

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. I  
KOLKATA**

**I.A. No. 739/KB/2026  
IN  
C.P. (IB) No. 243/KB/2023**

*An application under Section 60 (5) of IBC, 2016 with the Rule 11 of the National Company Law Tribunal Rules, 2016 and under Regulation 12 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016*

**IN THE MATTER OF:**

Damodar Valley Corporation

... .. Operational Creditor

*Versus*

Jai Venkatesh Concast Private Limited

... .. Corporate Debtor

**IN THE MATTER OF:**

The Assistant Provident Fund Commissioner, the Employees' Provident Fund Organisation, Ministry of Labour and Employment, Government of India, Regional Officer – Durgapur, Red Cross Road, City Centre, Durgapur, District – Paschim Burdwan, Pin – 713216, E-mail: [ro.durgapur@epfindia.gov.in](mailto:ro.durgapur@epfindia.gov.in)

... .. Applicant

*Versus*

Jai Venkatesh Concast Private Limited, having its Registered address at Bamunara Industrial Area, Bamunara, Durgapur, West Bengal, India – 713212, Email: [jvcpl\\_10@yahoo.co.in](mailto:jvcpl_10@yahoo.co.in)

... .. Corporate Debtor/Respondent No.1

*And*

Sh. Sandip Kumar Kejriwal, Resolution Professional of the Corporate Debtor, having his office at 322, 3<sup>rd</sup> floor, Martin Bum House, 1, R. N. Mukherjee Road, Kolkata – 700001, West Bengal, Email: [sandipkej2@gmail.com](mailto:sandipkej2@gmail.com), [rp.jvcpl@gmail.com](mailto:rp.jvcpl@gmail.com)

... .. Respondent No.2

**Date of Pronouncement: 12<sup>th</sup> of June, 2026**

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**CORAM:**

**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)**

**CMDE SIDDHARTH MISHRA, MEMBER (TECHNICAL)**

**APPEARANCE:**

Mr. Avijit Tewary, Adv. ] For EPFO in I.A. No. 739/KB/2026

Mr. Shaunak Mitra, Adv. ] For SRA

Mr. Arun Gupta, CA

Mr. Rishav Banerjee, Adv.

**ORDER**

**Per: Bidisha Banerjee, Member (Judicial):**

1. The court convened in hybrid mode.
2. Heard Ld. Counsels for the parties.
3. This application has been preferred by the EPFO, Regional Office Durgapur to seek the following reliefs:

*“a. to condone the delay, if any, in submitting the present application before the Hon’ble Tribunal;*

*b. to condone the delay, if any, in submitting the claim to the Respondent No.2 Resolution Professional;*

*c. to set aside the decision of the Respondent Resolution Professional by letter/email dated 20.03.2026;*

*d. to admit and allow the present application;*

*e. to direct the Respondent No.2 Resolution Professional to accept and admit the applicant’s revised claim dated 14.05.2026 towards the Provident Fund dues to the tune of Rs.1,29,30,953/- and further also be pleased to direct the*

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*Resolution Professional to acknowledge the priority of said provident fund dues of Rs.1,29,30,953/- over the assets of the Corporate-Debtor in the present Insolvency proceedings and to take steps for full release of the claim;*

*f. To direct the Respondents to pay costs to the applicant as may be determined by this Hon'ble Tribunal;*

*g. To pass any further order as may be deemed fit, proper and necessary in the interest of justice.”*

4. It appears from the records that the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor, namely, Jai Venkatesh Concast Private Limited by an Admission Order dated 19.06.2025.
  5. Mr. Sandip Kumar Kejriwal was appointed as Interim Resolution Professional (IRP), later confirmed as Resolution Professional (RP).
  6. The Public Announcement was issued on 23.06.2025 inviting all classes of Creditors to submit their claims against the Corporate Debtor on or before 04.07.2025.
  7. Pursuant thereto, the Zonal Office of the Applicant forwarded the claim of Rs.21,86,476/- to the Resolution Professional followed by the email dated 11.08.2025 and 18.08.2025 resubmitting the same claim in Form B and Form F respectively.
  8. It is submitted that upon receiving Enforcement Officer's (EO) Report dated 29.08.2025, the claim was revised to Rs.1,43,24,003/-
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incorporating the previous dues of 21 lakhs and odds. The break-up of the EPF contribution dues of Rs.1,21,37,527 out of earlier 21 lakhs and odds was shown as under:

