

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT-III**

Company Appeal No. 31 of 2024

In

C.P.(IB) 1307/MB/C-III/2017

*Under section 42 of the Insolvency and
Bankruptcy Code, 2016*

**Central Board of Trustees, Employees'
Provident Fund Through Regional Provident
Fund Commissioner – II (Legal), EPFO**

Having Regional office Thane North at Vardan
Commercial Complex, MIDC, Road No. 16,
Wagle Estate, Thane – 400604

... Appellant

Vs.

1. Dhiren Shantilal Shah

*Liquidator of M/s Global Gallarie Agencies
Private Limited*

B-102, Bhagirathi Niwas, Near Natrai Studio,
Sir M. V. Road, Andheri (East), Mumbai –
400069

2. SMFG India Credit Co

10th Floor, Office No. 101, 102 & 103, 2 North
Avenue, Maker Maxity, Bandra Kurla
Complex, Bandra (East), Mumbai – 400051

... Respondents

In the matter of

L & T Finance Limited

... Financial Creditor

Vs.

Global Gallarie Agencies Private Limited

Having office at: Swastik High Point Gloria,
Devchand Housing Compound, Next to Arihant

Plaza, Ghodbunder Road, Ovla, Thane West –
400607

CIN No: U51909MH2006PTC163411

... *Corporate Debtor*

Order pronounced on: 10.06.2026

Coram:

Ms. Lakshmi Gurung, Member (Judicial)

Sh. Hariharan Neelakanta Iyer, Member (Technical)

Appearances:

For the Applicant : Adv. Vinay Kate i/b Gunjan Chaubey

For Respondent 1 : Adv. Himanshu Vidhani a/w Adv. Shloka
Dikshit i/b Chandhiok & Mahajan

For Respondent 2 : Adv. Charles De Souza a/w Adv. Shreyansh
Desai i/b M/s V. Deshpande & Co.

Per: Ms. Lakshmi Gurung, Member (Judicial)

1. The present appeal is filed by the Central Board of Trustees, Employees Provident Fund through Regional Provident Fund Commissioner – II (Legal), EPFO seeking following reliefs:
 - a. *To condone the delay of 92 days in filing the present Appeal.*
 - b. *To pass an order directing Respondent No. 2 to deposit to the tune of Rs. 31,58,086/- with the Liquidator.*
 - c. *To pass an order to admit the dues of the Appellant and direct the Liquidator to pay the statutory dues of Rs. 31,58,086/- under section 7A, Short Remittance, 7Q and 14B of the Employees' Provident Funds & Miscellaneous Provisions Act, in priority to all other claims.*
 - d. *Any other order that this Tribunal may deem fit in the facts and circumstances of this case.*

2. **Background of the case as emerging from the pleadings**

- 2.1 M/s Global Gallarie Agencies Private Limited was admitted to Corporate Insolvency Resolution Process (**CIRP**) vide order dated 05.12.2017.
- 2.2 Upon non-receipt of expression of interest from any prospective resolution applicant, the Committee of Creditors (CoC) resolved to liquidate the Corporate Debtor. Accordingly, MA/973/2018 was filed seeking liquidation of the Corporate Debtor which was allowed vide order dated 03.07.2023 and Mr. Dhiren Shantilal Shah (**Respondent No. 1**) was appointed as the Liquidator.
- 2.3 Public Announcement was made on 13.07.2023 and the last date for submitting claims was 03.08.2023.
- 2.4 From the pleadings, it is observed that the Corporate Debtor possessed only one asset being Plot No. S. 17, MIDC Tarapur Industrial Area, Village Saravali, Taluka Palghar, Dist: Palghar, which was secured to M/s SMFG India Credit Co. Limited (**SMFG/ Respondent No. 2**). SMFG, without permission of the Liquidator, has sold the asset under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (**'SARFAESI Act'**) under section 52 of the Code.
- 2.5 The Liquidator had moved IA No. 5449 of 2023 seeking direction to SMFG to restrain the sale of the asset. In the meantime, the asset was already sold by SMFG. The Tribunal vide order dated 07.02.2024 disposed of I.A. 5449 of 2023 by directing SMFG to pay the liquidation cost.
- 2.6 The Central Board of Trustees, Employees Provident Fund (the **Appellant** herein) submitted its claim filed its claim for Rs. 31,58,086/- on 03.11.2023.
- 2.7 In response, the Liquidator sent an email dated 25.06.2024 informing that the Corporate Debtor is completely wound up and that the

Liquidator is in the process of filing application for dissolution of the Corporate Debtor.

