

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

**C.A. 15 OF 2024
IN
C.P. (IB)4488/MB/2018**

Under Section 42 of the Insolvency and
Bankruptcy Code, 2016

Central Board of Trustees, Employees' Provident
Fund through Regional Provident Fund
Commissioner-II (Legal)

...Applicant

Vs.

Mr. Bhavesh Rathod, Liquidator Ashapura
Intimates Fashion Limited

...Respondent

In the matter of

C.P. (IB) 4488/MB/2018,

IDFC Bank Limited

...Financial Creditor

Vs.

Ashapura Intimates Fashion Limited

... Corporate Debtor

Order delivered on: 19.07.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Ms. Gunjan Choubey, Adv

For the Respondent : Ms. Mitali Bhatt, Adv

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The present Company Appeal 15 of 2024 is filed in Company Petition CP No. 4488 of 2018 by the Central Board of Trustees, Employees' Provident Fund through Regional Provident Fund Commissioner-II (Legal) in terms of Section 42 of the Insolvency and Bankruptcy Code, 2016 in the matter of Ashapura Intimates Fashion Limited seeking following relief;
 - a) *That this Hon'ble Tribunal be pleased to condone the delay of 40 days in filing the present Company Appeal by the Appellant.*
 - b) *That this Hon'ble Tribunal be pleased to condone the delay of 670 days in filing the Claim by the Appellant and be pleased to pass an order and direct the Liquidator to admit the claim and pay the amount of Rs. 417102/- towards the provident fund dues under section 7Q and 14B of EPF & MP Act, 1952.*
 - c) *Any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of this case.*

2. The Corporate Debtor is covered under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952. The corporate debtor had defaulted in remittance of statutory Provident Fund and allied dues under section 7Q and 14 B to the tune of Rs. 417102/-. The Hon'ble NCLT passed the order of liquidation in respect of the Corporate Debtor on 05.10.2020. The Appellant got notification regarding the Insolvency Resolution Process on 18.07.2022. The Appellant vide letter dated 02.02.2024 submitted its claim before the Liquidator. The Liquidator

vide email dated 09.02.2024 replied to the Appellant that the last day to file the claim was 04.11.2020 and requested to make an Appeal for condonation of delay before Hon'ble NCLT. The Appellant, being an organization under the Ministry of Labour and Employment, has to go through various approvals and sanctions from the Higher authorities to file a claim in respect of the Corporate debtor which caused a delay of 670 days in filing a claim against the Corporate debtor.

3. Heard the Counsel and perused the material on record.
4. In the present case, the Liquidation commenced on 5.10.2020 and the order in terms of section 7Q and 14B of the EPF & MP Act, 1952 were passed on 29.12.2023 demanding a sum of Rs. 417102/-. The claim before the Liquidator was filed on 02.02.2024, while the last date for submission of claim in the liquidation process was 4.11.2020. The Liquidator rejected the claim vide email dated 09.02.2024. The appeal has been filed on 08.05.2024. Section 42 of the IB Code require the claimant to file an appeal against the rejection of claim within 14 days. The Hon'ble NCLAT in the case of ***Canara Bank vs. Commercial Tax Department Madhya Pradesh and Anr. (2023) ibclaw.in 342 NCLAT*** has held that *“The delay in filing the Appeal under Section 42 is clearly condonable while exercising the power under Section 5 of the Limitation Act.”* Accordingly, to meet the end of justice, we consider it appropriate to condone the delay in filing the present appeal.
5. Undisputedly the Orders u/s 7Q and 14B of the EPF Act were passed on 29.12.2023 i.e. after the commencement of liquidation in case of corporate debtor on 4.11.2020. Section 33(5) of the IB Code provides that *“Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor.”* In terms of section 38 of the Code, the Liquidator is collect the claims of creditors within 30 days of the liquidation commencement date which is 4.11.2020 in this case. The Hon'ble NCLAT in case of ***DBS Bank India Ltd. Vs. Kuldeep Verma, Liquidator of Eastern Gases Ltd. (2023) ibclaw.in 103 NCLAT*** held that *“When a statute provides for liquidation commencement date as a*

date up to which claims can be filed and proved, no claim thereafter can be entertained by the Liquidator.” Admittedly, the order creating the demand against the Corporate Debtor was passed after the commencement of liquidation, we have no hesitation to hold that the claim of applicant can not be admitted in the liquidation proceedings.

6. In view of the above, Appeal 15/2024 is dismissed.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Justice V.G. Bisht
Member (Judicial)