- i. Tentative dues of Rs.70,12,508/- under Section 14B (damages);
  - ii. Rs.39,22,090/- under Section 7Q (interest) were calculated assuming date of deposit of contribution as 20.11.2025.
- 9.** It is submitted that the proceedings under Sections 14B and 7Q were completed and concluded vide Order dated 02.12.2025, for the period from 29.10.2019 to 13.06.2024. Thereby, for the same period, the previous 14B dues were revised from Rs.7,06,431/- to Rs.6,43,271/- and Section 7Q dues was revised from Rs.3,59,880/- to Rs.3,17,445/-. Incorporating the above calculations for damages and interest, a revised dues of Rs.2,51,53,006/- was forwarded to Zonal Office vide the Office Letter dated 19.12.2025 for submission of the same to the Respondent No.2 RP. Accordingly, EPFO, Zonal Office, Kolkata submitted that revised total dues of Rs.2,51,53,006/- vide Form F to the Respondent No.2 RP vide Zonal Office, Kolkata's Email dated 22.12.2025.
- 10.** Vide Email dated 27.02.2026, the Zonal Office submitted revised claim of Rs.1,29,30,688/- in Form F to the Respondent No.2.
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- 11.** Vide Email dated 11.03.2026, the Resolution Professional enquired about the details of the dues of Rs.1.21 crores when there was no employees' work upto 2025.
- 12.** Accordingly, the claim was further revised to 42,74,370/- for the period of July 2019 to January 2026. The revised claim of Rs.1,29,30,688/- was submitted to the Respondents, RP vide letter dated 19.03.2026.
- 13.** The Resolution Professional vide Email dated 20.03.2026, intimated to the EPFO that its original claim of Rs.21,86,476/- has been considered and submitted to this Tribunal for approval and that the revised claim has been placed before CoC for the considerations.
- 14.** The list of break-up of the claim furnished by the EPFO is given in **Para M** of this Application is as under:

<b>Type of dues</b>	<b>Period</b>	<b>Amount</b>	<b>Documents Enclosed</b>
Damages u/s 14B	12/2010 to 05/2017	Rs.5,47,616/-	<b>Annexure - I</b> (Copy of Revenue Recovery Certificate dated 17.06.20/01.07.20 enclosed)
Interest u/s 7Q	12/2010 to 05/2017	Rs.2,83,304/-	
Damages u/s 14B	06/2017 to 01/2017	(Rs.1,80,042 – 1,73,484/-) (already recovered) = Rs.6,558/-	<b>Annexure - II</b> (Copy of Revenue Recovery Certificate dated 20.04.23/01.05.23 and copy of challan regarding payment enclosed)
Interest u/s 7Q	06/2017 to 01/2019	(Rs.1,11,688 – 1,11,688/-) (already	

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		recovered) = Outstanding <b>NIL</b>	
Dues u/s 7A	07/2019 to 01/2026	Rs.42,74,637/-	<b>Annexure - III</b> (Corrigendum dated 08/04/2026 along with original 7A order dated 30/03/2026)
Damages u/s 14B	Remittance Period 29/10/2019 to 13/06/2024	Rs.6,43,271/-	<b>Annexure - IV</b> (Copy of Order u/s 14B & 7Q dated 02.12.2025 enclosed)
Interest u/s 7Q	Remittance Period 29/10/2019 to 13/06/2024	Rs.3,17,445/-	
PF dues	Upto Accounting Year 2024-25	Rs.2,82,687/-	<b>Annexure - V</b> (System generated Establishment Ledger enclosed)
Damages u/s 14B	07/2019 to 01/2026	Rs.41,34,454/-	<b>Annexure - VI</b> (Copy of Corrigendum Letters dated 07/04/2026 regarding 14B & 7Q along with original orders regarding the same dated 30/03/2026)
Interest u/s 7Q	07/2019 to 01/2026	Rs.24,40,981/-	
<b>TOTAL</b>			<b>Rs.1,29,30,953/-</b>

