IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6845 OF 2023

M/s Dolphin Offshore Enterprises (India) Limited,
1001, Raheja Centre,
214, Nariman Point,
Mumbai 400021

Also At,
701/702, Lakhani Centrium,
Plot No. 27 Sector 15,
CBD Belapur (East),
Navi Mumbai – 400614 ...Petitioner

Versus

1. Union of India
Through, Ministry of Labour & Employment,
Govt. of India, Shram Shakti Bhawan Rafi Marg,
New Delhi-110001 ...Respondent No.1

2. Employee's Provident Fund Organization
Tower No. 6, 5th Floor,
Vashi Railway Station Complex,
Vashi, New Mumbai - 400703
Regional P.F. Commissioner II ...Respondent No.2

3. Mr. Dinesh Kumar Aggarwal
Erstwhile Resolution Professional
Having registration no.
IBBI/IPA-002/IP-N00890/2019-2020/12843
Address: Unit no 1507, 15th Floor,
B Wing, ONE BKC Plot No. C-66, G-Block,
BKC, Bandra (East), Mumbai - 400051 ...Respondent No.3

Mr. Shadab Jan a/w Ms. Geeta Lundwani, Ms. Anjali Yadav, i/by Mr. Amey Hadwale, for the Petitioner.

Mr. Gunjan Chaubey, for the Respondent No.2.

CORAM : SHARMILA U. DESHMUKH J.
RESERVED ON : JULY 24, 2026.
PRONOUNCED ON : SEPTEMBER 01, 2026.

JUDGMENT :

1. **Rule.** Rule made returnable forthwith by consent and taken up for final disposal.

2. By this petition filed under Article 227 of Constitution of India, the challenge is to the order dated 24th February 2023 passed by the Respondent No.2-Employees' Provident Fund Organization under Section 7A of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short, "**Provident Fund Act"**).

3. Briefly stated, the facts as set out in the Petition are that a petition was filed on 22nd October, 2018, under Section 9 of the Insolvency and Bankruptcy Code (`**IBC**') by one of the creditors against the Petitioner company, which came to be admitted by the National Company Law Tribunal and, vide order dated 16th July 2020, the Corporate Insolvency Resolution Process ("**CIRP**") was initiated. Under the provisions of IBC, the Interim Resolution Professional was appointed and a public announcement was made inviting claims from all creditors on 22nd July 2020. In response to the public announcement, the Respondent No.2, on 7th May 2021, submitted its claim of

Rs.2,24,98,772/-. The claim was verified and admitted by the Resolution Professional in full. After issuance of Form G and scrutiny of the resolution plans received from the interested parties, the Committee of Creditors, in its CoC meeting held on 7th February 2022, approved the final resolution plan submitted by one M/s. Deep Industries Limited. The resolution plan came to be approved by the National Company Law Tribunal (‘**NCLT’)** by its order passed on 29th September 2022. In terms thereof, the management of the corporate debtor was transferred to the Resolution Applicant. In accordance with the approved resolution plan, the Respondent No.2 was paid an amount of Rs. 2,250/- in full and final settlement of the claim.

4. Prior to the initiation of CIRP, the Respondent No.2 had initiated an inquiry under Section 7A of the Provident Fund Act for remittances of the Provident Fund contributions for the period from April 2018 to September 2019. The summons was issued on 24th October 2019. Even during the CIRP, the inquiry under Section 7A continued despite intimation by the IRP and RP about initiation of CIRP and imposition of moratorium vide letters dated 8th October, 2020, 11th December, 2020 and 27th April, 2021. After approval of the resolution plan, the Resolution Professional by letter dated 4th January, 2023 informed the Respondent No.2 about the same and that the Respondent’s claim stood settled at Rs.2,250/ in terms of the Resolution Plan, which

amount was paid to the Respondent No.2. The Respondent No. 2 issued the impugned order dated 24th February 2023 assessing the provident fund dues at Rs.1,22,48,716/- and directing the corporate debtor, to make the payment. Hence, the present petition.

