

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH, PRAYAGRAJ**

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**IA NO.438/2023 IN CP (IB) NO.81/ALD/2019**

*(An application under Section 60(5) read with Section 14 of  
the Insolvency and Bankruptcy Code, 2016.)*

**IN THE MATTER OF:**

**SAURABH CHAWLA**

Resolution Professional  
M/s Harig Chankshaft Limited  
409, Ansal Bhawan, K.G. Marg,  
New Delhi-110001

..... **Applicant**

***Versus***

**EMPLOYEE STATE INSURANCE CORPORATION**

(Ministry of Labour & Employment, Govt. of India)  
Through Vinod Kumar Nagpal, Assistant Director  
Sub Regional Office: B-64, Sector-57,  
Noida, U.P.-201301

.....**Respondent**

**AND IN THE MATTER OF:**

**M/S ASREC (INDIA) LIMITED**

..... **Financial Creditor**

***Versus***

**M/S HARIG CHANKSHAFTS LTD.**

.....**Corporate Debtor**

**Order pronounced on 03<sup>rd</sup> October, 2024**

***Coram:***

Mr. Praveen Gupta : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

**Appearances:**

Sh. Abhishek Anand with : For the RP, Mr. Saurabh  
Sh. Karan Kohli, Adv. Chawla present in person

**ORDER**

1. This application has been filed by Mr. Saurabh Chawala the Resolution Professional of M/s Harig Crankshaft Limited (hereinafter referred to as Applicant) under section 60(5) r/w section 14 of the Insolvency & Bankruptcy Code, 2016, against the order dated 07.08.2023 passed by the Employee State Insurance Corporation (hereinafter referred as 'Respondent') under section 45-A of the Employees' State Insurance Act, 1948. The Applicant is seeking the following relief in the instant matter: -

- a. Allow the present Application*
- b. Issue appropriate directions against the Respondent including declaring order dated 07.08.2023 passed by the Respondent for recovery is in contravention to Section 14 of the Code and the same is non-est in law;*
- c. During the pendency of the present Application grant an ex-parte ad-interim stay on the operation of Order dated 07.08.2023 passed by the Respondent Authority;*

- d. Pass such other further order/order(s) as may be deemed fit and proper in the facts and circumstances of the case.*
- 2.** This Tribunal vide order dated 31.03.2023, admitted the Company Petition i.e., CP (IB) No. 81/ALD/2019, filed against the Corporate Debtor for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "Code"). Mr. Saurabh Chawala was appointed as Interim Resolution Professional (IRP) of the Corporate Debtor. Subsequently, the IRP was confirmed to be appointed as RP in the first meeting of the Committee of Creditors (hereinafter referred to as "COC") held on 27.04.2023 and confirmed as RP by the order dated 23.05.2023 of this Tribunal.
- 3.** Following the admission of the petition, the IRP issued a Public Announcement on 03.04.2023 in 'Form A,' published in two newspapers, namely Business Standard (English) and Rashtriya Sahara (Hindi), inviting claims under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons)

Regulations, 2016. The last date for submission of claims was 14.04.2023.

4. The Applicant submits that during the CIRP of the Corporate Debtor, the Respondent initiated proceedings under the ESI Act, 1948, regarding the payment of contributions and submission of contribution returns under Sections 39 and 40 of the ESI Act, 1948, read with Regulations 29 and 31 of the Employees' State Insurance (General) Regulations, 1950, for the period from April 2018 to March 2023. Additionally, the Respondent issued a notice dated 21.04.2023, demanding a total contribution of Rs. 49,16,835/-, and directed the Applicant to appear before the Respondent Authority on 18.05.2023.
5. Subsequently, the Applicant issued a detailed reply dated 02.05.2023, informing the Respondent that upon the admission and initiation of the CIRP of the Corporate Debtor, a moratorium had been declared under Section 14 vide an order dated 31.03.2023. The Applicant requested the Respondent to submit its claim in the prescribed form. Accordingly, the

Respondent submitted its claim for Rs. 68,26,910/- in Form-B on 24.05.2023. The claim filed by the Respondent is reproduced herein below:

<b>Sr. No.</b>	<b>Details</b>	<b>Amount (In Rs.)</b>
1	C-19 (April 2011- October 2011)	4,94,699/-
2	C-19 (November 2011- March 2012)	10,38,628/-
3	D-18 (May 2011- August 2011)	2,214/-
4	D-18 Interest (May 2011- August 2011)	2,912/-
5	C-18 Adhoc (April 2018- March 2023)	52,88,457/-
	<b>Total</b>	<b>68,26,910/-</b>