15. It is submitted that in **Tourism Corporation of India Private Limited Vs. Rainbow Papers Limited and Ors.**, the Hon'ble NCLAT approved resolution plan modifying the same with the following observation:

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*“Therefore, we direct the Successful resolution applicant – 2<sup>nd</sup> Respondent (Kushal Limited) to release full provident fund and interest thereof in terms of the provisions of the EPF & MP Act, 1952, immediately, as it does not include as an asset of the Corporate Debtor. The impugned order dated 27<sup>th</sup> February, 2019 approving the Resolution Plan stands modified to the extent above.”*

- 16.** Further reference is drawn to the **Jet Aircraft Maintenance Engineering Welfare Association Vs. Ashish Chhawchharia Resolution Professional of Jet Airways (India) Limited and Ors., Company Appeal (AT) (Insolvency) No.628 of 2020**, where the Hon’ble NCLAT in the matter of EPFO Vs. RP for M/s Zillion Infra Projects Private Limited held that *“Since the EPF dues are not a part of the assets of the Corporate Debtor, we are of the view that the applicant was not required to file his claim. Rather, the Resolution Professional was duty bound to release the dues of the applicant. The EPF dues are to be given priority over all the other creditors during Liquidation. We thereby direct the Respondent/Resolution Professional to consider the claim of the Applicant”.*
- 17.** Further reference is drawn to a decision of Hon’ble NCLAT in **Anuj Bajpai Vs. EPFO** holding that Provident Fund dues including interest and damages under Sections 7A, 7Q and 14B of the EPF Act, 1952 are to be excluded from the liquidation estate as per

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Section 36 (4) (iii) of the IBC and hence not to be distributed as per waterfall mechanism under Section 53 of the IBC, 2016.

- 18.** Reference was also drawn to Hon'ble Supreme Court decision in **Maharastra State Co-operative Bank Vs. Assistant Provident Fund Commissioner (2009) Volume 10 SCC 123**, where the judgment is as under:

*“44. From above table, it is noted that there are four components of claims i.e., contribution of Rs. 34, 47,599/- under Section 7A; Rs.28,64,318/- as interest component as per Section 7Q; Rs.61,38,551/- as damages under Section 14B of the EPF Act and residual Rs.36,282/- as provisional costs and charges. Section 70 of the EPF Act stipulates that the employer shall be liable to pay simple interest @ 12% p.a. or as specified on any amount due from the employer under EPF Act, from the date of which amount becomes due until date of its actual payment.*

*45. From Section 14B of the EPF Act, we note that the EPFO Authorities have been given powers to recover damages in case of employer's defaults of any contribution to the fund.*

*here is no pre-conceived formula regarding what damages should be fixed under Section 14B of the EPF Act and the same has been left to the discretion of the EPFO Authority to determine the damages in facts of each case.*

*Thus, it becomes clear that the EPFO Authorities have powers to levy damages. It is also significant to note that damages is in relation to non-payment delayed payment of contribution under Section 7A of the EPF Act by the employer (the Corporate Debtor herein) therefore, the*

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*damage in a sense is to be treated as extended part of the contribution.*

*46. We note that the EPF Act itself provides the priority of payments of contributions or other debts under Section 11 which reads as under: "Section 11 Employees Provident Funds Miscellaneous Provisions Act, 1952.*

*11. Priority of payment of contributions over other debts*

*(1) Where any employer is adjudicated insolvent or, being a company, an order for winding up is made, the amount due*

*(a) from the employer in relation to fan establishment) to which any (Scheme or the insurance Scheme) applies in respect of any contribution payable to the Fund for, as the case may be, the Insurance Fund), damages recoverable under section 14B, accumulations required to be transferred under sub-section (2) of section 15 or any charges payable by him under any other provision of this Act or of any provision of the (Scheme or the Insurance Scheme); or*