- 2.8 The Appellant addressed email dated 05.07.2024 calling for explanation from the liquidator for non-cognizance of PF dues in contravention of section 36(4)(a)(iii) of IBC, 2016 and also sought for details of SMFG India credit co. and requested the Liquidator to remit the provident fund dues.
- 2.9 The liquidator sent email dated 09.07.2024 and stated that there are no funds or estate available for making distribution.
- 2.10 In the aforesaid factual backdrop, the Appellant has filed the present appeal on 22.10.2024.

3. Submissions of the Appellant

On condonation of delay in filing the present appeal

- 3.1 It is submitted that after receiving email dated 25.06.2024, the Appellant had to obtain approval from the higher authorities for further course of action and after receiving approval from then higher authorities, instruction was sent to its panel advocate on 05.07.2024. The panel advocate sought further information and documents and same was available to him by 12.07.2024 and draft of the Appeal was shared on 22.07.2024.
- 3.2 It is submitted that the draft received from the panel advocate was sent to the ACC Zone, Thane for approval. ACC Zone sought certain documents with respect to the claim being filed and subsequently, approval was received from the ACC Zone on 30.08.2024 Thereafter, affixation and notary was completed. Hence, the delay of 92 days in filing the present Appeal was not intentional.
- 3.3 The Appellant has annexed the copies of internal email correspondence.

On Merits

- 3.4 It is submitted that the order under section 7A was passed on 28.07.2021 for an amount of Rs. 16,08,403/- and the order under sections 7Q and 14B was passed on 20.11.2018 for an amount of Rs. 2,00,562/- and Rs. 3,31,023/- respectively. The aforesaid statutory dues were already reflecting on the books of accounts of the Corporate Debtor and being custodian of records, the Liquidator was aware of the same. However, the liquidator had neither intimated the status of the claim nor has paid the statutory dues to the appellant which is in violation of section 36(4)(a)(iii) of the Code.
- 3.5 It is submitted that by virtue of sections 36(4)(a)(iii) and 32(2)(e) of the Code which, the Provident fund dues, pension fund and gratuity are third-party assets and excluded from the liquidation estate of the Corporate Debtor. Reliance is placed on ***Assam Tea Employees Provident Fund Organization vs. Mr. Madhur Agarwal & Anr. [Company Appeal (AT) (Insolvency) No. 262 of 2022]***.
- 3.6 It is further submitted that Section 36(4) of the Code makes a further declaration that these assets cannot be utilized for recovery of debts of the corporate debtor and also priority of dues has been maintained under Section 11(2) of the Employees Provident Fund and Miscellaneous Act, 1952 (**EPF & MP Act**). Thus, it is submitted that the action of SMFG India credit Ltd does not sustain.
- 3.7 The appellant refers to the judgment of Hon'ble NCLAT in ***Sikandar Singh Jamuwal Vs. Vinay Talwar*** and submits that there is no conflict between EPF & MP Act and the Code. Provident fund dues not being assets of the corporate debtor has to be paid in full and in priority.
- 3.8 The Appellant has referred to the following judgments to substantiate its submissions:
- i. *Regional Provident Fund Commissioner-I, Ahmedabad vs. Ramchandra D. Chaudhary – NCLAT Delhi*
 - ii. *Order dated 18/02/2023 in I.A./176/KOB/2020 in MA/05/KOB/2020 in TIBA/01/KOB/2019 – NCLT Kochi Bench.*

- iii. *NCLAT Chennai in The Central Board of Trustees, EPF Vs. The Liquidator (Sri. Gorur Narasimhamurthy Venkataraman) M/s. Bunt Solar India Pvt. Ltd – NCLAT Chennai*
- iv. *Jet Aircraft Maintenance Engineers Welfare Association v. Ashish Chhawchharia – NCLAT*
- v. *Sikandar Singh Jamwal Vs. Vinay Talwar [CA (AT) 483/2019] – NCLAT*
- vi. *Sunil Kumar Jain Vs. Sundaresh Bhatt [CA 5910 of 2019] – Hon’ble Supreme Court*
- vii. *Savan Godiwala vs. Apalla Siva Kumar [Company Appeal (AT) (Insolvency) No. 1229 of 2019] - NCLAT*
- viii. *Precision Fasteners Ltd. vs. Employees Provident Fund Organisation [MA 576 & 752 of 2018 in CP No. (IB) 1339(MB)/2017] – NCLT Mumbai Bench.*
- ix. *State Tax Officer Vs Rainbow Papers Limited [Civil Appeal No. 1661 of 2018] – Hon’ble Supreme Court*
- x. *Regional PF Commissioner EPFO, Regional Office Jamshedpur vs. Mamta Binani, Resolution Professional & ors.*
- xi. *Maharashtra State Cooperative Bank Ltd. V. APFC [2009 10 SCC 123] – Hon’ble Supreme Court*
- xii. *EPFO Vs. O.L of Esskay Pharmaceuticals [(2011) 10 SCC 727] – Hon’ble Supreme Court*

