

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 701 of 2025

**[Arising out of the Impugned Order dated 21.03.2025 passed by the
Adjudicating Authority, National Company Law Tribunal, New Delhi
Bench in I.A. No. 470/2024 in C.P. (IB) No. 1683/ND/2018]**

In the matter of:

MR. SUNIL KUMAR JAIN

(IBBI/IPA-002/IP-N00334/2017-2018/10917)

(Resolution Professional of Vas Data Services Private Limited)

80-D, DDA Flats, Gulabi Bagh, Delhi-110007.

.... APPELLANT

Versus

EMPLOYEE'S PROVIDENT FUND ORGANIZATION

(Ministry of Labour & Employment, Government of India)

Through Regional Provident Fund Commissioner-II,

Regional Office, Delhi, Central Bhavishyanidhi Bhavan,

28, Community Centre, Wazirpur Industrial Area,

New Delhi - 110052.

.... RESPONDENT

Present:

For Appellant : Mr. Pankaj Jain and Mr. Yuvraj Singh, Advocates along
with Mr. Sunil Kumar Jain-RP in person.

For Respondent : Mr. Braja Bandhu Pradhan, Mr. Sandeep Kumar and Mr.
Kishor Kumar, Advocates.

WITH

Company Appeal (AT) (Insolvency) No. 793 of 2025

**[Arising out of the Impugned Order dated 21.03.2025 passed by the
Adjudicating Authority, National Company Law Tribunal, New Delhi
Bench in I.A. No. 470/2024 in C.P. (IB) No. 1683/ND/2018]**

In the matter of:

COMMITTEE OF CREDITORS

OF VAS DATA SERVICES PRIVATE LIMITED

(UNDER CIRP)

THROUGH AUTHORIZED REPRESENTATIVE

Mr. PRADEEP KUMAR BANSAL

D-108, CHARMS CASTLE RAJ NAGAR EXTENSION,

GHAZIABAD - 201017

MOB: +91 9971824631

.... APPELLANT

Versus

1. EMPLOYEE'S PROVIDENT FUND ORGANIZATION

(Ministry of Labour & Employment, Government of India)
Through Regional Provident Fund Commissioner-II,
Regional Office, Delhi, Central Bhavishyanidhi Bhavan,
28, Community Centre, Wazirpur Industrial Area,
New Delhi - 110052.

.... RESPONDENT NO.1

2. M/s. MANSIR DAGER AND ASSOCIATES

House No. 1322, Sector 14,
Faridabad, Haryana - 121007.

.... RESPONDENT NO.2

Present:

For Appellant : Mr. Pankaj Jain and Mr. Yuvraj Singh, Advocates.

For Respondent : Mr. Braja Bandhu Pradhan, Mr. Sandeep Kumar and Mr.
Kishor Kumar, Advocates for R1.

Mr. Aditya Madaan, Advocates for SRA/ R2.

J U D G M E N T

(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present set of two appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellants arises out of a common Order dated 21.03.2025 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-V) in I.A. No. 470/2024 in C.P. (IB) No. 1683/ND/2018. By the impugned order, the Adjudicating Authority has allowed the I.A. No. 470 of 2024 filed by Employees Provident Fund Organisation ("**EPFO**" in short) allowing their claim of Rs 1,78,18,960/- as assessed under Sections 7A, 14B & 7Q of the EPF Act. Aggrieved by the impugned order, Company Appeal No. 701 of 2025 has been

preferred by the Resolution Professional and Company Appeal No. 793 of 2025 has been filed by the Committee of Creditors (**“CoC”** in short)

2. Coming to the brief factual matrix of the case at hand, it is noticed that the Corporate Debtor-Vas Data Services Pvt. Ltd. had been admitted into CIRP on 09.04.2019 following which moratorium had come into play. The Interim Resolution Professional had made a public announcement on 27.04.2019 inviting claims from all stakeholders and the Respondent-EPFO had received intimation of the insolvency of the Corporate Debtor on 25.06.2019. The Respondent had intimated the Resolution Professional (**“RP”** in short) on 13.01.2020 regarding an enquiry having been initiated against the Corporate Debtor under the relevant provisions of EPF & MP Act. In the meantime, the CoC had approved the resolution plan on 06.08.2020 and the Adjudicating Authority had reserved orders on the approval of the resolution plan on 25.05.2021. The Respondent-EPFO submitted an unsigned Form-B dated 11.01.2022 for Rs 3,17,667/- towards demand under relevant Sections of the EPF & MP Act, 1952 to the RP who in turn informed the EPFO on 17.01.2022 that the Form-B received from them was unsigned and that the CoC had already approved the resolution plan which was pending consideration of the Adjudicating Authority. The Respondent-EPFO continued with their proceedings and passed orders dated 21.11.2023 demanding a total of Rs 1,78,18,960/- and thereafter filed IA No. 470 of 2024 before the Adjudicating Authority after lapse of 1757 days from the CIRP commencement date seeking recovery demand of the said amount. The Adjudicating Authority passed the impugned order dated 21.03.2025 allowing IA

