

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**PHYSICAL HEARING**

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)  
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 14.03.2023 AT 02:30 PM**

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| <b>TRANSFER PETITION NO.</b>            |  |
| <b>COMPANY PETITION/APPLICATION NO.</b> | <b>IA (IBC)/868/2022 IA (IBC)/1004/2022 in<br/>CP (IB) No.278/7/HDB/2018</b> |
| <b>NAME OF THE COMPANY</b>              | <b>BS Ltd</b>  |
| <b>NAME OF THE PETITIONER(S)</b>        | <b>State Bank of India</b>   |
| <b>NAME OF THE RESPONDENT(S)</b>        | <b>BS Ltd</b>  |
| <b>UNDER SECTION</b>                    | <b>7 of IBC</b>  |

**ORDER**

**IA(IBC)/868/2022**

This Application is allowed, vide separate orders.

**IA(IBC)/1004/2022**

This Application is dismissed, vide separate orders.

**Sd/-**

**MEMBER (T)**

**Sd/-**

**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**HYDERABAD BENCH - II**

**IA Nos.868/2022 & 1004/2022**  
**in CP(IB) No. 278/7/HDB/2018**  
**u/s 60(5) Read Section 33(5) of IBC. 2016**  
**and r/w Rule 11 of NCLT Rules, 2016**

**In the matter of:**

**M/s. BS Limited Vs. Employees Provident Fund organisation**

**In IA Nos.868/2022**

Mr. Yadavilli Sai Karunakar,  
Liquidator of M/s. BS Limited,  
Flat No.205, B-Block,  
2<sup>nd</sup> Floor, Kushal Towers,  
D.No.6-2-975, Khairatabad,  
Hyderabad – 500 004.

...Applicant/Liquidator

Vs

M/s. Employees Provident Fund Organisation,  
Represented by the Regional P.F. Commissioner-I,  
1<sup>st</sup> & 2<sup>nd</sup> Floor, TSRTC Bus Complex,  
Prashanthi Nagar, Near Y Junction,  
Kukatpally, Hyderabad – 500 018.

....Respondent

**In IA Nos.1004/2022**

Central Board of Trustees Employees Provident Fund,  
Rep. By its the Assistant Provident Fund Commissioner,  
Regional Office – Kukatpally,  
Employees Provident Fund Organisation,  
Prashanthi Nagar, TSRTC Bus Complex,  
2<sup>nd</sup> Floor, Near `Y' Junction, Kukatpally,  
Hyderabad – 500 018.

....Applicant/Petitioner

Vs

Mr. Yadavilli Sai Karunakar,  
Liquidator of M/s. BS Limited,  
Flat No.205, B-Block,2<sup>nd</sup> Floor, Kushal Towers,  
D.No.6-2-975, Khairatabad,Hyderabad – 500 004.

....Respondent/Liquidator

**Date of order: 14.03.2023**

**CORAM:**

Hon'ble Justice Smt. Telaprolu Rajani, Member (Judicial)

Hon'ble Sri Charan Singh, Member (Technical)

**Counsels present:**

For the Liquidator : Mr. M. Anil Kumar, Advocate

For the Petitioner : Mr. Manoj Kumar, Advocate  
Ms. Uma

Heard on : 10.03.2023

**[PER: BENCH]**  
**COMMON ORDER**

1. Both the matters are taken-up for passing a common order, since the issues involved in both the IAs are the same.
2. IA 868/2022 is filed Under Section 60(5) Read Section 33(5) of the Insolvency and Bankruptcy Cod, 2016 and Read With Rule 11 of the NCLT Rules 2016, seeking to stay the Prohibitory and Restraining Order dated 17.08.2022 issued by the Respondent and stay the proceedings therein and to set aside the Prohibitory and Restraining Order dated 17.08.2022 issued to Indian Overseas Bank, Lakdikapool Branch for attaching Liquidation Bank Account and pass orders as are necessary.
3. The facts mentioned in the application are as follows:

4. This Tribunal admitted the Company Petition which was filed by the State Bank India to initiate Corporate Insolvency Resolution Process (CIRP) and one Mr. K.V. Srinivas was appointed as an IRP. The CoC ratified the appointment of IRP. A liquidation order was passed on 17.10.2019 in respect of the CD and one Mr. Yadavilli Sai Karunakar was appointed as Liquidator. All the properties and the assets of the Company are vested in the Tribunal and without the orders of NCLT, no properties can be attached/realised/recovered by any other person other than the Liquidator.
  
5. A Prohibitory and Restraining Order was issued on 17.08.2022 by the Employees Provident Fund Organisation (EPFO) to the Indian Overseas Bank, Lakdikapool Branch for attaching Liquidation Bank Account maintained with the said bank. Liquidator made a public announcement in Form-B of Schedule II on 07.11.2019 calling the claims to be made against the Company in liquidation, fixing the last date as 29.11.2019.
  
6. The Respondent i.e. Employees Provident Fund Organisation (EPFO) has submitted the claim in Form-F dated 28.01.2021 on 16.02.2021 for an amount of Rs.25,35,229/- and the same was rejected by the Liquidator on the ground that the claim was submitted after the due date fixed i.e. on 29.11.2019. Aggrieved by the rejection of the claim, the Respondent preferred IA No.135 of 2021 and the same was allowed with a direction to the Liquidator to consider the claim as per record and other supporting documents. The Respondent revised its claim to Form-C while filing the said Interlocutory Application without any intimation to the Liquidator. Pursuant to the Order dated 13.05.2021 in IA No.135 of 2021, the Liquidator verified the claim as per Section 39 of IBC, 2016 and admitted the

said claim as per Section 40 of IBC, 2016 under unsecured debt due to the Central Government and the same was communicated to the Respondent vide email dated 17.11.2021. The claim amount of Rs.25,35,229/- pertains to the interest under Section 7Q to an extent of Rs.10,38,333/- and penal damages under Section 14B to an extent of Rs.14,96,896/- for delaying remitting of PF dues for the period pertaining to December, 2008 to June, 2019 and there were no principal provident fund dues pending for remittance by the Corporate Debtor.

7. The Respondent sent a letter dated 20.01.2022 enquiring the status of the claim. The Liquidator sent a reply through email dated 07.02.2022, stating that the Respondent Claim is admitted under the category of unsecured debt due to the Central Government as already communicated through an email dated 17.11.2021. The Liquidator further stated that the Respondent claim shall be settled in terms of Section 53 of IBC, 2016. Subsequently on 18.08.2022, the Regional PF Commissioner, Kukatpally orally enquired with the Liquidator as to why their claim was admitted as unsecured debt. The Liquidator explained that EPFO has submitted their claim under Operational Creditors and have not provided any proof of security for considering the said claim as secured debt. Subsequent to that, the Respondent issued Prohibitory and Restraining Order dated 17.08.2022 issued by the EPFO u/s 8B & 8F of the Employees Provide Funds and Miscellaneous Provisions Act, 1952 and Second Schedule of the Income Tax Act, 1961 for attaching the Liquidation Bank Account maintained with Indian Overseas Bank, Lakdikapool Branch and to remit/pay forthwith by way of Demand Draft in favour of the Regional Provident Fund Commissioner, Kukatpally from the amounts available in the said Liquidation Bank

Account. Accordingly, the Indian Overseas Bank communicated to the Liquidator that Liquidation Bank Account is marked as lien.