6. It is further stated that after the submission of the claim, the Applicant requested the Respondent, through email dated 30.05.2023, to provide supporting documents to substantiate the claim of Rs. 68,26,910/-. Upon receiving the requested documents on 30.05.2023, the Respondent informed the Applicant that the Corporate Debtor had not been

operational since 2009, with the last compliance occurring in 2011. The Applicant then requested additional supporting documents related to the period from April 2018 to March 2023 to understand the calculation, given that the Company's last compliance was in 2011. After not receiving the requested documents, the Applicant, through an email dated 26.06.2023, requested the Respondent to provide the documents at the earliest to verify the claim in accordance with the provisions of the Code.

7. The Applicant submitted that its authorized representative, Mr. Prasad Babsaheb Warker, appeared before the Respondent Authority on 04.07.2023. Mr. Warker informed the Authority that the Corporate Debtor had not been operational since 2009 and there were no employees requiring ESIC compliance for the period from April 2018 to March 2023. He also submitted that the Company is undergoing CIRP as per the order dated 31.03.2023, and a moratorium under Section 14 of the Code has been declared. Following these submissions, the

Respondent Authority directed the Applicant's representative to provide documents, including salary/wage details, balance sheets, and books of accounts, for the period from April 2018 to March 2023, and scheduled the matter for further hearing on 18.07.2023.

8. Subsequently, neither the Applicant nor his Authorized Representative appeared for the hearing before the Respondent Authority due to unavailability of the requested documents and the prior submission of the claim. After collating and verifying the claim based on the available documents, the Applicant acknowledged/admitted the Respondent's claim up to Rs. 15,38,453/- and communicated the same through email dated 06.07.2023. Consequently, the Respondent passed an order under Section 45-A of the ESI Act on 07.08.2023.
9. The Applicant contends that the Respondent issued an order for recovery of the claimed amount despite it being in the knowledge of the CIRP having been commenced against the Corporate Debtor and the

moratorium has been declared. As per the Applicant, this action of the Respondent issuing the impugned order has contravened the moratorium imposed by the Hon'ble Tribunal and is inconsistent with the provisions of the Code. It is further submitted by the Applicant that pursuant to the Section 14 of the Code, 2016, all recovery actions or proceedings against the Corporate Debtor are prohibited during the CIRP, including those under Section 45-A of the ESI Act. Therefore, the order dated 07.08.2023 issued by the Respondent should be quashed by this Hon'ble Adjudicating Authority.

10. Additionally, it is also contended by the Applicant that the Section 63 of the Code explicitly prohibits civil courts from entertaining suits or proceedings on matters within the jurisdiction of the National Company Law Tribunal. Thus, as argued by the Applicant, proceedings under Section 45-A of the ESI Act against the Corporate Debtor are not maintainable. The moratorium under Section 14 of the Code bars the initiation or continuation of any



proceedings against the Corporate Debtor or its assets until the CIRP is concluded. This includes any actions taken by the Respondent for levying of penalties and interest relating to the period prior to the commencement of the CIRP. Furthermore, it has been pointed out by the Applicant that Section 238 of the Code provides that the Code's provisions will override all other laws inconsistent therewith, including the Code of Civil Procedure, 1908. Consequently, no proceedings under the ESI Act, 1948, for penalties and interest can be initiated or continued against the Corporate Debtor during the CIRP.

11. The Applicant relies on the following judgments:

(i) ***Alchemist Asset Reconstruction Company Ltd. v. M/s Hotel Gaudavan Pvt. Ltd., Civil Appeal No. 16929 of 2017***, wherein it was held as follows:

*"5) The mandate of the new Insolvency Code is that the moment an insolvency petition is admitted, the moratorium that comes into effect under Section 14(1) (a) expressly institution or continuation of pending suits or proceedings against Corporate Debtors.*

6) *This being the case, we are surprised that an arbitration proceeding has been purported to be started after the imposition of the said moratorium and appeals under Section 37 of the Arbitration Act are being entertained. Therefore, we set aside the order of the District Judge dated 06.07.2017 and further state that the effect of Section 14(1) (a) is that the arbitration that has been instituted after the aforesaid moratorium is non est in law.*