No. 470 of 2024. Aggrieved by the impugned order, the present appeals have been preferred by the Appellants-RP and CoC.

3. Making submissions on behalf of both the Appellants, Shri Pankaj Jain, Ld. Counsel submitted that the Adjudicating Authority had erred in allowing the IA No. 470 of 2024 since the said application was not maintainable as it had been filed belatedly after passage of 1757 days from the CIRP commencement date. The Respondent-EPFO had failed to file their claim with the IRP on time though they had admittedly received a copy of the CIRP admission order on 09.04.2019 and with CIRP process being strictly time-bound, claims not filed within the prescribed time-lines but filed late due to negligence cannot be admitted. It was also submitted that the Adjudicating Authority committed a mistake in overlooking the fact that the claim had been belatedly filed by EPFO by way of an unsigned Form-B on 14.01.2022 also happened to be much after the CoC had approved the resolution plan with 100% vote-share on 06.08.2020 on which the Adjudicating Authority had reserved its orders on 25.05.2021.

4. Besides the gross negligence of EPFO-Respondent in not filing their claim on time, their claim was also based on assessment proceedings carried out during the moratorium period which was clearly prohibited under Section 14(1) of the IBC. Contention was pressed that the Adjudicating Authority had erred in not considering the judgment of this Tribunal in ***EPFO Vs Jaykumar Pesumal Arlani in CA(AT)(Ins) No. 1062 of 2024*** wherein it was held that after initiation of moratorium under Section 14(1) of IBC, no assessment proceedings can be continued by the EPFO and no claim on the basis of assessment made during the moratorium period can be pressed in CIRP. It was also pointed out that the

Adjudicating Authority while allowing the claims of the EPFO basis assessment proceedings drawn up during the moratorium period had conspicuously missed the point that the Corporate Debtor was still under CIRP and not reached the stage of liquidation. The Ld Counsel also contended that the Adjudicating Authority has wrongly made adverse remarks against the RP in the conduct of the CIRP proceedings by holding that the RP had held back details of the pending suit filed by EPFO under Section 7A of the EPF & MP Act which amounted to a violation of Regulation 36(2)(h) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**" in short). In any case no claim was put forth by EPFO relating to provident fund during preparation of the Information Memorandum by the RP. It was also asserted that these adverse remarks were passed by the Adjudicating Authority without seeking his clarification and deserved expunction.

5. Making submissions on behalf of the Successful Resolution Applicant ("**SRA**" in short), the Ld. Counsel representing the SRA endorsing the arguments canvassed by the two Appellants-RP and CoC also added that the belated EPFO claims cannot be foisted on the SRA since these claims were not factorised by them while submitting their resolution plan as they had no clue about the EPFO proceedings and related claims.

6. Rebutting the arguments and contentions canvassed by the Appellant, it was asserted by Shri Braja Bandhu Pradhan, Ld. Counsel for Respondent that the Adjudicating Authority had by way of a reasoned order allowed the claims filed by the Respondent-EPFO in exercise of the provisions contained in the EPF & MP Act, 1952. It was contended that the EPF & MP Act being a social welfare