5. Mr. Jan, learned counsel appearing for the Petitioner would submit that the corporate insolvency resolution process was initiated in July 2020, in which the claim of Respondent No.2 came to be verified and admitted. He submits that the resolution plan was approved by NCLT on 29th September 2022, and thereafter the impugned order was passed on 24th February 2023. He submits that it is a settled position in law that once the resolution plan is approved by the adjudicating authority under Section 31(1) of IBC, the claims as provided in the resolution plan, stand frozen and are binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors, and other stakeholders, drawing support from the decision of the Hon'ble Apex Court in the case of ***Ghanashyam Mishra & Sons Pvt. Ltd., through the Authorized Signatory vs. Edelweiss Asset Reconstruction Co. Ltd., through the Director & Ors.***[1]. He submits that no proceedings in respect of dues for the period prior to the date of approval of resolution plan by the adjudicating authority can be continued. He

1 Civil Appeal No.8129/2019

would further submit that the proceedings have been continued by the Respondent No.2 through the period of moratorium imposed under Section 14 of IBC, and hence the assessment based on the inquiry held during the moratorium period is *non est*. He would further submit that in the case of ***Employees' Provident Fund Organization vs. Subhlaxmi Investment Advisory Pvt. Ltd. & Anr. (supra),*** the decision of the Bombay High Court, Nagpur Bench, in the case of ***Dalmia Cement (Bharat) Limited vs. The Central Board of Trustees, Employees Provident Fund Organization***[2]**,** decided on 29th April 2025, was distinguished on the ground that in that case, the Resolution Professional had not taken note of the claim of the Provident Fund Organization. He submits that in the present case, an identical factual scenario exists, inasmuch as, the Respondent No.2 had lodged its claim with the Resolution Professional and a treatment has been given in the resolution plan. He submits that the Respondent No.2 did not challenge the resolution plan and, having accepted the same, could not have continued with the inquiry under Section 7A of the Provident Fund Act and assessed the dues.

6. He would further submit that Sub Section (6) to Section 31 came to be introduced on 26th May, 2026, which renders the impugned Section 7A inquiry without jurisdiction. He submits that the amendment

2 MANU/MH/2645/2025

has retrospective effect and by reason of the amendment, the precedential value of ***Dalmia Cement (Bharat) Limited vs. The Central Board of Trustees, Employees Provident Fund Organization*,** has been diluted. He submits that Section 7A proceedings were continued during the moratorium and culminated into the impugned order which was passed after the approval of resolution plan. He submits that the continuation of the assessment proceedings is in teeth of Section 31(6) of IBC which prohibits continuation of proceedings in respect of pre-resolution approval claims. He submits that the impugned order proposes recovery under Sections 8B-8G, damages under Section 14B, interest under Section 7A and prosecution under Section 14 in respect of alleged default for the period April, 2018 to September, 2019 which is pre-CIRP conduct by the erstwhile management and not the Resolution Applicant. He submits that under Section 32A of IBC, the new management is immune from prosecution or liability for past offences once the Resolution Plan is approved. In support, he relies upon the following decisions :

(i) Shiv Charan & Ors. vs. Adjudicating Authority & Anr.[3];

(ii) Ghanashyam Mishra & Sons Pvt. Ltd., through the Authorized Signatory vs. Edelweiss Asset Reconstruction Co. Ltd., through the Director & Ors.[4]

3 (OS) WPL/9943/2023 dated 01/03/2024
4 Civil Appeal No.8129/2019 dated 13/04/2021

(iii) Employees' Provident Fund Organization vs. Jaykumar Pesumal Arlani[5]

(iv) Employees' Provident Fund Organization vs. Subhlaxmi Investment Advisory Pvt. Ltd. & Anr.[6]