4. **Reply of Respondents**

The Appellant has impleaded the Liquidator as Respondent No. 1 and SMFG, the secured creditor of the Corporate Debtor, as Respondent No. 2. Both the Respondents have filed their respective replies.

4.1 **Reply of Liquidator**

The Liquidator has filed his reply dated 04.02.2025 and submitted *inter alia* the following:

On delay

- a. It is submitted that the Appellant has not filed the Appeal within the time frame of 14 days as required under section 42 of the Code. Thus, this Tribunal must not consider the Appeal. Reference is made to ***State of M.P v. Bherulal, (2020) 10 SCC 654*** and ***Provident Fund Commissioner Employees Provident Fund Organisation. v. Vasudevan, 2022 SCC Online NCLAT 3661.***
- b. It is submitted that as per the submissions of the Appellant, the approval from the ACC Zone was received on 30 August 2024 itself, however, the Appeal has been filed only on 22 October 2024 a month and a half after permission for filing of the Appeal had been granted. Thus, there is no sufficient cause for delay in filing of the Appeal. Hence, the Appeal should be dismissed. Reference is made to ***Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. Ltd., (2019) 10 SCC 572***, wherein the Hon'ble Supreme Court has held that "*there is no equity about limitation*" and thus, the Appeal cannot be entertained.
- c. It is submitted that the Hon'ble Supreme Court in ***Aditya Khaitan v. IL&FS, (2023) 9 SCC 570***, propounded that law assists those who are vigilant and not those who sleep over their rights. In the present case, the Appellant being not vigilant enough to pursue its claim within the timeframe ought not be entertained by this Tribunal.

On merits

- d. It is further submitted that despite the commencement of CIRP in 2017, the Liquidator who was also the erstwhile Resolution Professional was not made aware or party to the inquiry under Section 7A which was initiated during the CIRP. It is trite law that no proceeding whatsoever could have been proceeded with after imposition of the moratorium under section 14 of the Code.
- e. Further, it is submitted that no such orders passed by the Appellant was every communicated or delivered to the Liquidator.

Furthermore, there were no books of the Corporate Debtor made available to the IRP, RP and/or the Liquidator and as such no records of any employees at any point of time. A proceeding under Section 19(2) of the Code was filed to seek such information and order dated 14.05.2018 came to be passed, however, no details of any employees of the Corporate Debtor was made available to the IRP, RP, and/or Liquidator. Consequently, the Liquidator had no knowledge of these alleged claims.

- f. It is submitted that no claim was sent by the Appellant since the start of CIRP of the Corporate Debtor and even after the commencement of liquidation, the claim of the Appellant was submitted beyond the stipulated timeframe. It is submitted that under Section 38 of the Code, the liquidator is not empowered to verify a claim submitted beyond 30 days.
- g. It is submitted that the Corporate Debtor was not in operation since 2016 and as such, there were no funds or assets available. There were no funds maintained/allocated towards the PF dues owed by the Corporate Debtor. Further, the Liquidator did not open a bank account of the Corporate Debtor as the PAN Card of the Corporate Debtor is non-operative.
- h. Without prejudice, it is submitted that there was only one asset which belonged to the Corporate Debtor which came to be sold by the SMFG on its own motion under the provisions of SARFAESI despite the Liquidator's intervention. It is submitted that due to the non-relinquishment of the sole Secured Asset, there was no liquidation estate, hence this Respondent could not intimate the status of the claim and thus, there has been no violation of Section 36(a)(a)(iii) of the Code. Thus, any dues payable to the Appellant ought to be recovered from SMFG.