legislation which protects the interests of labourers/employees, the claims filed by the Respondent had been rightly taken into cognisance by the Adjudicating Authority. It was asserted that the Adjudicating Authority had rightly noticed that all sums due to any workman/employee from the provident fund, gratuity fund or pension fund should not be included in the liquidation estate assets. It was further added that several judgments of this Tribunal and by the Hon'ble Supreme Court clearly laid down that the provisions of the PF Act needs to be complied with. Reliance was placed on the judgment of this Tribunal in ***Sikander Singh Jamuwal Vs Vinay Talwar & Ors. in CA (AT) (Ins) No. 483 of 2019*** where in it has been held that the Successful Resolution Applicant ('SRA' in short) should release full provident fund dues in terms of the provisions of EPF & MP Act. Reference was also made to the judgment of this Tribunal in ***Tourism Finance Corporation of India Ltd. Vs Rainbow Papers Ltd. in CA (AT) (Ins) No. 354 of 2019*** wherein it was held that Provident Fund is not the assets of the Corporate Debtor and hence the applicability of Section 238 of the IBC does not arise. It was also pointed out that the Adjudicating Authority had correctly relied on the decision of this Tribunal in ***Jet Aircraft Maintenance Engineers Welfare Association Vs Ashish Chhawchharia, RP in CA (AT) (Ins) No. 752, 643, 792, 801, 915 of 2021, 361, 771 & 987 of 2022*** in which it was held that workmen and employees are entitled to receive the amount of Provident Fund and Gratuity in full since they do not form part of the Liquidation Estate under Section 36(4)(b)(iii) of the IBC which decision was upheld by the Hon'ble Supreme Court in ***Jalan Fritsch Consortium Vs Regional Provident Fund Commissioner 2023 SCC OnLine SC106***.

7. It was also asserted that though the RP was aware of the ongoing Section 7A proceedings under the EPF & MP Act before the commencement of CIRP, yet it omitted to disclose this fact in the Information Memorandum. This failure to disclose pertinent information by the RP constituted a breach of CIRP Regulation 36(2)(h) which mandates the RP to provide details of all litigation/investigation/proceeding initiated by the government/statutory authorities. In support of their contention, reliance was placed on the judgment of the Hon'ble Supreme Court in ***Essar Steel Vs Satish Kumar Gupta (2019) 20 SCC 273*** wherein the Hon'ble Apex Court had emphasised that the RP must ensure complete transparency in disclosing all pending proceedings to the CoC and the Adjudicating Authority.

8. We have duly considered the arguments advanced by the Learned Counsel for all the parties and perused the records carefully.

9. The short point which arises for our consideration is whether assessment proceedings could have been pursued by the EPFO under Sections 7A, 14B and 7Q of the EPF & MP Act after imposition of moratorium under Section 14 of the IBC and whether claims arising out of such assessment made subsequent to imposition of moratorium can be admitted in the CIRP after approval of resolution plan by the CoC with 100% vote-share.

10. It is the case of the Appellants that it is an admitted fact that the Corporate Debtor had been admitted into CIRP on 09.04.2019. The Information Memorandum had been approved by the CoC on 20.12.2019 before being shared by the RP with resolution applicants. The resolution plan was finally approved by CoC on 06.08.2020 and filed before the Adjudicating Authority in September

2020. With the commencement of CIRP, the provisions of moratorium stood enforced and since the EPFO proceeded to finalise the assessment proceeding on 20.11.2023 while moratorium was subsisting, the RP had rightly rejected the claim of the EPFO on 07.12.2023 on grounds of being time-barred and contrary to moratorium. It is contended that the Respondent could not have continued with the assessment proceedings during the CIRP period as such proceeding during moratorium is non-est in law. It was contended that moratorium was not only a procedural embargo but a substantive statutory protection forming the backbone of the CIRP. It was also pointed out that Section 238 of IBC has overriding effect over any other law which is repugnant or inconsistent to the statutory provisions of the IBC and hence prevails over parallel statutory recovery proceedings of the EPFO during moratorium.

11. Per contra, it is the contention of the Respondent that the provident fund dues of the employees are exclusively owned by the employees and, therefore, the IRP/RP cannot alienate or transfer such assets. Assertion was made that workmen and employees are entitled to receive in full the amount of provident fund and gratuity. The provisions of EPF & MP Act 1952 being a social welfare legislation, the provident fund dues do not form part of the liquidation estate of the Corporate Debtor, therefore, the claims arising out of provident fund dues cannot be denied even if the assessment proceedings were completed on 22.11.2023 by EPFO. Thus, the Adjudicating Authority vide impugned order had rightly allowed IA No. 470 of 2024 preferred by the Respondent and directed the RP to finalise the claim of the EPFO as a pre-condition for approval of the plan.

12. The moot question whether assessment proceedings could have been pursued by the EPFO under Sections 7A, 14B and 7Q of the EPF & MP Act after imposition of moratorium under Section 14 of the IBC has already been well settled by this Tribunal in ***Jaykumar Pesumal Arlani judgment supra*** wherein exactly this question was framed and answered. In fact this judgement also dwelled upon the question as to whether claims based on assessment proceedings during subsistence of moratorium can be admitted in CIRP.

