



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

Number 243

(September 29, 2025)

**Mr. Harry Dhaul Vs. Regional PF Commr. - II, with Regional PF Commr., Delhi vs. Harry Dhaul and Ors.
C.P. (IB) No. 2520/MB/V/2018
Date of NCLAT Judgement, 18 Sept. 2025**

Facts of the Case: -

The present appeal has been filed by Mr. Harry Dhaul, the Successful Resolution Applicant (SRA), against the Monitoring Committee of Global Energy Pvt. Ltd., challenging the common impugned order dated 03.07.2024 passed by the Adjudicating Authority (NCLT, Mumbai Bench) approving the Resolution Plan under I.A No. 2475 of 2023 in CP(IB) No. 2520/MB/V/2018. The SRA and the Employees Provident Fund Organization (EPFO) have filed cross-appels disputing the treatment of EPFO dues under the approved Resolution Plan.

The Corporate Debtor was admitted into CIRP on 02.12.2019, with claims invited by 22.06.2022. The EPFO failed to file its claim within the prescribed period and only submitted it on 06.03.2023, which was rejected by the Resolution Professional (RP). Despite the CoC approving the Resolution Plan on 23.03.2023, the EPFO contested the rejection via I.A No. 2332 of 2023, resulting in a direction to the RP to consider the claim lawfully. The SRA subsequently undertook payment of EPFO, and the Resolution Plan was approved on 03.07.2024. Both parties have appealed against the treatment of EPFO dues.

The SRA challenged the Adjudicating Authority's jurisdiction in admitting EPFO claims based on assessments conducted during the moratorium period, rendering such claims invalid as per the Tribunal's ruling in *EPFO vs. Jaykumar Pesumal Arlani*. Further, the AEOR report underlying EPFO's claims allegedly lacks correlation with identifiable beneficiaries and is premised on a non-existent establishment, rendering the claims unenforceable. The SRA contends that its affidavit undertaking to pay was induced by misrepresentation since no Section 7A adjudication order existed, and that post-CoC approval admission of claims and modifications to the plan violated the CoC's commercial wisdom and the IBC framework.

The EPFO counters that it is entitled to the full claim amounting to ₹1,33,19,135/- including interest and damages as per the EPF Act, noting that the claim was submitted prior to CoC approval and was rightly directed to be considered by the Adjudicating Authority. EPFO asserts that the RP admitted the claim accordingly, and the SRA, having submitted multiple affidavits undertaking payment, cannot evade liability. Further, EPFO challenges the classification of ₹55,52,007/- as "tentative dues" under the Mamta Binani judgment, asserting its inapplicability and emphasizing that provident fund dues must be paid in priority. EPFO prays for setting aside the impugned order dated 03.07.2024.



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NCLT's Observations:

The issue before the Tribunal is whether the EPFO could lawfully continue assessment proceedings under Sections 7A, 7Q, and 14B of the EPF Act after the imposition of moratorium under Section 14 of the IBC, and whether any claim based on such assessments conducted during the moratorium could be admitted by the Adjudicating Authority. The Tribunal relied on its earlier decision in *CA Pankaj Shah Vs EPFO (2025)* and the Supreme Court judgment in *Rajendra K. Bhutta Vs Maharashtra Housing and Area Development Authority (2020) 13 SCC 208*, which establish that the moratorium imposes a statutory freeze on actions affecting the corporate debtor, designed to allow the resolution process to proceed unhindered and protect the debtor's assets during the insolvency process.

The Supreme Court in *Rajendra K. Bhutta* clarified that once the moratorium is imposed under Section 14 of the IBC, all proceedings, including recovery and assessment, against the corporate debtor are stayed to prevent depletion of assets and preserve value for all stakeholders. This freeze applies broadly to suits and proceedings affecting the corporate debtor's assets, as outlined in Section 14(1). While some submissions argued that assessment proceedings could continue during moratorium, the Tribunal emphasized that such proceedings are prohibited to ensure the debtor's revival and continuation, consistent with the protective intent of the Code as affirmed in *Swiss Ribbons (P) Ltd. v. Union of India* and *P. Mohanraj v. Shah Brothers ISPAT Pvt. Ltd.* Thus, orders of assessment passed during moratorium are impermissible, and claims based thereon cannot be admitted in the CIRP.

Order/Judgement:

The Tribunal held that assessment proceedings by the EPFO cannot be initiated or continued after the moratorium under Section 14(1) of the IBC, rendering any claims based on such assessments during the moratorium period unenforceable. While assessment may continue post-liquidation under Section 33(5), this does not apply during the moratorium. Applying this principle, the Tribunal found the EPFO's claim based on assessments conducted post-moratorium invalid, and despite the Resolution Applicant's affidavit undertaking to pay, set aside the Adjudicating Authority's order admitting these claims under Sections 7A, 14B, and 7Q, dismissing the EPFO's appeal and allowing the Resolution Applicant's appeal.

Case Review: *Appeal filed by SRA is allowed while appeal filed by EPFO is dismissed.*