7) *Mr. Jayent Bhushan, learned Senior Counsel, also informs us that criminal proceeding FIR No. 0605 dated 06 08 2017 has been taken in a desperate attempt to see that the IRP does not continue with the proceedings under the Insolvency Code which are strictly time bound. We quash this proceeding.*

8) *As a result, the appeal is allowed and the steps that have to be taken under the Insolvency Code will continue unimpeded by any order of any other court."*

**(ii) *Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407, wherein it was held as follows:***

*"On reading its provisions, the moment initiation of the corporate Insolvency resolution process takes place, a moratorium is announced by the adjudicating authority vide Section 13 and 14 of the Code, by which institution of suits and pending of proceedings etc. cannot be proceeded with. This continues until the approval of a resolution plan under Section 31 of the said Code. In the interim, an interim resolution professional is appointed under Section 16 to manage the affairs of corporate debtors under Section 17.*

*It is clear, therefore, that the earlier state law is repugnant to the later Parliamentary enactment as under the said State law, the State Government may take over the management of the relief undertaking, after which a temporary moratorium in 97 much the same manner as that contained in Sections 13 & 14 of the Code takes place under Section 4 of the Maharashtra Act. There is no doubt that by giving effect to the State law, the aforesaid plan or scheme which may be adopted under the Parliamentary statute will directly be hindered and/or obstructed to that extent in that the management of the relief undertaking, which, if taken over by the management of the corporate body by the interim resolution professional. Also, the moratorium imposed under Section 4 of the Maharashtra Act would directly clash with the moratorium to be issued under Sections 13 and 14 of the Code. It will be noticed that whereas the moratorium imposed under the Maharashtra Act is discretionary and may relate to one or more of the matters contained in Section 4(1), the moratorium imposed under the Code relates to all matters listed in Section 14 and follows as a matter of course. In the present case it is clear, therefore, that unless the Maharashtra Act is out of the way, the Parliamentary enactment will be hindered and obstructed in such a manner that it will not be possible to go ahead with the insolvency resolution process outlined in the Code. Further, the non-obstante clause contained in Section 4 of the Maharashtra Act cannot possibly be held to apply to the Central enactment, in as much as a matter of constitutional law, the later Central enactment being repugnant to the earlier State enactment by virtue of Article 254 (1), would operate to render the Maharashtra Act void*

*vis-a-vis* action taken under the later Central enactment. Also, Section 238 of the Code reads as under:

*"Sec. 238. Provisions of this Code to override other laws. - The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.*

*It is clear that the later non-obstante clause of the Parliamentary enactment will also prevail over the limited non-obstante clause contained in Section 4 of the Maharashtra Act. For these reasons, we are of the view that the Maharashtra Act cannot stand in the way of the corporate insolvency resolution process under the Code."*

**(iii) Principal Commissioner of Income Tax v.**

**Monnet Ispat & Energy Ltd., IT Appeal 533-**

**532 of 2017, wherein it was held as follows:**

*"2. It appears to the Court that Section 238 of the Code is categorical that the Code will apply, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 14(1)(a) of the Code states, inter alia, that on the 'insolvency commencement date the Adjudicating Authority (AA) shall by order declare moratorium for prohibiting "the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority." That the Code will prevail over all other statutes inconsistent therewith has been explained in the recent decision dated 31st August, 2017 of the Supreme Court in Civil Appeal No.8337-8338/2017 (M/s. Innoventive Industries Ltd. v. ICICI Bank)."*

(iv) ***Solidaire India Ltd. v. Fairgrowth Financial Services Private Limited***, wherein it was held

“33. where two statutes contain non-obstante clause, the later statute shall prevail over the former since the legislature, at the time of drafting the later law, is aware of the non-obstante clause in the earlier law the inclusion of a non-obstante clause in the later law implies that it intends to override the earlier law. Thus, in view of this judgment the provisions of Insolvency and Bankruptcy Code, 2016 shall prevail over any earlier law.”