7. *Per contra*, Mr. Chaubey, learned counsel appearing for the Respondent No.2 submits that though a claim was lodged for sum of Rs.2,24,98,772/- only a meagre claim of about Rs.2,250/- has been allowed. He submits that under the provisions of Section 18 of IBC, the Explanation excludes the assets owned by the third party in possession of the corporate debtor held under trust. He submits that under Section 36 of IBC, the assets owned by the third party, including all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund, are excluded from the liquidation estate assets and are not to be used for recovery in the liquidation. He submits that the said provisions were considered by the Hon'ble Division Bench of this Court, Nagpur Bench, in the case of ***Dalmia Cement (Bharat) Limited*** (supra), and that the Hon'ble Division Bench has held that the provident fund dues of an employee do not fall within the meaning of operational debt as defined in Section 5(21) of IBC and, therefore, would not be a claim to be included in the resolution plan, non-inclusion

5 Company Appeal (AT) (Insolvency) No.1062/2024 dated 03/01/2025
6 2026 SCC OnLine NCLAT 26

of which would result in the liability being wiped out in terms of what has been held in the decision of ***Ghanashyam Mishra*** (supra). He submits that once it is held that the provident fund contribution is not an asset of the corporate debtor and does not constitute a debt, the decision of ***Ghanashyam Mishra (supra)*** would not apply to wipe out the assessment of the provident fund contribution. He would further submit that the assessment of the dues under Section 7A of the Provident Fund Act was for a period from April 2018 to September 2019 i.e. even prior to the corporate insolvency resolution process.

8. Rival contentions now fall for determination:

9. The facts are undisputed. The impugned order is assailed on three grounds firstly that the inquiry under Section 7A continued during the moratorium period and hence are *non est,* secondly that the treatment was given to the claim lodged by Respondent No.2 in the resolution plan and upon approval of the resolution plan, the claims stands frozen and thirdly, extinguishment of claim by reason of Section 31(6) of IBC. The first issue requiring consideration is whether after the imposition of moratorium under Section 14 of IBC, the Respondent No.2 could have continued with the inquiry under Section 7A of Provident Fund Act.

10. The CIRP was initiated on 16th July 2020, in respect of Petitioner Company. The initiation of CIRP triggers the provisions of Section 14 of IBC imposing moratorium and prohibiting the continuation of pending suits or proceedings against the corporate debtor, which moratorium has the effect of statutory freeze limited till the date that the adjudicating authority either allows the resolution plan or the Corporate Debtor goes in liquidation. Once the moratorium has been imposed by Section 14 of IBC, no proceedings can continue which has the effect of creating new liabilities on the Corporate Debtor. (See ***Rajendra K Bhutta vs Maharashtra Housing and Area Development And Anr 2020 13 SCC 208)***.

11. In the inquiry under Section 7A of Provident Fund Act, the summons was issued on 24th October, 2019 calling upon the erstwhile management of Petitioner to appear before the Respondent No.2 on 19th November, 2019. Subsequently, on 16th July, 2020, CIRP was initiated resulting in imposition of moratorium. The impugned order records that on 8th October 2020, the Respondent No.2 received communication from the IRP stating that the CIRP has been initiated against the Petitioner by virtue of order of Hon'ble NCLT Mumbai Bench on 16th July, 2020. Despite thereof, the Respondent No.2 called for the necessary documents from IRP on 19th October 2020 and 4th December 2020. The Respondent No.2 was apprised of the appointment of resolution professional and the required documents were submitted along with letter dated 27th April 2021 in the hearing held on 27th April, 2021. The impugned order further records that the Area Enforcement

Officer filed her deposition on 12th May, 2021. The impugned order also observes that as per the approved resolution plan, an amount of Rs.2,250/- was sent by the RP vide letter dated 10th January, 2023.

12. The Respondent No.2 was therefore aware of the initiation of the CIRP as well as the approval of the Resolution Plan in which the Respondent No.2's claim was approved for sum of Rs.2,250/-. Despite the imposition of moratorium, the Respondent No.2 proceeded with the Section 7A inquiry and after the approval of the resolution plan, the impugned order came to be passed on 24th February, 2023.