*(b) from the employer in relation to an exempted [establishment] in respect of any contribution to the provident fund or any insurance fund) (in so far as it relates to exempted employees), under the rules of (the provident fund or any insurance fund) (any contribution payable by him towards the (Pension) Fund under sub-section (6) of section 17, damages recoverable under section 14B or any charges payable by him to the appropriate Government under any provision of this Act under any of the conditions specified under section 17, shall where the liability accrued before the order of adjudication or winding up is made, be deemed to be included) among the debts which under section 49 of the Presidency Towns Insolvency Act, 1909, or under section 61 of the Provincial Insolvency Act, 1920, under [Section 530*

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*of the Companies Act, 1956), are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be.*

*(Explanation: In this sub-section and in section 17, "insurance fund" means any fund established by an employer under any Scheme for providing benefits in the nature of life insurance to employees, whether linked to their deposits in provident fund or not, without payment by the employees of any separate contribution or premium in that behalf.)*

*(2) Without prejudice to the provisions of sub-section (1), if any amount is due from an employer, (whether in respect of the employee's contribution (deducted from the wages of the employee) or the employer's contribution), the amount shall be deemed to be the first charge the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts." due*

*(Emphasis Supplied)*

*47. The liability accrued before the order of adjudication of insolvency or winding up are to be paid in priority over other claims.*

*48. In the present appeal, the claims pertain to the period prior to CIRP and subsequent liquidation and the claims were filed by the Respondents before the Resolution Professional after issue of by public notice inviting claims and the Respondents filed the claim of Rs. 1,24,86,750/-.*

*49. It is significant to note that an amendment was be made in the EPF Act vide amendment Act, 33 of 1988 w.r.f. 01.08.1988 which describes that without prejudice to the provision of sub-section 1 of Section 11 of the EPF Act, "if any amount is due from an employer"*

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*amount so due shall be due to be first charge on the assets of the establishment.*

*In this regard, we would like to refer to the judgment of the case Maharashtra State Hon'ble Supreme Court of India Cooperative Bank (Supra) which gives clear ratio as laid down by the Hon'ble Supreme Court of India in Para 67 to 69. These paras read as under-*

*“67. The expression "any amount due from an employer" appearing in sub-section (2) of Section 11 has to be interpreted keeping in view the object of the Act and other provisions contained therein including sub-section (1) of Section 11 and Sections 7-A, 70, 14-B and 15(2) which provide for determination of the dues payable by the employer, liability of the employer to pay interest in case the payment of the amount due is delayed and also pay damages, if there is default in making contribution to the Fund. If any amount payable by the employer becomes due and the same is not paid within the stipulated time, then the employer is required to pay interest in terms of the mandate of Section 7-Q. Likewise, default on the employer's part to pay any contribution to the Fund can visit him with the consequence of levy of damages.*

*As mentioned earlier, sub-section (2) was inserted in Section 11 by Amendment Act 40 of 1973 with a view to ensure that payment of provident fund dues of the workers are not defeated by the prior claims of the secured and/or of the unsecured creditors. While enacting sub-section (2), the legislature was conscious of the fact that in terms of existing Section 11 priority has been given to the amount due from an employer in relation to an establishment to which any scheme or fund is applicable including damages recoverable under Section 14-B and*

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*accumulations required to be transferred under Section 15(2). The legislature was also aware that in case of delay the employer is statutorily responsible to pay interest in terms of Section 17. Therefore, there is no plausible reason to give a restricted meaning to the expression "any amount due from the employer" and confine it to the amount determined under Section 7-A or the contribution payable under Section 8.*