(v) ***ABG Shipyard v. Central Board of Indirect Taxes and Customs, Civil Appeal No. 7667 of 2021***, wherein it was held as follows:

“56. *On the basis of the above discussions, following are our conclusions: Once moratorium is imposed in terms of Section 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*

*57. Resultantly, we allow the appeal and set aside the impugned order and judgment of the NCLAT. There shall be no orders as to costs.”*

- 12.** The Applicant further submits that the Respondent’s claim as verified by the Applicant to the extent of Rs. 15,38,453/- based on established legal principles, will be addressed through a Resolution Plan or during Liquidation, as applicable. Therefore, once the claim is being processed in accordance with the provisions of the Code, no recovery, as sought by the Respondent in the order dated 07.08.2023, can be pursued. based on established legal principles,

### **REPLY BY THE RESPONDENT**

- 13.** The Respondent filed a reply on 07.12.2023 in compliance to the order dated 18.09.2023 of this Tribunal, submitting relevant sections of the ESI Act (Sections 38 to 44) for proper adjudication of the matter, which have been relied upon while passing the order u/s 45-A of the ESI Act, 1948 against which this application is filed. These are the following sections:

*“Section 38. All employees to be insured.;*

*Section 39. Contributions;*

*Section 40. Principal employer to pay contributions in the first instance;*

*Section 41. Recovery of contributions from immediate employer;*

*Section 42. General provisions as to payment of contributions;*

*Section 43. Method of payment of contribution and*

*Section 44. Employers to furnish returns and maintain registers, in certain cases.*

**14.** The Respondent argued that under Section 45-A of the ESI Act, an alternative remedy is available, allowing the Applicant to file an appeal before the Appellate Authority. The Applicant, however, failed to pursue this remedy against the order dated 07.08.2023. To support this contention, the Respondent relied on the judgment in **S.N. Public School v. ESIC, Civil Misc. WP No. 14007 of 2019**, wherein the Hon'ble High Court held that the petitioner has an appellate remedy under Sections 45-AA and 75(1)(g) of the ESI Act, leading to the dismissal of the petition due to the availability of a statutory alternative remedy.

**15.** The Respondent further contended that the Applicant deducted employee contributions but failed to remit them to the Respondent department in a timely manner, constituting a breach of trust. As a result, the Respondent argued that no leniency should be

extended to the Applicant. The Respondent also cited the Hon'ble Supreme Court's judgment in ***M/s Maharashtra State Co-operative Bank Ltd. v. APFC, Civil Appeal Nos. 6893/2009 and 6894/2009***, in which it is held that the ESI Act, being a social welfare legislation intended to protect workers, requires courts to interpret its provisions purposively, considering the Directive Principles of State Policy in Articles 38 and 43 of the Constitution of India.

- 16.** The Respondent averred that Notice C-18 Adhoc dated 21.04.2023 was issued to the Applicant due to non-compliance for the period from April 2018 to March 2023, amounting to Rs. 52,88,457/-. The Applicant was given an opportunity to represent their case on 18.05.2023. In response to the Applicant's email dated 30.05.2023, in which the Applicant claimed that the Corporate Debtor's business had not been operational since 2009-10, the Respondent questioned why ESI compliance was maintained until October 2011 if the business was non-functional.



- 17.** The Respondent also stated that complete information regarding all notices was provided to the Applicant through email on 24.05.2023, with the calculation of C-18 Adhoc clearly detailed in the notice dated 21.04.2023. Upon the Applicant's request, all notices were re-sent through email on 30.05.2023 by the Respondent.
- 18.** The Respondent submitted that the Applicant was given sufficient opportunities, in accordance with the principles of natural justice, to present documentary evidence such as balance sheets, salary/wages registers, and books of accounts to the authorized officer. However, the Applicant failed to do so. Further, a speaking order under Section 45-A was issued on 07.08.2023, with instructions to the employer that if dissatisfied with the order, they are entitled to file an appeal before the Appellate Authority (ROSRO) under Section 45-AA of the ESI Act, 1948. Relevant portions of the order dated 07.08.2023 are as follows:

*“If an employer is not satisfied with the order referred to in Section 45-A of the act, he may prefer an appeal to Appellate Authority as may be provided by regulation within sixty days of*

*the date of such order after depositing twenty five percent of the contribution so ordered or the contribution as per his own calculation whichever is higher, with the corporation.”*

### **REJOINDER BY THE APPLICANT**

**19.** The Applicant filed a rejoinder on 07.02.2024 in compliance to the order dated 08.01.2024 of this Tribunal, countering all the contentions raised by the Respondent in its reply by placing its reliance on the November 2015 Bankruptcy Law Reforms Committee report submitted to the Government of India, which reads as follows: -

*"(1) while the IRP is in process, the law enshrines a 'calm period where creditors stay their claims, this gives a better chance for the firm to survive as a going concern, for the 180 days, for which the IRP is in operation, the creditors committee will analyse the company, hear the rival proposals, and make up its mind about what has to be done, and*