13. In the case of ***Employees' Provident Fund Organization vs. Jaykumar Pesumal Arlani*** (*supra*) the NCLAT dealt with an identical issue as to whether the assessment proceedings can be carried on by the EPFO after imposition of moratorium under Section 14 of IBC. Noting the statutory provisions and the judicial pronouncements, the NCLAT opined in paragraph 24 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. The view of NCLAT in ***Employees' Provident Fund Organization vs. Jaykumar Pesumal Arlani*** (supra) was thereafter followed by the NCLAT in the case of ***Employees' Provident Fund***

Organization vs. Subhlaxmi Investment Advisory Pvt. Ltd. & Anr. (supra).

14. Though not cited at the bar, in the affidavit-in-reply of the Respondent No.2, a reference is made to the decision of the Hon'ble Apex Court in the case of ***S.V. Kondaskar Vs. V.M. Deshpande***[7] where the Hon'ble Apex Court was considering the provisions of Section 446 of the Companies Act, 1956 in context of assessment proceedings under Section 148 of the Income Tax Act, 1961. The provisions of Section 446 of the Companies Act is similar to Section 14 of the IBC and prohibits the commencement or continuation of suit or other legal proceedings, once a winding up order has been made or the official liquidator has been appointed as provisional liquidator except by leave of the Court. The Hon'ble Apex Court held that the authorities can initiate assessment or re-assessment proceedings, however, cannot enforce a claim for recovery during the period of moratorium.

15. The decision in the case of ***S.V. Kondaskar Vs. V.M. Deshpande*** (supra) was considered by the Hon'ble Apex Court in ***Sundresh Bhatt, Luquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs***[8] and it was held in Paragraphs 46, 53 and 54 as under :

> "46. There is another aspect of this case that needs to be highlighted to portray the inconsistency of the Customs Act vis-à-vis the IBC during

7 AIR (1972) SC 878
8 (2023) 1 SCC 472

the moratorium period. In the present case, the demand notice dated 11.07.2019 was issued by the Respondent Under Section 72 of the Customs Act, in clear breach of the moratorium imposed Under Section 33(5) of the IBC. Issuing a notice Under Section 72 of the Customs Act for nonpayment of customs duty falls squarely within the ambit of initiating legal proceedings against a Corporate Debtor. Even under the liquidation process, the liquidator is given the responsibility to secure assets and goods of the Corporate Debtor Under Section 35(1)(b) of IBC.

“53. For the sake of clarity following questions, may be answered as under:

a) Whether the provisions of the IBC would prevail over the Customs Act, and if so, to what extent?

The IBC would prevail over The Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the Respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The Respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.

b) Whether the Respondent could claim title over the goods and issue notice to sell the goods in terms of the Customs Act when the liquidation process has been initiated? answered in negative.

54. On the basis of the above discussions, following are our conclusions :

i) Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the Respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The Respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.

ii) After such assessment, the Respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority.

iii) In any case, the IRP/RP/liquidator can immediately secure goods from the Respondent authority to be dealt with appropriately, in terms of the IBC.”

16. The decision of the Hon'ble Apex Court directs, in case of custom duty, to submit the assessed claims under the IBC and has construed the issuance of demand notice for non payment of duty as initiation of legal proceedings against Corporate Debtor.

17. In the present case, the impugned order passed under Section 7A of the Provident Fund Act, not only assesses the outstanding dues from the Corporate Debtor at Rs.1,22,48,716/- but also orders the payment by the Corporate Debtor within a period of 15 days failing which the action for recovery will be initiated and directs as under:

> 1) Recovery action will be taken as per provision under Section 8B to 8G of the Act, 1952.
>
> 2) This assessment is irrespective of interest u/s 7A and damages u/s 14B of EPF & MP Act, 1952.
>
> 3) Prosecution under Section 14 read with Para 76 of EPF & MP Act, 1952 and Scheme framed thereunder will be initiated.