4.2 Reply of SMFG

SMFG filed its reply dated 26.07.2025 and submitted *inter alia* the following:

- a. The only prayer sought against this Respondent is to deposit a sum of Rs. 31,58,086/- with the Liquidator, however, the same is prayed without any supporting averments and further, the said relief is sought under the presumption that the delay is bound to be condoned. Thus, the reliefs sought against this Respondent are premature at this stage and it is on this ground alone the aforesaid Appeal deserves to be rejected in *limine*.
- b. Without prejudice, it is submitted that the Appellant failed to lodge its claim within the period stipulated and has not given a plausible justification in this regard.
- c. It is submitted that CIRP under the Code is a time bound process, and the Appellant being a statutory entity and representing the interest of workers, ought to have been vigilant enough in submitting the claims before the Liquidator. Thus, having failed to lodge its claim on time, the Appellant is now estopped from seeking condonation of delay especially when there are no assets of the Corporate Debtor available and the Corporate Debtor is on the verge of dissolution.
- d. It is submitted that the claim of SMFG was not admitted by the either during CIRP or during Liquidation. However, SFMG being the only Secured Creditor of the Corporate Debtor opted to stand outside the winding up. Since SMFG was not a member of either the Committee of Creditors (CoC) or the Stakeholders' Consultation Committee (SCC) and thus, was never a part of the CIRP of the Corporate Debtor. Since the secured asset was an exclusive security of SFMG, it has opted to realize the security interest by informing the Liquidator of its intention to realize the same in the manner specified under the provisions of Section 52 of Code.

- e. It is further submitted that SFMG vide its email dated 17.10.2023 and by various subsequent emails had sought permission from the Applicant to realize the security interest as required under the provisions of Section 52(3) of IBC. Despite the same, the Liquidator had withheld permission which constrained SFMG to proceed with further measures for realization of its secured assets by putting up its secured assets for public auction and realize the security interest as envisaged under section 52 of the Code.
- f. It is submitted that in IA/5449/2023 filed by the Liquidator seeking direction to restrain the sale of the asset was disposed of by this Tribunal on 07.02.2024 with a direction to SFMG to contribute towards CIRP/Liquidation costs. It is submitted that the same has been complied with.

5. **Affidavit dated 12.09.2025**

- 5.1 During the course of the hearing on 30.07.2025, it was noticed that the assessment orders passed by the Appellant under sections 7A, 7Q and 14B were not annexed to the appeal. The Appellant filed the affidavit dated 12.09.2025 placing on record the order dated 28.07.2021 passed under section 7A of the EPF & MP Act and the orders dated 20.11.2018 passed under sections 7Q and 14B of the EPF & MP Act.

Analysis and Findings

6. Heard Ld. Counsel for the parties and perused the record.
7. In a nutshell, the Appellant, being the Central Board of Trustee, Employees' Provident Fund, had filed its claim for an amount of Rs. 31,58,086/- before the Liquidator on 03.11.2023.
8. The Liquidator vide his email dated 25.06.2024 *inter alia* gave the following response:

"It is pertinent to note that the Corporate Debtor has only one asset being Plot No. S.17, MIDC Tarapur Industrial Area, Village Saravali, Taluka, Palghar, District: Palghar ('sole Secured Asset'). Despite

denial of permission to sell the sole Secured Asset, SMFG India Credit Co, in the capacity of the Secured Creditor, sold the asset without following the procedure under Section 52 of the Code and Regulation 21A of the Liquidation Process Regulations. Thus, an application bearing no. I.A. 5449 of 2023 was filed before the Hon'ble NCLT restraining SMFG from selling asset, however, by the first week of December 2023, SMFG had sold the sole Secured Asset. The Hon'ble NCLT vide order dated 7 February 2024 disposed off the said Application by directing SMFG to pay the liquidation cost, which has been paid.

...

Since the affairs of the Corporate Debtor are completely wound up, and all the assets of the Corporate Debtor are liquidated, this email is to notify you that I, in the capacity of a Liquidator, am filing a dissolution application with the Hon'ble NCLT.”

9. The Appellant addressed email dated 05.07.2024 demanding payment of the dues. In response thereto, the Liquidator vide email dated 09.07.2024 *inter alia* stated that:

“...there were neither funds nor realisable estate belonging to the Corporate Debtor. In fact, entire cost of the Corporate Insolvency Resolution Process (CIRP) was borne by the Committee of Creditors and myself at all point of time. xxx

You will appreciate that at no point were there any funds created by the employees, being the promoters of the Corporate Debtor, at the same time, there were no funds or estate available for making distributions. As a Liquidator I am bound by the law and the resources available with the Corporate Debtor and in the present case there was no fund to be released to your office.”

