

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING  
HELD ON **28.06.2024** THROUGH VIDEO CONFERENCE

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**PRESENT:** HON'BLE SHRI SANJIV JAIN, MEMBER (JUDICIAL)  
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

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**IN THE MATTER OF** : K N Interior Designs and Engineering pvt Ltd

**MAIN PETITION NUMBER** : CP(IB)/87(CHE)/2021

**(IA/MA) APPLICATION NUMBERS**

IA/1676(CHE)/2023; IA/1677(CHE)/2023

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**ORDER**

Present: Mr. Badrinarayanan, Ld. Counsel for Liquidator.

Vide separate order pronounced in open Court, both the applications are dismissed.

-sd-

**[VENKATARAMAN SUBRAMANIAM]  
MEMBER (TECHNICAL)**

MS

-sd-

**[SANJIV JAIN]  
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**IA(IBC)/1676(CHE)/2023 in IA/699/CHE/2022 in CP(IB)/87(CHE)/2021**

*(Filed under Section 42 of Insolvency and Bankruptcy Code, 2016 Read with Rule  
11 of NCLT Rules, 2016)*

*Along with*

**IA(IBC)/1677(CHE)/2023 in IA/699/CHE/2022 in  
CP(IB)/87(CHE)/2021**

*(Filed under Section 5 of Limitation Act, 1963 read with Rule 11, Rule 51 and Rule  
153 of NCLT Rules, 2016)*

*In the matter of KN Interior Designs and Engineering Private Limited*

**Central Board of Trustees**

**Rep. by its Regional Provident Fund Commissioner,**

**Employee Provident Fund Organisation,**

Regional Office, Tambaram,

No.3, Rajaji Salai,

Tambaram, Chennai – 600 045

*... Applicant*

**-Vs-**

**M.Murugesan,**

Liquidator of KN Interior Designs and Engineering Private Limited

New No.41, Old No.17,

16<sup>th</sup> Avenue, Ashok Nagar,

Chennai – 600 033

*... Respondent*

*Order Pronounced on 28<sup>th</sup> June 2024*

**CORAM**

**SANJIV JAIN, MEMBER (JUDICIAL)**

**VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

*For Applicant* : *Revathi Manivannan, Advocate*

*For Respondent* : *S.Sathiyarayanan, Advocate*

**COMMON ORDER**

**(Hearing Conducted through VC)**

IA(IBC)/1676(CHE)/2023 is an application filed by the Applicant under Section 42 of IBC, 2016 read with Rule 11 of NCLT Rules, 2016 seeking relief as follows;

- a) *Set aside the order of rejection communicated by email dated 23.12.2022 passed by the Respondent/Liquidator of M/s. K.N.Interior Designs and direct the Liquidator, Mr.M.Murugesan to accept the full claim of Rs.21,94,745/- of the Applicant including interest and penalty filed by the Applicant and further direct the Respondent to pay the Applicant a sum of Rs.21,94,745/- (Twenty One Lakhs Ninety Four Thousand Seven Hundred Forty Five Only) in priority to all other claims.*
- b) *for such other and further order as this Hon'ble Tribunal may deem fit and proper.*
- c) *Costs of this application be provided for.*

2. IA(IBC)/1677(CHE)/2023 is an application filed by the Applicant under Section 5 of Limitation Act, 1963 read with Rule 11, Rule 51 and Rule 153 of NCLT Rules, 2016 seeking relief as follows;

- a) *To condone the delay of 255 days in filing the appeal.*
- b) *For such other and further order as this Hon'ble Tribunal may deem fit and proper.*
- c) *Costs of this application be provided for*

**COMMON FACTS OF THE CASE:**

3. This Tribunal vide its order dated 19.09.2022 had ordered for Liquidation of the Corporate Debtor and appointed the Respondent herein as the Liquidator. The Liquidator caused the public announcement on 24.09.2022. The last date for submission of claims was fixed as 19.10.2022.

4. It is stated that the Applicant had filed Annexure A by way of E-Mail to the Liquidator claiming a sum of Rs.21,94,745/- (Rupees Twenty One Lakhs Ninety Four Thousand Seven Hundred and Forty Five Only) on 21.10.2022 towards Provident Fund and allied dues, along with supporting documents.