*(2) Resolution Phase I envisages a calm period for insolvency resolution. The Committee recommended two phases of resolution, once a procedure of default resolution has been triggered. The first phase was a collective negotiation to rationally assess the viability of the debt. The Committee recommended that the assessment must ensure a calm period where the interest of the creditors can be protected, without disrupting the running of the enterprise.*

*(3) A calm period for negotiations i.e., during insolvency resolution, there is a time bound moratorium against debt recovery actions, and any new case filed:*

*(4) moratorium on debt recovery action, since the motivation behind the moratorium was that it is value maximization for the entity to continue operations, even as its viability is being assessed during the IRP, there would be no additional stress on the business after the public announcement of the IRP: the order for the moratorium during the IRP imposes a stay not just on debt recovery actions, but also any claims or expected claims from old lawsuits, or on new lawsuits, for any manner of recovery from the entity,*

*(5) The moratorium will be active for the period over which the IRP is active*

*(6) Moratorium period, as one of the goals of having an insolvency lane, is to ensure the suspension of debt collection actions by the creditors, and to provide time for the debtors and creditors to re-negotiate their contract; and this requires a moratorium period in which there is no collection or other action by creditors against the debtors."*

- 20.** The Applicant, in support of its above contention, referred to Paragraph 5.2 of the above Report, emphasizing that the moratorium during the insolvency resolution process aims to preserve the corporate debtor's assets, facilitate orderly proceedings, and maintain the company's status as a going concern while creditors address the resolution of defaults. The moratorium is intended to prevent individual enforcement actions that could disrupt the process. Further, the intent of moratorium under

section 14 of the code is not to bar all suits or proceedings but to prevent those that affect the debtor's assets.

**21.** The Applicant further argued that the Respondent has already filed a verified claim amounting to Rs. 15,38,453/-, which has been addressed in the Resolution Plan submitted by the Successful Resolution Applicant in IA No. 554 of 2023 before the Hon'ble Tribunal. Therefore, the Applicant asserts that once the claim is dealt with under the provisions of the code, the Respondent cannot pursue recovery of the said claim as sought through the order dated 07.08.2023.

**22.** The Applicant also contends that it is within its rights to seek relief from this Hon'ble Tribunal due to the violation of the moratorium under Section 14 of the Code by the Respondent. The Applicant argued that the Respondent's reliance on the judgment in S.N. Public School v. ESIC, Civil Misc. Writ Petition No. 14007 of 2019, is irrelevant to the provisions of the Code, as Section 238 of the Code provides overriding

effect over other laws, rendering the Respondent's cited judgment untenable.

**23.** The Applicant further argued that the Respondent failed to raise any issues regarding the violation of the moratorium, indicating the Respondent's awareness of the initiation of CIRP proceedings against the Corporate Debtor, yet it still proceeded to issue the order dated 07.08.2023.

**24.** The Applicant clarified that the application was filed under Section 14 of the Code due to the violation of the moratorium period by the order dated 07.08.2023 and not in relation to the submission of documents before the Respondent Authority.

### **FINDINGS AND ORDER**

**25.** We have heard the learned Counsel for the parties and perused the record. The undisputed facts in this case are that the CIRP of the Corporate Debtor was initiated on 31.03.2023, with the Applicant i.e., Mr. Saurabh Chawala appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor. Further, publications for inviting claims under Regulation 6 of

the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 were made on 03.04.2023, with the last date for submission of claims being 14.04.2023. During the CIRP of the Corporate Debtor, the Respondent initiated proceedings under the ESI Act, 1948, and issued a notice dated 21.04.2023, to call for a total contribution of Rs. 49,16,835/-. However, on the request of the Applicant to file the claim in the prescribed form as per the provisions of the code, 2016, the Respondent submitted its claim for Rs. 68,26,910/- in Form-B on 24.05.2023.

- 26.** The Applicant on multiple occasions requested the Respondent to provide supporting documents to substantiate the claim of Rs. 68,26,910/- and through his authorized representative also attended a hearing before the Respondent Authority on 04.07.2023. Further, due to the unavailability of the documents requested by the Respondent Authority and the prior submission of its claim, neither the Applicant nor the Authorized Representative appeared at the subsequent hearing held on 18.07.2023. After

collating and verifying the claim based on the available documents, the Applicant admitted the Respondent's claim up to Rs. 15,38,453/- and communicated the same through email dated 06.07.2023. Subsequently, the Respondent passed an order under Section 45-A of the ESI Act on 07.08.2023, demanding a total contribution of Rs. 49,16,835/- within 15 days from the date of the order.