10. Thus, the Liquidator had claimed his inability to pay the dues to the Appellant on the ground that there is no asset available with the Corporate Debtor.
11. Aggrieved by the same, the Appellant has filed the present appeal under section 42 of the Code.
12. The main arguments put forth on behalf of the Appellant are:

- i. The PF dues are statutory having overriding effect and are excluded from the liquidation estate under section 36(4)(a)(iii) of the Code and are entitled to be paid in full and in priority. Reliance is placed on the following judgments:
 - a. *Jalgaon District Central Coop. Bank Ltd. v. State of Maharashtra & Ors. [Civil Appeal arising out of SLP (C) No. 27740 of 2011]*
 - b. *Maharashtra State Cooperative Bank Ltd. v. Assistant Provident Fund Commissioner [(2009) 10 SCC 123]*
 - ii. As far as the orders passed under sections 7A, 7Q and 14B of the EPF & MP Act are concerned, it is submitted that the same were passed based on pre-CIRP defaults and the moratorium under section 14 of the Code does not apply to proceedings under EPF & MP Act as PF dues are not “debts” recoverable through civil suits. It is submitted that in ***Sundaresh Bhatt, Liquidator of ABG Shipyard Versus Central Board Indirect Taxes and Customs in Civil Appeal No. 7667 of 2021***, it was held that assessment can be done during moratorium under section 14 of the IBC only for the determination of quantum of dues but does not have power to initiate recovery.
 - iii. It is submitted that any perceived delay in demand orders is irrelevant as default pre-dates CIRP and further, the EPF proceedings are independent.
13. The arguments advanced by the Respondents are cumulated and put forth as follows:
- i. The assessment orders relied upon by the Appellant are hit by moratorium and are unenforceable. Reliance is placed on following judgments:
 - a. *Mr. Harry Daul v. Regional Provident Fund Commissioner-II, Company Appeal (AT) (Insolvency) No. 1691 of 2024*
 - b. *EPFO v. Rajat Mukherjee & Ors., 2024 SCC Online NCLAT 718*

c. *Regional Provident Fund Commissioner v. Manish Kumar Bhagat, 2023 SCC Online NCLAT 731*

ii. It is submitted the Appellant is not entitled to any payment in absence of a Liquidation Estate.

14. We have considered the submissions of Ld. Counsel for the Appellant as well as the Liquidator.

15. The present appeal has been filed under section 42 of the Code which reads as follows:

*“A creditor may appeal to the Adjudicating Authority against the decision of the liquidator accepting or rejecting the claims **within fourteen days of the receipt of such decision.**”*

16. It is noted that the last email sent by Liquidator was sent on 09.07.2024 whereas the appeal has been filed by the Appellant on 22.10.2024. Thus, the present appeal has been filed after the expiry of the 14 days prescribed in section 42 of the Code. The Appellant, in prayer ‘a’ is seeking condonation of delay in filing the appeal.

17. To condone the delay, the Appellant has to show sufficient cause in filing the appeal belatedly.

18. It is the submission of the Appellant that the approval of ACC Zone, Thane is required before filing the appeal and the said approval was received on 30.08.2024 and thereafter, the affixation and notary was completed and the present appeal has been filed. Hence, it is submitted that the delay in filing the present Appeal was not intentional. The relevant correspondence has been annexed to the Appeal.

19. It is noticed that the ACC, Thane had sent email dated 30.08.2024 informing that the competent authority has directed to file IA before the Tribunal. However, the present appeal has been filed only on 22.10.2024 i.e. after a delay of 53 days from the date of communication received on

30.08.2024. The only reason that has been provided is that the delay was due to affixation and notary. It is not convincing that affixation and notary could cause a delay of 53 days. Thus, we are not satisfied that the Appellant has made out sufficient cause for condonation of the delay. Thus, on this ground itself, the appeal deserves to be dismissed.