13. At this stage we may turn our attention to the ***Jaykumar Pesumal Arlani judgment supra*** wherein this Tribunal had clearly posed identical issues for its consideration at para 9 of the judgment and returned its findings at paras 23 and 24 thereof. The relevant extracts of this judgment are as reproduced 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.

23. In the present case, admittedly assessment has been completed after initiation of the moratorium. We, thus, are of the view that once order of liquidation is passed, moratorium under Section 14 comes to an end and moratorium under Section 33(5), which is differently worded, comes into play. Under Section 33(5), the expression used are “suit or other legal proceeding”, which occurs in Section 446 of sub-section (1) noticed above. Thus, bar is only against suit or legal proceeding and there is no bar against assessment proceeding to be conducted by statutory Authorities, including the EPFO. Thus, after

the liquidation, it is open for EPFO to carry on the assessment. Section 33(5), cannot be held to apply on assessment proceedings. However, while looking to the expression used in Section 14(1), assessment proceedings before the EPFO, cannot be continued after initiation of CIRP.

24. *In view of the aforesaid, we answer Question Nos.(1) and (2) in following manner:*

(1) We hold that after initiation of moratorium under Section 14, sub-section (1), no assessment proceedings can be continued by the EPFO. If after an order of liquidation is passed, Section 33, sub-section (5), does not prohibit initiation or continuation of assessment proceedings.

(2) No claim on the basis of assessment carried during the moratorium period, which is prohibited under Section 14(1) can be pressed in the CIRP.”

(Emphasis supplied)

14. When we look at the above judgement, it is crystal-clear that once moratorium under Section 14(1) of the IBC is imposed there can be no institution of suits or continuation of pending suits or proceedings against the Corporate Debtor. The Tribunal has also looked into the differential impact on the conduct of assessment proceedings by the EPFO during CIRP period and liquidation phase and categorically held that there is prohibition on any assessment carried out by the EPFO during the moratorium period. It is an undisputed fact that the EPFO in the present case had passed the assessment order under EPF & MP Act on 21.11.2023 which clearly fell during the moratorium period. Since there is no dispute over the fact that the assessment orders were passed by the EPFO after commencement of CIRP and not during liquidation, the assessment order and the claims arising therefrom is clearly unenforceable during the subsistence of moratorium.

15. We are also guided by an earlier precedent set by this Tribunal in **Harry Dhaul Vs. Regional Provident Fund Commissioner-II in CA(AT)(Ins) No. 1691 of 2024** wherein this Tribunal has also reiterated that a demand made by the EPFO after initiation of moratorium is not enforceable in view of the statutory provisions of Section 14(1) of the IBC. It is pertinent to add here that this Tribunal in the above judgment had arrived at this finding after considering the judgments of the Hon'ble Supreme Court in **Rajendra K. Bhutta Vs Maharashtra Housing and Area Development Authority (2020) 13 SCC 208** and this Tribunal in **Jaykumar Pesumal Arlani judgment supra**. The relevant excerpts of the above judgment read as follows:

“16. Having noted the above facts, we now would like to dwell upon the tenability of claims of EPFO. To arrive at our view, we need to first consider whether assessment proceedings could have been conducted by the EPFO under Sections 7A, 7Q and 14B of the EPF Act after imposition of moratorium under Section 14 of IBC and whether any claim on the basis of such assessment carried out by EPFO during moratorium could have been admitted by the Adjudicating Authority.

*17. We are squarely guided by the precedent laid down by this Tribunal in **CA Pankaj Shah Vs Employee Provident Fund Organisation & Anr. in CA (AT) (Ins) No. 17 of 2025** where this issue of whether assessment proceedings can be continued by EPFO after initiation of moratorium under Section 14(1) of IBC has been considered at length after relying on the judgment of the Hon'ble Supreme Court in **Rajendra K. Bhutta Vs Maharashtra Housing and Area Development Authority (2020) 13 SCC 208**.*

18. The relevant excerpts of the said judgment are as extracted hereunder:

“7. The demand made by the EPFO on the basis of inspection dated 10.05.2023 is clearly demand from the Corporate Debtor after commencement of the Moratorium. Similarly, revised claim submitted on 26.09.2023 on the basis of orders passed on 25.09.2023 where demand in pursuance of subsequent to