8. As per Section 33(5) of IBC, 2016 when a liquidation order has been passed, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. No realisations are made and no distributions are made so far in the liquidation process of BS Limited. The amounts available in the attached Liquidation Bank Account are held by the Liquidator for meeting the ongoing liquidation process but not for the purpose of distribution to the stakeholders as per IBC, 2016. The attachment and recovery of the amount from the Liquidation Bank Account by EFPO would stall the liquidation process. All the movable and immovable fixed assets are first charged to IFCI and Bank of India who have not relinquished their security to the Liquidation Estate and the same are handed over to the said first charge holders for their realisation. Presently, very few assets are available in the Liquidation Estate. The Stakeholders Consultation Committee advised the Liquidator to sell the Company in Liquidation as a going concern, with all available assets, for which, the process of identification of some of the assets is still going on. The attachment of the Liquidation Bank Account is causing irreparable prejudice to the liquidation process. Hence, this application.
9. The respondent filed counter denying the contents of the application and further contending that a letter dated 21.10.2019 was received from Mr. K.V. Srinivas, IRP intimating about the liquidation order passed by NCLT. Upon communication from the Standing Counsel for Respondent Organisation, it is stated that the petition has to file for condonation of delay in filing claim before NCLT. The claim was

rejected as it was submitted beyond the limitation period. The action taken by the Respondents to attach the Bank Accounts is in accordance with the procedure laid under the Recovery Manual of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. The EPF dues are to be paid in priority and the Provident Fund dues have to be paid as per the waterfall mechanism u/s section 53 of IBC, 2016. Section 36(3) of IBC, 2016 defines the components of Liquidation Estate. However, Sub-Section (3) of Section 36 is subject to the exemption Clause contained in Sub-Section (4). Sub-Section 4(a)(iii) excludes all sums from the Liquidation Estate due to any workman or employee from the Provident Fund, Pension Fund and Gratuity Fund. The position of Law is that the dues under EPF Act are not debts and do not form a part of the waterfall mechanism. On the above grounds, the application is sought to be dismissed.

10. Heard both the counsel and perused the written submissions filed by the Respondents.
11. IA No.1004/2022 is filed by the Central Board of Trustees Employees Provident Fund (hereinafter referred to as the Assistant Provident Fund Commissioner), seeking to issue a direction to the Respondents to release the claim amount of Rs.25,35,229/- and to declare the communication letter dated 07.02.2022 as null and void.
12. The facts as stated in the application are as follows:
13. The application is filed aggrieved by the communication of an email dated 07.02.2022 by virtue of which, the Liquidator has not considered the claim of the Applicant, on the ground that the claim

is admitted under the category of unsecured debt due to the Central Government and it shall be settled in terms of Section 53 of IBC, 2016. It is also further intimated that the realisations from assets of the company in liquidation may not even be sufficient for settling the secured financial creditors' claims. The Employees Provident Funds and Miscellaneous Provisions Act, 1952 is a legislation for providing social security to the employees working in any establishment engaging more than 20 persons on any day. It provides for compulsory deduction of Provident Fund from employees. Similarly Act 1952 also provides for insurance and pensionary benefits to the employees. Any effort by the employer to deny the employees to their legitimate dues has to be looked upon with suspicion. The Applicant office initiated an enquiry under section 7Q & 14B of the Act, 1952 and summons were issued to Respondent No.1 and the case was finalised by the counsel on 27.01.2021. The Applicant Enquiry Officer issued final proceedings for an amount of Rs.25,35,229/-. As Respondent No.2 was in default and as the representatives were not cooperating, the enquiry took a long time. Finally, the proceedings of levy of interest and damages was concluded on 27.01.2021. The applicants submitted its claim on 28.01.2022 and the same was rejected.

14. An application was filed seeking for condonation of delay in submitting the claim and the same was allowed. Respondent No.1 intimated that the claim was admitted under the category of unsecured debt that is to be settled as per Section 53 of IBC, 2016. While so, the Applicant issued Form No.EPFCP-3 dated 17.08.2022 to the Head of Branch, Indian Overseas Bank and the Banker blocked an amount of Rs.1,60,400.76 and the same was challenged by the Liquidator. Damages and interest are recoverable from the



employer as per Section 14B and 7Q of Employees Provide Funds and Miscellaneous Provisions Act, 1952.