5. It is stated that by mail dated 23.12.2022, the Liquidator did not admit the Claim filed by EPFO for Rs.21,94,745/- (Twenty One Lakhs Ninety Four Thousand Seven Hundred Forty Five Only) on the main reason that, in compliance of Regulation 17 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Form C has to be filed.

6. It is stated that EPFO is a statutory body and the contribution, interest and damages payable under Section 7A, 7Q and 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 are the statutory dues and not claims. Further the dues of Provident Fund are not part of Liquidation estate and therefore the Applicant can file the claim as contemplated under the legal framework document of EPFO which is annexed in the application.

7. The Applicant has placed reliance on the NCLT Kochi Bench order dated 18.02.2021 in **IA/176/KOB/2020 IN MA/05/KOB/2020 IN TIBA/01/KOB/2019** in Para 10 it is held as follows:

*"is clear that the contribution, interest and damages payable are statutory dues and not claims which can be submitted to the Liquidator in Form G. Hence the EPFO need not file Form G before the Liquidator. It is also seen that the EPFO has got first charge over the Assets of the defaulter and its priority of payment over other debts is as per Section 11 of the EPF and MP Act 1952.*

*In view of the above, the liquidator is directed to consider the claims of EPFO made by them vide Annexure A."*

8. It is stated that the Provident Fund dues are to be given priority as per the law laid down by the Hon'ble Supreme Court in the case of

*Paschimanchal Vidyut Vitran Nigam Ltd vs Raman Ispat Private Limited and others in Civil Appeal Nos. 7976 of 2019.*

9. It is stated in IA(IBC)/1677(CHE)/2023 that after the rejection of the claim by the Liquidator on 23.12.2022, the applicant had obtained approvals for filing an appeal before this Tribunal and handed over the papers to concerned standing counsel for preparing an appeal. It has taken considerable time. The petitioner had only one panel advocate to attend the cases. He informed that he is sick and will file the case. When the applicant was waiting for the final version, it came to the notice that the standing counsel to whom the case was given has passed away so the applicant could not get the papers immediately from the office of the counsel. After short time, immediately upon receipt of the papers the application has been filed before this Tribunal. Hence there is a delay in filing the Application.

10. The Respondent/ Liquidator has filed a reply dated 08.01.2024 vide S.R.No.153.

11. It is stated that Respondent-Liquidator vide email dated 29.10.2022 rejected the claim on account of delay in submission despite personal intimation advised the Applicant to file their claim in Form-C as mandated under Reg. 17 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The Respondent- Liquidator also referred to an email of the Suspended Director Mr.Kannan addressed to the Applicant dated 26.10.2022 that "there shall be no claim as there were no employees enrolled to EPF after 2016.

12. It is stated that the Liquidator before rejecting the claim, had also asked for details of employees/workmen wise particulars and documents in support of the claim.

13. It is stated that subsequent to the email dated 21.10.2022, a letter dated 19.10.2022 was received by the Liquidator through Registered Post on 15.12.2022 claiming that the total due payable by the Corporate Debtor is Rs.11,53,717/- (Interest Rs.4,01,246/-and Damages Rs.7,52,471/- ) which was lesser than the claim filed previously.

14. It is stated that the Liquidator vide email dated 23.12.2022 after specifying the discrepancy in the claim email dated 21.10.2022 and letter dated 19.10.2022 (received on 15.12.2022) rejected the claim by referring to the email dated 29.10.2022.

15. It is stated that the Applicant has not filed the Claim in Form-C before the Liquidator and therefore cannot contend that the Liquidator has rejected the claim thereby conferring a right on the Applicant u/s 42 of the Code to file an Appeal against the order of the Liquidator.

16. It is stated that the Liquidator received further emails from the Applicant requesting to consider the claim. However, the Respondent-Liquidator highlighted the following thereby requiring the Applicant to approach this Tribunal

- a. The claim amount filed by Applicant was not adjudicated on the date of commencement of liquidation. Claims were adjudicated only subsequent to the commencement of liquidation.
- b. Reply email of the Suspended Director Mr. Kannan stating that the all the settlements were made during 2016 and there were no



new enrolments to EPF after 2016. Hence, there is no claim to be paid by the Corporate Debtor.