Moratorium. This Tribunal has occasion to examine the consequences of Moratorium on assessment made by EPFO in Company Appeal (AT) (Insolvency) No.1062 of 2024– “Employees’ Provident Fund Organisation Regional Office vs. Jaykumar Persumal Arlani, Resolution Professional of Ms/. Decent Laminates Pvt. Ltd.” with Company Appeal (AT) (Insolvency) No. 1065 of 2024- – “Employees’ Provident Fund Organisation Regional Office vs. Sanjay Kumar Lalit, Resolution Professional of Apollo Soyuz Electricals P. Ltd. & Anr.” decided on 03.01.2025. In the above case also, after commencement of the CIRP, EPFO initiated proceeding under Section 7A and passed an order under Section 7A, 7Q & 14B. Application was filed by EPFO before the Adjudicating Authority seeking a direction to the Resolution Professional to admit the claim which claim to be rejected. This Tribunal in the above case, examined the consequence of Moratorium and held that the assessment proceeding cannot be continued after initiation of CIRP. This Tribunal in the above judgment had framed questions in paragraph 9 which are as follows:-”

“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.”

*8. While answering Question Nos.1 and 2, this Tribunal has relied on the judgment of the Hon’ble Supreme Court in **“(2020) 13 SCC 208 – Rejendra K. Bhutta vs. Maharashtra Housing and Area Development and Anr”**. In paragraphs 11, 12 & 13, following was laid down:*

“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.”

9. *After considering the submission of the parties, this Tribunal came to the conclusion that after initiation of the CIRP, assessment proceedings cannot be continued. In paragraphs 23 & 24, following was laid down:*

“23. In the present case, admittedly assessment has been completed after initiation of the moratorium. We, thus, are of the view that once order of liquidation is passed, moratorium under Section 14 comes to an end and moratorium under Section 33(5), which is differently worded, comes into play. Under Section 33(5), the expression used are “suit or other legal proceeding”, which occurs in Section 446 of sub-section (1) noticed above. Thus, bar is only against suit or legal proceeding and there is no bar against assessment proceeding to be conducted by statutory Authorities, including the EPFO. Thus, after the liquidation, it is open for EPFO to carry on the assessment. Section 33(5), cannot be held to apply on assessment proceedings. However, while looking to the expression used in Section 14(1), assessment proceedings before the EPFO, cannot be continued after initiation of CIRP.

24. In view of the aforesaid, we answer Question Nos. (1) and (2) in following manner:

(1) We hold that after initiation of moratorium under Section 14, sub-section (1), no assessment proceedings can be continued by the EPFO. If after an order of liquidation is passed, Section 33, subsection (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.”

10. *The above judgment clearly indicates that after initiation of the CIRP, no assessment can be initiated or continued against the Corporate Debtor so as to pass any pecuniary liability on the Corporate Debtor. In the present case, the EPFO has made demand on the basis of an*

alleged inspection report dated 10.05.2023 and assessment order dated 25.09.2023 which both were subsequent to initiation of CIRP on 17.02.2023. When no demand can be made on the basis of any inspection or assessment, we do not find any ground to allow the application IA No.409 of 2024 which was filed by EPFO where direction was sought to allow the entire claim of Rs.1,37,17,837/-.”

The above judgment fortifies the settled principle that any assessment made by the EPFO subsequent to the commencement of CIRP during moratorium period cannot be ground to accept any claim in the CIRP process.

16. We now come to the next inter-related question as to whether the present claims were filed belatedly after the CoC had approved the plan and if so whether such belated claims could have been admitted by the RP. When we look at the facts on record, we find that the Respondent did not file their claim with the IRP on time though they had admittedly received a copy of the CIRP admission order on 09.04.2019. When the Information Memorandum was approved by the CoC, until then there was no claim submitted by the Respondent-EPFO nor was any information given by them about pending EPFO proceedings. We also find that the IRP had invited claims on 27.04.2019 with the last date of filing claims being 10.05.2019 as seen at pages 44-53 of APB of CA 701 of 2025 or submitted their claim within the prescribed time-line. Claim had been filed by EPFO much later by way of an unsigned Form-B on 14.01.2022. This happened to be much after the CoC had approved the resolution plan with 100% vote-share on 06.08.2020 on which the Adjudicating Authority reserved its orders on 25.05.2021. Furthermore, the RP had also rejected the claim on 17.01.2022 on account of late submission of claim form as the plan had already been approved by the CoC on 06.08.2020. Subsequently, when the Respondent-EPFO finalised the

assessment proceeding on 20.11.2023 and forwarded the same to the RP on 21.11.2023, the RP had sent an e-mail to the Respondent on 07.12.2023 intimating that the claim arising out of the order of 20.11.2023 cannot be accepted or admitted by him and had advised the Respondent to approach the Adjudicating Authority. It is therefore an admitted fact that the claims were filed by the EPFO subsequent to approval of the resolution plan by the CoC on which the Adjudicating Authority had reserved its orders on 25.05.2021.

