that the Corporate Debtor did not maintain separate funds with respect to pension fund and provident fund and therefore according to the appellant the claims of the respondents were to be treated under the waterfall mechanism as per the Section 53 of the Code. Respondents on the other hand submitted that interest under Section 7Q and damages under Section

14B are levied after following statutory procedures and are imposed due to delayed remittance of dues by the employers and that these dues are rights of workers which cannot be treated as assets of the Corporate Debtor and therefore stand in priority of payment as per statutory scheme provided in the EPF act and do not fall in the water fall mechanism. It was held in the Judgment that dues of the workmen and employees from Provident fund, and gratuity fund are not to form the assets of the liquidation estate and as such they cannot be treated under the Water Fall mechanism under Section 53. There are two distinguishing features in the present matter vis-à-vis Anuj Bajpai's case. Firstly, the case related to liquidation wherein the EPFO authorities can continue and complete the proceedings under the Act to determine the liability under Section 7Q and 14B of the EPF Act. Secondly, the claim of workmen/ employees was already crystalized and therefore payable. The ratio of the Anuj Bajpai (supra) is therefore not applicable in this case.

64. We now have a look at the Judgment of this Appellate Tribunal in '*Regional Provident Fund Commissioner v. Ashish Chhawchhria (Jet Airways)*' (supra). In this matter, this Appellate Tribunal examined the nature of damages imposed under Section 14B of the EPF Act and held that such damages are not automatic, but are discretionary in nature and subject to waiver depending upon the facts and circumstances of each case. The Tribunal further observed that with the repeal of the Sick Industrial Companies (Special Provisions) Act, 1985 and the introduction of the Insolvency and Bankruptcy Code, 2016, the framework for corporate rehabilitation now stands governed by the IBC. Applying this principle to

the present case, where no final order imposing damages under Section 14B had been passed prior to commencement of CIRP on 01.05.2023, we find that the Appellant cannot claim damages as a fixed or crystallised liability and the said judgment supports the Respondents' case that such damages are neither automatic nor mandatorily payable in the Resolution Plan.

65. We now examine the cases cited by Respondent No.2. In '*Employees Provident Fund vs. Jaykumar Pesumal Arlani'* [Company Appeal (AT)(INS) No. 1062 of 2024], order dated 03.01.2025, this Appellate Tribunal dealt with the effect of moratorium on EPFO proceedings in '*Employees Provident Fund Organisation v. Jaykumar Pesumal Arlani'*, (supra). The relevant paras 9 to 13 of the Judgment are extracted below:

> *"**9**. From the submissions of learned Counsel for the parties, following issues arise for consideration:*
>
> *(1) Whether after imposition of moratorium under Section 14 of the IBC, assessment proceedings can be carried on by the EPFO under Section 7A, 14B and 7Q of the EPF & MP Act, 1952.*
>
> *(2) Whether any claim on the basis of assessment, subsequent to imposition of moratorium, can be admitted in the CIRP.*
>
> *(3) Whether claims, which were filed by the Appellant(s), subsequent to the approval of Resolution Plan by the CoC, could have been admitted in the CIRP.*
>
> ***Question Nos. (1) & (2)***
>
> *Question Nos.(1) & (2) being interrelated, are being taken together.*

10. *In Company Appeal (AT) (Ins.) No.1062 of 2024, CIRP was initiated vide order dated 03.05.2021 and the assessment order under Section 7A was passed on 11.08.2023 and order under Section 14B and 7Q was issued on 16.08.2023. In Company Appeal (AT) (Ins.) No.1065 of 2024, the CIRP against the CD commenced on 12.07.2021 and assessment order under Section 7A was passed on 29.08.2022. It is an admitted position that in both the cases, assessment orders under Section 7A, 14B and 7Q were passed subsequent to initiation of CIRP against the CD. Moratorium under Section 14 was imposed by the Adjudicating Authority, initiation CIRP. Section 14(1) of the IBC provides as follows:*

> *"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 judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
>
> *(b)transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
>
> *(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and*

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period."