17. It is stated that the Liquidator has received the following claims from other Creditors/ Stakeholders:

S.No.	Category of Stakeholders	Summary of Claims received		Summary of Claims admitted		% share in total amount of claims admitted
		No. of Claims	Amount in Rs.	No. of Claims	Amount in Rs.	
1.	Secured financial creditors	1	3,25,27,576	1	3,25,27,576	59.05
2.	Unsecured financial creditors	3	32,00,751	3	32,00,751	5.81
3.	Operational Creditors (Government dues)	3	24,09,335	2	2,14,590	0.39
4.	Operational Creditors (other than workmen, employees and government dues)	15	2,00,71,859	15	1,91,43,082	34.75
	<b>TOTAL</b>	<b>22</b>	<b>5,82,09,521</b>	<b>21</b>	<b>5,50,85,999</b>	<b>100.00</b>

18. It is stated that Corporate Debtor does not have any immovable property and the only Asset is Sundry Debtors. Further, there are no supporting documents, invoices, or correspondences in respect of these receivables. Therefore, the recovery prospects of these receivables are very bleak. This position was updated to the SCC and based on the

recommendations of the SCC, the Dissolution Application u/s 54 of the Code has been filed before this Tribunal.

19. It is stated that the Liquidation Process of the Corporate Debtor has ended, the Final Report of the Liquidator has been filed before this Tribunal and has been taken on record by Tribunal. Further, the Respondent Liquidator has also filed the Application for Dissolution of the Corporate Debtor (IA No. 1382 of 2023) and the same is pending for adjudication.

20. Heard the submissions made by the Learned Counsel for the parties and perused the records.

21. IBC, 2016 is a time bound process. The Liquidator while rejecting the claim on 23.12.2022 had clearly stated the reason that the process of Liquidation has almost come to an end. The distribution of the amount to the stakeholders had already began at that point of time. The Applicant has pleaded that standing counsel was sick and there was delay. The reasons stated by the Applicant for condoning the delay of almost 255 days do not appear to be plausible.

22. After distributing the entire amount to the stakeholders as per Section 53 of IBC, 2016, the Liquidator has filed an Application seeking dissolution of the Corporate Debtor and the same is pending adjudication before this Tribunal.

23. This Tribunal is persuaded by the decision of the Hon'ble NCLAT in the matter of **The Deputy Commissioner Commercial Taxes (Audit), Raichur –Vs- Surana Industries Ltd. (In Liquidation) & Anr.** in *Company Appeal (AT) (Insolvency) No. 1525 of 2019* dated 07.02.2020, wherein the Hon'ble NCLAT dismissed the application filed by the Applicant in relation to the Appeal against the order of the liquidator and also held that liquidation process is a time bound process and the Liquidator has to conclude the proceedings within one year.

24. Under Regulation 44(1) of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator has been directed to liquidate the Corporate Debtor within one year from the date of commencement of the liquidation proceedings. Regulation 44(2) stipulates that, after the expiry of one year, the liquidator shall file an application to the

Authority to continue the liquidation period along with a report and explain why the liquidation has not been completed. Thus, it can be seen that the Liquidation is a time bound process and the Liquidator being made accountable is required to explain if there is any delay caused in the liquidation process.

25. The Hon'ble Supreme Court in **Gaurav Hargovindbhai Dave – Vs- Asset Reconstruction Company (I) Ltd. & Another** in *Civil Appeal No. 4952 of 2019*, in relation to the aspect of limitation has restated the well-established and well settled principle that “*there is no equity about limitation*”, we are unable to entertain this Application/Appeal.

26. In view of the reasons as stated above IA(IBC)/1676(CHE)/2023 and IA(IBC)/1677(CHE)/2023 stand **dismissed**, however without costs.

**Sd-**

**VENKATARAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

*SriramAnanth.V*

**-Sd**

**SANJIV JAIN**  
MEMBER (JUDICIAL)