20. However, considering the fact that the claim of the Appellant also includes the dues under section 7A of the EPF & MP Act which belongs to the employees of the Corporate Debtor, this Tribunal decided to also look into the merits of the case.
21. The Applicant has relied upon a catena of judgments and submitted that the dues of EPFO does not form part of the Liquidation Estate and has to be paid in full and in priority. It is further submitted that there is no conflict between the provisions of the Code and EPF & MP Act.
22. There is no quarrel about the settled legal position that EPFO dues are to be kept outside the Liquidation Estate and must be paid in priority and this Tribunal is bound by the judicial precedents.
23. It is also settled that there is no conflict between the provisions of EPF & MP Act and the Code, as held in ***Tourism Finance Corporation of India Ltd. vs. Rainbow Papers Ltd. & Ors. [CA (AT) (Ins) No. 354/2019]*** wherein the Hon'ble NCLAT has been observed that no provisions of EPF & MP Act are in conflict with the provisions of the Code.
24. However, it is relevant to see whether in the facts and circumstances of the case, the claim of the Appellant deserves to be admitted.
25. The Applicant had placed the orders passed under sections 7A, 7Q and 14B of the EPF & MP Act by way of affidavit dated 12.09.2025. Perusal of the same reveals the following:
 - a. The order under section **7A** of the EPF & MP Act was passed on **28.09.2021** determining **Rs. 16,08,403/-** payable by the Corporate Debtor for the period from July 2016 to March 2017.

- b. The order under section **7Q** of the EPF & MP Act was passed on **20.11.2018** determining **Rs. 3,31,023/-** payable by the Corporate Debtor for the period from 01.04.2007 to 31.10.2007 and from 01.06.2014 to 31.12.2017.
- c. The order under section **14B** of the EPF & MP Act was passed on **20.11.2018** determining **Rs. 2,00,562/-** payable by the Corporate Debtor for the period from 01.04.2007 to 31.10.2007 and from 01.06.2014 to 31.12.2017.
26. We note that the assessment orders were passed on 20.11.2018 and 28.09.2021. The Corporate Debtor was admitted to CIRP vide order dated 05.12.2017. Thus, the assessment orders have been passed after the imposition of moratorium which tantamount to violation of section 14(1)(b) of the Code which prohibits initiation of suits or continuation of pending suits or proceedings against the Corporate Debtor.
27. The Hon'ble NCLAT in **CA Pankaj Shah vs. EPFO [CA (AT) (Ins) No. 17 of 2025, CA (AT) (Ins) No. 102 of 2025 & CA (AT) (Ins) No. 103 of 2025]** has observed as follows:
- “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/-.”*
28. In the matter of **The Regional Provident Fund Commissioner II vs. Vineeta Maheshwari, RP of Bloom Dekor Ltd. [CA (AT) (Ins) No. 1618 of 2024]**, the Hon'ble NCLAT observed that, “after the imposition of

moratorium under Section 14 of the Code, the assessment cannot be carried out much less no claim can be raised.”

29. The Hon’ble NCLAT in the aforesaid cases has unequivocally held that any assessment order passed under sections 7A, 7Q and 14B of the EPF & MP Act after the commencement of CIRP is not enforceable.
30. Ld. Counsel for the Applicant sought to argue that the claim is liable to be admitted since the assessment period is prior to CIRP.
31. In this regard, we refer to the judgment of Hon’ble NCLAT in ***EPFO vs. Jaykumar Pesumal Arlani, RP of M/s Decent Laminates Pvt. Ltd. [CA (AT) (Ins) No. 1062 of 2024]***. In this case, one of the submissions on behalf of the EPFO was that the assessment was related to period prior to CIRP initiation. However, the Hon’ble NCLAT held that, *after initiation of moratorium under Section 14, sub-section (1), no assessment proceedings can be continued by the EPFO”*.
32. Thus, it is irrelevant as to whether the claim period pertains to pre-CIRP or not. What is to be considered is the date on which the assessment order is passed. If it is passed after the commencement of CIRP, the same cannot be made enforceable merely because it relates to period prior to CIRP.
33. In the present case, the claim of the Appellant cannot be sustained as the same is based on the assessment orders passed after the commencement of CIRP in violation of the provisions of section 14(1)(a) of the Code.
34. We also note that the Corporate Debtor had only one asset which was secured with SMFG. SMFG chose to realise its security interest. Thus, the Corporate Debtor was left with no asset and in view thereof, the Liquidator could not form the Liquidation Estate. Thus, the question of keeping aside the dues owed to the Appellant would not arise in the present facts and circumstances.

35. As far as the liability of SMFG is concerned, since we have held that claim based on assessment order passed during moratorium is unenforceable, accordingly, no direction is required to be given to SMFG to pay the dues owed to the Appellant.
36. In result, Company Appeal No. 31/2024 is **dismissed**.

Sd/-

Hariharan Neelakanta Iyer
Member (Technical)

Sd/-

Lakshmi Gurung
Member (Judicial)

Uma