11. *The Hon'ble Supreme Court had occasion to consider effect and consequence of imposition of moratorium. The Hon'ble Supreme Court in (2020) 13 SCC 208 – Rejendra K. Bhutta vs. Maharashtra Housing and Area Development and Anr. held that after the imposition of moratorium, a statutory freeze takes place. In paragraph 25 of the judgment, following was held:*

> *"25. There is no doubt whatsoever that important functions relating to repairs and reconstruction of dilapidated buildings are given to MHADA. Equally, there is no doubt that in a given set of circumstances, the Board may, on such terms and conditions as may be agreed upon, and with the previous*

approval of the Authority, hand over execution of any housing scheme under its own supervision. However, when it comes to any clash between MHADA Act and the Insolvency Code, on the plain terms of Section 238 of the Insolvency Code, the Code must prevail. This is for the very good reason that when a moratorium is spoken of by Section 14 of the Code, the idea is that, to alleviate corporate sickness, a statutory status quo is pronounced under Section 14 the moment a petition is admitted under Section 7 of the Code, so that the insolvency resolution process may proceed unhindered by any of the obstacles that would otherwise be caused and that are dealt with by Section 14. The statutory freeze that has thus been made is, unlike its predecessor in the SICA, 1985 only a limited one, which is expressly limited by Section 31(3) of the Code, to the date of admission of an insolvency petition up to the date that the adjudicating authority either allows a resolution plan to come into effect or states that the corporate debtor must go into the liquidation. For this temporary period, at least, all the things referred to under Section 14 must be strictly observed so that the corporate debtor may finally be put back on its feet albeit with a new management."

12. *In (2021) 6 SCC 258 – P. Mohanraj and Ors. Vs. Shah Brothers ISPAT Pvt. Ltd., the Hon'ble Supreme Court had occasion to interpret the expression "proceeding" in Section 14. The object and purpose of moratorium has been captured in paragraph 30 of the judgment, which is as follows:*

"30. It can be seen that Para 8.11 refers to the very judgment under appeal before us, and cannot therefore be said to throw

any light on the correct position in law which has only to be finally settled by this Court. However, Para 8.2 is important in that the object of a moratorium provision such as Section 14 is to see that there is no depletion of a corporate debtor's assets during the insolvency resolution process so that it can be kept running as a going concern during this time, thus maximising value for all stakeholders. The idea is that it facilitates the continued operation of the business of the corporate debtor to allow it breathing space to organise its affairs so that a new management may ultimately take over and bring the corporate debtor out of financial sickness, thus benefitting all stakeholders, which would include workmen of the corporate debtor. Also, the judgment of this Court in Swiss Ribbons (P) Ltd. v. Union of India [Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17] states the raison d'être for Section 14 in para 28 as follows : (SCC p. 55)

> *"28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution*

process. The timelines within which the resolution process is to take place again protect the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."

***13**. The plain reading of Section 14, sub-section (1) indicates that expression 'suits or proceedings against the corporate debtor' has been used. The word 'proceeding' is not qualified, so as to confine it to proceedings before the Civil Court. The proceedings, which have the effect on the assets of the CD are all covered in the expression 'proceeding'. The question to be answered is as to whether after moratorium has been imposed, it was open for EPFO to proceed with the assessment proceeding. Learned Counsel for the parties state that during moratorium proceeding, no recovery proceeding can be initiated against the CD. However, submissions of the learned Counsel for the Appellant is that assessment proceedings against the CD may continue. Hence, the orders of assessment passed during moratorium period, were fully permissible and the claim on the basis of the said proceedings had to be admitted in CIRP."*

66. Based on the questions framed in para 9 of the aforesaid Judgment of Pesumal Arlani (supra), this Appellate Tribunal gave the following findings in para 24 of the Judgment in relation to question (1) and (2), which is extracted below:

*"**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."

67. We note that the Tribunal examined admissibility of EPFO claims in the CIRP proceedings, which had not been finally determined, before commencement of CIRP. The Tribunal emphasised that insolvency proceedings proceed on the basis of liabilities crystallised as on the insolvency commencement date and that statutory claims which were still pending adjudication cannot be allowed to attain finality during the moratorium period. Applying this principle to the present case, we find that the claims of the Appellant towards interest and damages were also not finally determined prior to commencement of CIRP on 01.05.2023 and were sought to be pursued thereafter. This judgment therefore squarely applies to the present case and supports exclusion of uncrystallised EPF claims from the Resolution Plan.