18. The impugned order is thus a demand raised upon the Corporate Debtor to make the payment of the assessed amount failing which coercive action would be initiated. In my view, it is not merely an assessment proceeding, but proceeding in nature of recovery impermissible during moratorium. The impugned order was passed on 24th February, 2023 and it may well be argued that the impugned order is passed after approval of resolution plan and the moratorium ceased

to have effect. The amendment of Section 31 of IBC gives the answer to the status of claims against the Corporate Debtor and its assets after approval of resolution plan. Once the resolution plan is approved, the pre-resolution approval claims are extinguished by reason of the amendment to Section 31 of the year 2026. Sub Section 6 of Section 31 came to be introduced vide Insolvency and Bankruptcy Code (Amendment) Act, 2026 notified on 26th May, 2026 which reads as under:

> "(6) Where the Adjudicating Authority approves the resolution plan under sub-section (1),—
>
> (a) unless otherwise provided in the resolution plan, any claim, against the corporate debtor and its assets under any other law for the time being in force, prior to the date of approval, shall be extinguished; and
> (b) no proceedings shall be continued or instituted against the corporate debtor or its assets on the basis of such claims, including proceedings for assessment of the claims.
>
> Explanation I.—For the purposes of this section, it is hereby clarified that nothing in this section shall affect a claim or any proceeding in respect of a person who was a promoter or in the management or control of the corporate debtor, a guarantor of the corporate debtor or any person having a joint liability or a joint and several liability with the corporate debtor, as the case may be.
>
> Explanation II.—For the purposes of this section, it is hereby clarified that if a person has a joint liability or a joint and several liability with the corporate debtor for payment of debt owed to a creditor before the approval of resolution plan, and such person makes a payment for such debt after the approval of the resolution plan, then any right of such person to be indemnified by the corporate debtor shall be extinguished.
>
> Explanation III.—For the removal of doubts, it is hereby clarified that the provisions of sub-sections (5) and (6) shall be deemed to apply to the resolution plan that is approved under sub-section (1), on and from the

> date of commencement of this Code, except for matters that have attained finality under this Code.".

19. Sub-section (6) has the effect of extinguishing all pre-resolution approval claims unless provided in the resolution plan. The claim of Respondent No.2 as allowed in the resolution plan is saved by reason of sub-section (6) of Section 31, but not the amount determined by the impugned order. Clause (b) of sub section (6) of Section 31 prohibits continuation of proceedings against the corporate debtor or its assets on the basis of such claims, including proceedings for assessment of the claims. Explanation-III gives a retrospective effect to Sub-section 6 of Section 31. Clause (b) of Sub-section (6) of Section 31 specifically prohibits proceedings for assessment of claim, even if it is considered that the inquiry was conducted only for assessment of the PF claims under Section 7A of Provident Fund Act.

20. As the inquiry under Section 7A of the PF Act continued after initiation of moratorium, the same was prohibited under Section 14 of IBC and the resultant quantification and post-resolution approval claim, stand extinguished in view of Section 31(6) of IBC and cannot be recovered as directed by the impugned order.

21. It is an admitted position that the Respondent No.2 lodged a claim with the Resolution Professional on 7th May, 2021, at the time

when Section 7A inquiry was being conducted parallelly which was verified and admitted by the resolution professional in full. Annexure 5 of the Resolution Plan notes the claim received from EPFO on 7th May, 2021 and that the claims have been submitted based on the assessment order passed by the appropriate authority, which liabilities have not been provided in the books of accounts of suspended management. A question would then arise that as the contributions were already assessed and submitted to the resolution professional, there was no necessity of conducting Section 7A inquiry. There is no clarity as to whether the claim which was submitted to the resolution professional was for the same period for which the assessment was being carried out. Be that as it may. The resolution plan was approved by the NCLT vide order dated 29th September 2022 in which the claim of Respondent No.2 was approved at Rs.2,250/-. The Respondent No.2 was duly informed about the approval of the resolution of plan on 7th December 2022 and the cheque of Rs.2,250/- was duly forwarded to Respondent No.2. The Respondent No.2 has an opportunity of challenging the resolution plan before NCLAT and demand full payment of the provident fund dues. The decisions which have been relied upon by Mr. Chaubey arises out of appeal proceedings before the NCLAT. The Respondent No.2 herein did not challenge the resolution plan and instead continued with 7A inquiry.