17. It is settled law that after the resolution plan is approved by the CoC but pending before the Adjudicating Authority, no new claims can be entertained. It may be relevant to advert attention to the judgment of the Hon'ble Supreme Court in **M/s RP Infrastructure Ltd. vs Mukul Kumar & Anr. in Civil Appeal No. 5590 of 2021** which is as extracted below:

“19. The second question is whether the delay in the filing of the claim by the Appellant ought to have been condoned by the Respondent No. 1. The IBC is time bound process. There are, of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters. The delay on the part of the Appellant is of 287 days. The Appellant is a commercial entity. That they were litigating against the corporate debtor is an undoubted fact. We believe that the Appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the corporate debtor was undergoing CIRP. The Appellant has been deficient on this aspect. The result, of course, is that the Appellant to an extent has been left high and dry.

21. 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. This would result in there opening of the whole issue, particularly as there may be other similar person who may jump onto the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.

22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.

23. 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. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump on to the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by the CoC."

18. Viewed against the backdrop of the above judgement, when the claims had been filed belatedly by the EPFO, the Adjudicating Authority committed an error in admitting the claim. In this case, there is all the more reason for the Adjudicating Authority not to have admitted the claim since the claim was not only filed by EPFO with a lot of delay but the claim was also made on the basis of assessment which had been carried out subsequent to initiation of moratorium and was hit by Section 14(1) of IBC. Further the ***Jet Aircraft judgment supra*** judgment relied upon by the Adjudicating Authority while allowing the claim is not applicable since that judgment clearly dealt with EPFO entitlement during liquidation while in the facts of the present case, the resolution plan had been approved by the CoC and was pending consideration and approval of the Adjudicating Authority and was yet to reach the stage of liquidation. The judgments relied upon by the Respondent have no relevance since those judgments pertain to issues arising at the stage of liquidation while the present matter relates to CIRP period.

19. This brings us to the question as to whether the RP in the conduct of the CIRP proceedings had committed breach of the CIRP Regulations. It is the finding of the Adjudicating Authority that the CIRP Regulations mandate the RP to disclose all relevant details of litigations and hence non-disclosure of this information by the RP undermined the integrity of the CIRP. However, where the Adjudicating Authority committed an error was that it overlooked the practical fact that the RP and the CoC had to rely on information provided by the suspended management of the Corporate Debtor with regard to pending litigations/legal proceedings relating to the Corporate Debtor. As per records placed before us, this information was provided by the suspended management of the Corporate Debtor on 18.10.2019 as is placed at pages 218-221 of APB in Company Appeal No. 701 of 2025 and clearly this list did not include proceedings pending before the EPFO. The EPFO has also not produced any proof that it had given any intimation of the EPFO proceeding to the IRP/RP. Hence, when there was no information about pending proceedings received from the EPFO or the suspended management of the Corporate Debtor nor was any claim submitted by EPFO to the IRP/RP before the last date fixed for submission of claims, the RP cannot be said to have acted in breach of the CIRP Regulations. Hence, there is sufficient justification that the remarks made against the RP deserve to be set aside.

20. In view of the above discussions, we are of the considered view that no assessment proceedings could have been continued by the EPFO after initiation of moratorium under Section 14(1) of IBC and further the claims having been filed belatedly after the resolution plan had already been approved by the CoC,

the directions of the Adjudicating Authority to consider these claims cannot be sustained. We also find substance in the contention of the RP that the adverse remarks made by the Adjudicating Authority with regard to his conduct and holding him to have acted in breach of the CIRP Regulations are unfounded and deserve to be expunged. We therefore find merit in both the appeals. We set aside the impugned order and also direct expunction of the remarks contained in para 14 and 16 of the impugned order with regard to conduct of the RP in rejecting the EPFO claims. No order as to cost.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 10.03.2026

Abdul