*If interest payable by the employer under Section 7-0 and damages leviable under Section 14 (sic Section 14-3) are excluded from the ambit of expression "any amount due from an employer", every employer will conveniently refrain from paying contribution to the Fund and other dues and resist the efforts of the authorities concerned to recover the dues as arrears of land revenue by contending that the movable or immovable property of the establishment is subject to other debts. Any such interpretation would frustrate the object of introducing the deeming provision and non obstante clause in Section 11(2). Therefore, it is not possible to agree with the learned Senior Counsel for the appellant Bank that the amount of interest payable under Section 7-Q and damages leviable under Section 14-B do not form part of the amount due from an employer for the purpose of Section 11(2) of the Act".*

*(Emphasis Supplied)*

*51. The Hon'ble Supreme Court laid down that there is no reason to give restrictive Meaning of expression "any amount due from the employer and confine to only amount determine under Section 7A of the EPF Act. The Hon'ble Supreme Court further held that interest payable by the employee under Section 70 and the damages levied*

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*under Section 14B of the EPF Act will also be covered as dues from the employers for the purpose of Section 11(2) of the EPF Act.*

*52. We note that in the present appeal the amount which has been claimed by the employer are covered under Section 7A, 70 and 14B of the EPF Act and therefore are fully governed by the judgment Maharashtra State Cooperative Bank (Supra).*

*53. in view of this clear judgment of the Hon'ble Supreme Court of India the contention of the Appellant is not tenable and stand rejected.*

*54. We also note that the Hon'ble Supreme Court of India in **Sunil Kumar Jain Vs. Sundaresh Bhatt (2002) 7 SCC 540** held that the dues of the gratuity and pension shall be governed by Section 36(4) of the Code. It is reiterated that Section 36(4)(ii) of the Code specifically excludes "all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund", from the ambit of liquidation estate assets. Therefore, Section 53(1) of the Code cannot be made applicable to such dues, which are to be treated outside the liquidation estate assets under the Code. Section 36(4) of the Code has clearly given protection to workmen's dues under provident fund, gratuity fund and pension fund which are not to be treated as liquidation estate assets and the liquidator cannot claim over such dues.*

*55. We also note that this Appellate Tribunal's order in case of **Jet Aircraft Maintenance Engineer's Welfare Association [2023 SCC OnLine NCLAT 2363]** was upheld by the Supreme Court and where it was held that PF and ESI funds not part of Corporate Debtor estate and do not belong to the Corporate Debtor and therefore could not fall under liquidation estate. This also does not support the case of the Appellant.*

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56. This Appellate Tribunal in the case of **State Bank of India v. Moser Baer Karamchari Union, 2019 SCC OnLine NCLAT 447** also examined the question of whether gratuity fund, provident fund and pension fund should be included as part of liquidation estate by including the same for payments under the waterfall mechanism under Section 53 of the Code. In this case, the Liquidator denied payment of the said funds in a preferential manner and had included the same for payment under the waterfall mechanism prescribed under Section 53 of the Code whereas the workers union claimed dues cannot be part of the waterfall mechanism under Section 53 of the Code. This Appellate Tribunal decided that Section 36(4)(a)(iii) of the Code cover all sums due to any workmen or employee from provident fund and the gratuity fund and the same should not be included in liquidation estate and further held that the liquidation estate/assets of the corporate debtor under Section 36(1) read with Section 36 (3) of the Code, do not include sums due to any workman and employees from the provident fund, the pension fund and the gratuity fund, for the purpose of distribution of assets under Section 53 of the Code. It was decided that the dues are to be paid to the workmen/employees on priority, without reference to or waiting for distribution of liquidation assets as per the waterfall mechanism under Section 53 of the Code.

57. In view of detailed discussion, we do not find any merit in the appeal. The appeal deserved to be dismissed and stand dismissed. No costs. Interlocutory Application(s), if any, are closed.”