22. In ***Dalmia Cement (Bharat) Limited*** (supra) the Hon'ble Division Bench of this Court was considering the exception taken to the claim of the Provident Fund department to recover PF dues of the employees which are not part of the resolution plan. In that case, there was no proof of claim filed by the EPFO and resultantly the dues were not made part of the resolution plan. The contention raised therein was that after the approval of the resolution plan, it was not permissible for the Respondent to raise the claim as it stood extinguished. In that case, there was Section 7A order passed and the challenge to the demand notice was given up restricting the issue to the extinguishment of claim of EPFO upon approval of the resolution plan. The Hon'ble Division Bench also considered the plea that PF dues cannot form part of the resolution plan. The Hon'ble Division Bench held that the Employees Provident Fund contribution cannot be included in the definition of assets in view of Explanation (a) to Section 18(1) of IBC and there would be no obligation upon the Provident Fund Department to lodge a claim for dues in that regard with RP and get such claim verified so as to be included in the resolution plan. The Hon'ble Division Bench also considered the decision of the Hon'ble Apex Court in the case of ***Ghanashyam Mishra (supra)*** and held that the payment of employers contribution cannot be construed to mean payment to the central government, any state government or any local authority and would not

fall within the meaning of operational debt as defined in Section 5(21) and would not be a claim which has to be included in the resolution plan, non inclusion of which would result in the liability being wiped out in terms of what has been held in ***Ghanashyam Mishra*** (supra).

23. This Court is informed that the decision of ***Dalmia Cement (Bharat) Limited*** (supra) is challenged before the Hon'ble Apex Court which had granted interim protection against recovery.

24. During the pendency of the present petition and subsequent to the decision in the case of ***Dalmia Cement (Bharat) Limited*** (supra) in view of the legislative amendment to IBC, the decision in the case of ***Dalmia Cement (Bharat) Limited*** (supra) is considerably watered down. In any event, the issue in the present case is about the legality of continuation with Section 7A enquiry during period of moratorium, which has to be answered against Respondent No.2. The said issue was not in consideration in ***Dalmia Cement (Bharat) Limited*** (supra).

25. The impugned order proposes recovery under Sections 8B to 8G of PF Act, imposes damages under Section 14B interest under Section 7Q and prosecution under Section 14, whereas Section 32A of IBC provides immunity in respect of offences committed prior to commencement of CIRP from the date the resolution plan has been approved, if the resolution plan results in change of management or control of the corporate debtor to another entity. Section 32A also

protects the property of the corporate debtor in relation to such an offence and the impugned order which provides for recovery action under Section 8B to 8G of the Provident Fund Act qua the assets of the corporate debtor is unsustainable. [See ***Shiv Charan vs Adjudicating Authority*** (supra)].

26. The "clean slate" principle enunciated in the decision of ***Ghanshyam Mishra And Sons Private Limited*** (supra) has been given legislative effect by introducing Sub Section (6) to Section 31 of IBC. The conspectus of above discussion is that the impugned order dated 24th February, 2023 is unsustainable for the following reasons:

(a) Section 7A enquiry was continued during the period of moratorium, which is prohibited under Section 14 of IBC.

(b) The enquiry culminated in the impugned order in nature of recovery proceedings, after the approval of resolution plan, which claim stands extinguished by reason of Section 31(6) of IBC.

(c) The Respondent No.2 had lodged its claim with IRP, which was given effect in the Resolution Plan and there is no challenge to the Resolution Plan by the Respondent No.2.

(d) The provisions of Section 32A grants immunity to the Corporate Debtor and its assets, which forms part of the

Resolution Plan, upon change in character of ownership and control of the Corporate Debtor.

27. In light of the above discussion, the impugned order dated 24th February, 2023 is clearly unsustainable and is hereby quashed and set aside. The Petition succeeds. Rule is made absolute.

[SHARMILA U. DESHMUKH, J.]