- 27.** It is clearly provided under the provision of the Section 13 of the Code that the Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall by an order declare a moratorium for the purposes referred to in section 14 and that under section 14(1) of the Code, the Adjudicating Authority subject to provisions of sub-section (2) and (3) shall declare a moratorium for prohibiting the following actions:
- (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or

order in any court of law, tribunal, arbitration panel or other authority;

- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

The intent and purpose of Section 14 in the Code is to keep the corporate debtor's assets intact during the insolvency resolution process, facilitate orderly completion of the processes envisaged during the insolvency resolution process and ensure that the company may continue as a going concern while the



creditors take a view on resolution of default. The moratorium ensures a standstill period, preventing creditors from taking individual enforcement actions that could undermine the CIRP.

- 28.** This intent has been upheld in various judgments, including; ***Swiss Ribbons Pvt. Ltd. & anr. Vs. Union of India & Ors. (Writ Petition (Civil) No. 99 of 2018*** passed by the Hon'ble Supreme Court, wherein it was held that the moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends. In **Sundaresh Bhatt, Liquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs (Civil Appeal No. 7667**

**of 2021)** passed by the Hon'ble Supreme Court, wherein it was held that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the customs authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The customs authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act. After such assessment, the customs 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. The customs authority could only initiate assessment or re-assessment of the duties and other levies. They cannot transgress such boundary and proceed to initiate recovery in violation of sections 14 or 33(5) of the IBC.

**29.** Therefore, in view of Section 14 of the Code, the actions of the Respondent with respect to the issuance of an order dated 07.08.2023, demanding a total

contribution of Rs. 49,16,835/- within 15 days is in violation and clearly inconsistent with the provisions of the Code.

- 30.** Section 238 in the Code provides overriding effect to the provisions of the Code and the same is reproduced as below for ready reference:

*“Section 238. The provisions of this code shall have effect, notwithstanding anything inconsistent contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”*

- 31.** In view of the above provisions of the Section 238 of the Code, all the provisions of the Code have overriding effect over all other laws in the country for the time being in force in case provisions of those laws are in conflict with the provisions of the Code.
- 32.** Overriding effect of the provisions of the Code over other laws is further confirmed by the judgement of *Hon'ble Supreme Court in **Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407***, wherein it was held that the non-obstante clause, in the widest terms possible, is contained in Section 238 of the Code, so

that any right of the Corporate Debtor under any other law cannot come in the way of the Code.

- 33.** The learned Counsel for the Applicant has also stated that the Resolution Plan submitted by the Successful Resolution Applicant, presented before this Hon'ble Tribunal in IA No. 554 of 2023, had already been approved by order dated 17.04.2024 of this Tribunal. Subsequently, as per the Resolution plan, Rs. 4,30,000/- has been disbursed for the claim raised by the Respondent, which was admitted during CIRP for Rs. 15,38,453/-.
- 34.** Based on the judicial precedents discussed above, and considering the relevant facts and circumstances, we find that the order dated 07.08.2023 issued by the Respondent for recovery of the claimed amount as per its order passed u/s 45-A of the ESI Act is in violation of Section 14 of the Code. This is because under Section 14(1)(a) of the Code, once the moratorium is declared, the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or

order in any court of law, tribunal, arbitration panel or other authority is strictly prohibited.

- 35.** Further, the Respondent has already submitted its claim for outstanding dues to the RP (the Applicant herein) on 24.05.2023, which was admitted to the extent of Rs. 15,38,453/- by the RP, the Applicant herein. Furthermore, in line with the approved Resolution Plan, the Respondent has received a disbursement of Rs. 4,30,000/- towards their claim. Therefore, once the claim has been processed in accordance with the provisions of the Code, the Respondent cannot pursue recovery through a separate proceeding under any other Law.
- 36.** In view of our above findings taking into account the provisions of the Code and relevant judicial pronouncements as discussed in foregoing paras of the order, we allow the present application and hold the impugned order dated 07.08.2023 passed by the Respondent for recovery of its claim is in contravention of the Section 14 of the Code and hence, the same is non-est in law and cannot be enforced.

**37.** Ordered as above and accordingly, **I.A. No.438/2023**  
is hereby disposed off.

*-Sd-*

**(Ashish Verma)**  
**Member (Technical)**

**Date: 03<sup>rd</sup> October, 2024**

*-Sd-*

**(Praveen Gupta)**  
**Member (Judicial)**