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19. Reference was also drawn to **Sikander Singh Jamuwal Vs. Vinay Talwar Resolution Professional and Ors. (2022) SCC Online NCLAT 2453** for the proposition that

*“d. Since no provisions of the above said Act is in conflict with any of the provisions of the I&B Code, the applicability of even Section 238 of the I&B Code does not arise. PF dues are not the assets of the Corporate Debtor as amply made clear by the provisions of Section 36(4)(a)(iii) of the I&B Code, 2016.”*

20. The Applicant has also referred to a decision of three-member bench of this Tribunal in **Tourism Finance Corporation of India Limited Vs. Rainbow Papers Limited and Ors (supra)** that provident fund dues were entitled to be paid in full. In view of the decision of **Maharashtra State Co-operative Bank Limited Vs. Assistant Provident Fund Commissioner and Ors.**

21. The Applicant has further referred to **V-Con Integrated Solution Private Limited Vs. Acharya Techno Solution (India) Private Limited and another, (2021) SCC Online NCLT 5518**, where the NCLT observed as under:

*“10. From a reading of the above sections, it is clear that the contribution, interest and damages payable are statutory dues and not claims which can be submitted to the Liquidator in Form G. Hence, the EPFO need not file Form G before the Liquidator. It is also seen that the EPFO has got first charge over the Assets of the defaulter and its priority of payment over other debts is as per Section 11 of the EPF & MP Act, 1952.”*

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- 22.** In view of the aforesaid enumerations, it is submitted that the Resolution Professional should admit the claims in toto or as the poor subscribers of EPFO would be the ultimate loser. It is alleged that the Resolution Professional has failed to appreciate applicability of Section 36(4)(a)(iii) of the I&B Code which states that any sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation.
- 23.** The contentions have vehemently opposed by the Ld. Counsel Mr. Rishav Banerjee appearing on behalf of the Resolution Professional who would draw our attention to an Order passed in **Rachna Jhunjhunwala Vs. Power Max**. In **Power Max** matter, an IA filed by the Resolution Professional against EPFO that dues that had crystalized before commencement of CIRP should also be admitted and paid by the SRA in full. The dues arising out of subsequent assessment in course of CIRP proceedings which had not crystalized as on the date of admission of CIRP need not be paid.
- 24.** To that effect, Ld. Counsel would draw our attention to a decision of this Bench in the above matter, upheld by the Hon'ble NCLAT in the following words:
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*“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 -37- Company Appeal (AT) (Ins.) No. 1412 of 2024 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*

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*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

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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.”

- 25.** We have heard Ld. Counsel for the parties and perused the materials on record.

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- 26.** A bare reading of the decision of **Power Max** exemplifies and demonstrates that this Bench had clearly and categorically indicated that the dues of EPFO towards Provident Fund etc. of workman/employees which had crystalized as on the date of commencement of CIRP, are only required to be admitted by the Resolution Professional and paid by the SRA.
- 27.** Since the instant case is not one of liquidation, most of the judgments relied upon. Ld. Counsel appearing on behalf of the EPFO would have no relevance.
- 28.** Further, Ld. Counsel for the EPFO has failed to furnish any decision on the proposition that the final figure arrived at post-assessment after initiation of CIRP is also required to be paid in full by the SRA.
- 29.** The reliance on ABG Shipyard's decision and a decision of Hon'ble Bombay High Court reported in **(2025) SCC Online Bombay 1754** as well as **Sikander Singh Jamuwal** did not appear to be on the proposition, whether the claims arising out of assessment proceedings, post commencement of CIRP should be paid in full.
- 30.** It is also to be noted that the last date of submission of claim was 4<sup>th</sup> of July, 2025, Form F was filed by EPFO on 18<sup>th</sup> of August, 2025 claiming an amount of Rs.21 lakhs and odds. The revised Form F was filed on 27<sup>th</sup> of February, 2026 long after the plan of Kejriwal
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Mining was approved by the CoC on 26<sup>th</sup> of September, 2025, any further addition would take the SRA by surprise.