68. In '*Regional Provident Fund Commissioner vs. Harry Dhaul & Ors.'* [Company Appeal (AT)(INS) No. 1752 of 2024, order dated 18.09.2025], this Tribunal dealt with the permissibility of EPFO assessment proceedings

during the moratorium period. The Tribunal held that assessment proceedings under the EPF Act have the effect of determining and increasing liability and therefore cannot continue once moratorium under Section 14 of the IBC is in force. In the present case, the Appellant's reliance on proceedings initiated after 01.05.2023 suffers from the same legal bar. We therefore find that this judgment directly supports the view that the Appellant could not have crystallised its claim during the moratorium.

69. The Appellant has argued that reliance on *Harry Dhaul (supra)* is not correct, as an appeal against that judgment is pending before the Hon'ble Supreme Court. From the records of the said appeal, we note that no stay has been granted by Hon'ble Supreme Court. Merely because an appeal is pending does not mean that the ratio of the judgment of this Tribunal would not apply. Unless the Hon'ble Supreme Court has stayed or set aside the judgment, the Judgments of this Appellate Tribunal would continue to be binding. Moreover, the principle laid down in that judgment that uncrystallised EPF claims cannot be enforced during the moratorium, has been consistently followed by this Tribunal in several cases. We are therefore not inclined to agree with this submission of the appellant.

70. In '*Regional Provident Fund Commissioner II vs. Vineeta Maheswari, RP of Bloom Dekor Ltd.'* [Company Appeal (AT)(INS) No. 1618 of 2024, order dated 08.09.2025] this Tribunal clearly distinguished between provident fund contributions already determined and consequential liabilities such as interest and damages under Sections 7Q and 14B. It was held that while

determined provident fund contributions are protected, claims towards interest and damages must attain finality, before the insolvency commencement date to be enforceable in CIRP. In the present case, only the Section 7A dues had been determined prior to 01.05.2023, whereas claims under Sections 7Q and 14B had not. The ratio of aforesaid decision also applies to the present factual matrix.

71. In '*Regional Provident Fund Commissioner, Vatwa, EPFO vs. Shri Manish Kumar Bhagat & Ors.'* [Company Appeal (AT)(INS) No. 808 of 2022, order dated 11.10.2023], this Appellate Tribunal examined the effect of moratorium on EPFO's power to assess and quantify damages and interest. The Tribunal held that such powers remain in abeyance during CIRP, as assessment would lead to enlargement of liability. In the present case as well, the Appellant seeks to rely on proceedings, which had not culminated into a final order prior to CIRP. We therefore find that this judgment reinforces the position that EPFO assessment proceedings could not have proceeded after 01.05.2023.

72. We note that the exclusion of claims towards Sections 7Q and 14B flows from the factual position that such claims had not been finally determined as on the insolvency commencement date. We also note that this position has been affirmed through various judgments of this Tribunal.

73. We further note that Ld. Adjudicating Authority did not ignore any adjudicated statutory liability; rather, it approved a Resolution Plan which reflected the legal position as it stood on the relevant date. In the present case, directing payment of unadjudicated claims under Sections 7Q and

14B would have resulted in imposing uncertain and indeterminate liabilities upon the Successful Resolution Applicant. Such a course would be inconsistent with the object of the IBC, which seeks to freeze claims as on the insolvency commencement date and provide certainty to the resolution process.

74. We find no material on record to suggest that there was any irregularity in approval of resolution plan. The approval of the Resolution Plan was preceded by CoC approval, statutory scrutiny, and compliance with procedural requirements. The decision to exclude uncrystallised claims of the EPFO by the Adjudicating Authority was in accordance with the provisions of the Code and legal precedence, accordingly we are of the view that the impugned order does not warrant interference.

75. In view of findings above, the appeal is dismissed. Pending I.A.s, if any, are closed. No order as to costs.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial

[Mr. Indevar Pandey]
Member (Technical)

SA/Pragya (LRA)