

There shall be complete embargo to continue any proceeding against the 'Corporate Debtor' by any 'Authority' till the 'Corporate Insolvency Resolution Process' is completed

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| CASE TITLE | Mr. B Parmeshwara Udpa, Resolution Professional of M/s. Easun Reyrolle Limited v/s. Assistant PF Commissioner and ors. ¹ |
| CASE CITATION | Company Appeal (AT) (CH) (Ins) No. 231 of 2021 |
| SECTIONS/ REGULATION | Section 14 and 18 of IBC |
| DATE OF ORDER | 23.09.2022 |
| COURT/ TRIBUNAL | NCLAT, New Delhi |
| CASE LAW REFERRED | <i>Mr. Savan Godiwala, Liquidator of Lanco Infratech Ltd., vs. Mr. Apalla Siva Kumar</i> |

Brief of the case:

The Adjudicating Authority (AA) vide an Order dated 05.05.2020 had initiated the Corporate Insolvency Resolution Process ("CIRP") against M/s. Easun Reyrolle Limited (Corporate Debtor/CD). CoC appointed appellant as IRP and RP. During the examination of accounts of CD, the IRP came across the 'Order of Attachment' issued by Employees' Provident Fund Organisation (EPFO). The RP filed an application before the Adjudicating Authority, seeking removal of Attachment Orders. AA directed RP to make adequate provisions in relation to the amount stated in the 'Orders of Attachment, as dues towards PF. The appellant alleged that the impugned order is contrary to section 14 of IBC. Hence, filed the present appeal before the Appellate Tribunal.

Decision:

Hon'ble NCLAT allowed the appeal and set aside the application. It observed that,

"As per Section 14(1)(a), it is clear that 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' will temporarily cease to operate during 'Moratorium'. The purpose of the Section 14 is to ensure that no depletion of 'Assets' of the 'Corporate Debtor' takes place during the 'Corporate Insolvency Resolution Process' and the 'Corporate Debtor' is allowed to continue as a going concern in order to maximise the value for all the 'Stakeholders'. If we read Section 14(1)(a), it can be inferred that there shall be complete embargo to continue any proceeding against the 'Corporate Debtor' by any 'Authority' till the 'Corporate Insolvency Resolution Process' is completed and 'Moratorium' is lifted by the 'Adjudicating Authority' or it result into 'Liquidation' on failure of the 'Corporate Insolvency Resolution Process'. As such, the order of 'Moratorium' shall give relief to the 'Corporate Debtor' from any such continuation during calm period.

'Attachment of Bank Account' of the 'Corporate Debtor' by 'EPFO' cannot be continued when 'Moratorium' is declared under I & B Code, 2016 and proceedings are required to be kept in abeyance till lifting of moratorium. Liberty can, however, be given to the respondent to continue/ initiate proceedings against the 'Corporate Debtor' after disposal of the proceedings and lifting of the 'Moratorium' and completion of the 'Corporate Insolvency Resolution Process'."

QR CODE FOR FULL ORDER/JUDGEMENT:



¹ <https://ibbi.gov.in/uploads/order/adfe9ef3c3e049045cf41a9670607c53.pdf>