- 31.** It is also evident from record that on 1<sup>st</sup> of November, 2025, the plan of SRA was discussed and deliberated upon on its feasibility and viability. The Plan Approval Application was filed on 28.11.2025.
- 32.** Ld. Counsel Mr. Rishav Banerjee would also point out that the plan provides for in fresh admission of claims to the tune of 1% of the admitted claim and a corresponding haircut which the Secured Financial Creditors have agreed to sustain.
- 33.** However, as per the RP, the claim of the Applicant is based on the following –
- i.** Letter dated 19.03.2026 (@pp 89 – 91 of the IA) issued by the Regional Provident Fund Commissioner – II claiming a sum of Rs.1,29,30,953/- primarily arising out of Damages under Section 14B of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (PF Act) and interest Section 7Q of the PF Act.
  - ii.** Purported Order passed by the Regional Provident Fund Commissioner – II of the Applicant on 30.03.2026 assessing dues of Rs.42,74,370/- (@pp 107 – 113 of the IA) which was revised to Rs.42,74,637/- by Corrigendum dated 08.04.2026 (@p.106 of IA).
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- iii.** Purported Order passed by the Applicant on 02.12.2025 assessing dues of Rs.6,43,271/- (@pp 114 – 116 of IA), also after commencement of moratorium and after the Resolution Plan was approved by the COC on 01.11.2025.
- iv.** Purported Demand Notice dated 02.12.2025 by the Assistant Provident Fund Commissioner for a sum of Rs.3,17,445/- (@ pp 117 – 145 of IA).
- v.** Purported Corrigendum dated 07.04.2026 (@ pp 146 of IA) demanding a sum of Rs.41,34,454/-.
- vi.** Purported Corrigendum dated 07.04.2026 (@ pp 147 of IA) demanding a sum of Rs.24,40,981/-.

It is stated that all the above assessments and/or orders are much after commencement of moratorium under the Insolvency & Bankruptcy Code, 2016 on 19.06.2025 and also much after the Resolution Plan was approved by the COC on 01.11.2025.

- 34.** Further it is asserted that the Hon'ble National Company Law Appellate Tribunal (NCLAT) has held on several occasions that no assessment order can be passed by the Employees' Provident Fund after commencement of moratorium under the IBC and no further claims can be made on the basis of such assessments or orders. The RP relies on the following judgments of the Hon'ble NCLAT in this regard –
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- i. Employees' Provident Fund Organisation Vs. Rachna Jhunjhunwala and Anr.** – reported at (2026) ibclaw.in 69 NCLAT – passed on 27.01.2026
  - ii. Central Board of Trustees, through Regional Provident Fund Commissioner – II (Legal) Vs. Vinod Tarachand Agarwal and Anr.** – reported at (2026) ibclaw.in 273 NCLAT 0 passed on 02.03.2026
  - iii. Sunil Kumar Jain Vs. Employees' Provident Fund Organisation** – reported at (2026) inclaw.in 284 NCLAT – passed on 10.03.2026
  - iv. Employees' Provident Fund Organization Vs. IPE-NPV Insolvency Professionals Pvt. Ltd.** – reported at (2026) ibclaw.in 293 NCLAT – passed on 11.03.2026.
  - v. Employees' Provident Fund Organization, Kandivilo East vs. Kailash Shah** – reported at 2026 SCC Online NCLAT 383 – passed on 09.04.2026.
  - vi. Employees' Provident Fund Organization, Kandivilo East vs Ashok Mittal (RP)** – reported at (2026) ibclaw.in 583 NCLAT – passed on 27.04.2026.

It is stated that in all above judgments, the Hon'ble NCLAT has categorically held that any claim of the EPFO based on assessment of interest and/or damages made after commencement of

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moratorium, cannot be admitted by the Resolution professional and that the EPFO cannot pursue assessments during moratorium.

That the above judgments are binding on this Hon'ble Tribunal and therefore the application of the Applicant deserves to be rejected.

- 35.** An extract from the decision of Hon'ble NCLAT in Power Max has been noted earlier already.
- 36.** Having noted that the amount that has crystalized before initiation of CIR process has already admitted and fully provided for in the plan, the present **I.A. No. 739/KB/2026** in **C.P. (IB) No. 243/KB/2023** seeking payment against post-CIRP claims stands **dismissed**.
- 37.** Certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

**Siddharth Mishra**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**Signed on this, the 12<sup>th</sup> day of June, 2026.**

*S. Adhikary (Steno)*

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