15. On the above grounds, Applicant seeks to allow the application.
16. Respondent filed counter denying the contents of the application and further contended that the application is filed beyond limitation. As per Section 42(2) of IBC, 2016 a creditor may appeal to the Adjudicating Authority against the decision of the Liquidator, accepting or rejecting the claims, within 14 days of the receipt of such decision of the Liquidator. In the present case, the Liquidator communicated the decision of the Liquidator on admission of the claim of the applicant on 17.11.2021, but the present application is filed on 20.09.2022 which is after 307 days. Hence, the application is barred by limitation.
17. The issuance of summons by the EPFO for non-production of records and the inspection of the Enforcement Officer at the Corporate Debtor's office are prior to the commencement of liquidation process.
18. The appointment of the Liquidator is on 25.10.2019 which is subsequent to the date of visit of the Enforcement Officer. The period of default by the Corporate Debtor is prior to the liquidation commencement and hence proceedings of the enquiry are not in the knowledge of the Liquidator. An enquiry/assessment proceedings are in respect of interest and damages and no principal of PF amount is outstanding from the Corporate Debtor. The claim amount towards interest and penalty was admitted as unsecured debt.

19. On the above grounds, Respondent seeks to dismiss the application.
20. Written submissions are filed by the Applicant reiterating the contents of the application.
21. Heard the Liquidator and the Counsel appearing for the Central of Board of Trustees Employees Provident Fund (hereinafter referred to as the Assistant Provident Fund Commissioner).
22. The argument of the Liquidator is mainly based upon the aspect of limitation. He draws our attention on Section 42 of IBC, 2016 which prescribes the limitation for preferring an appeal against the decision of the Liquidator. The said provision is extracted hereunder for ready reference:

***Section 42 of IBC, 2016***

*Appeal against the decision of liquidator:- A creditor may appeal to the Adjudicating Authority against the decision of the liquidator 1 [accepting or] rejecting the claims within fourteen days of the receipt of such decision.*

23. There is no denial of the fact that the claim of the Assistant Provident Fund Commissioner (APFC) was admitted on 17.11.2021 and the present petition is filed on 20.09.2022. According to Section 42(2), any appeal against the decision taken by the Liquidator shall be filed only within 14 days. The counsel for the Liquidator relied on the judgement of the Hon'ble NCLAT, Chennai in Company Appeal (AT) (CH) (INS) No.182 of 2022 & IA No.415 of 2022 between The Regional Provident Fund Commissioner, Chennai Vs. Mr. Vasudevan, Resolution Professional & Liquidator of M/s. Titanium Tantalum

*Products Limited, Chennai, wherein, on the aspect of delay, it was ruled that the length of the delay is immaterial. However, the acceptability of an explanation furnished by the party is the prime criteria. A Court of law or a Tribunal will be very reluctant/slow to excuse the delay to lend a helping hand/assistance to a litigant/stakeholder who is guilty of 'inaction or bad faith or latches or negligence'.*

24. There is apparently no explanation given by the APFO with regard to the delay. Hence, without there being any explanation for the delay, the appeal filed by the APFO cannot be entertained beyond 14 days from the date of the admission of the claim by APFO.

*The judgement of the Hon'ble Supreme Court in Civil Appeal No.6187 of 2019 between National Spot Exchange Limited Vs. Mr. Anil Kohli, Resolution Professional for M/s. Dunar Foods Limited is also relied upon which is on the same principle. It was held that in case of Popat Bahiru Govardhane & Others, the Hon'ble Supreme Court observed and held that it is a settled legal position that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the Statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. It is further observed that the statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it by giving full effect to the same.*

25. Hence, in view of the above two judgements, this application cannot be entertained, since it is filed beyond 14 days from the date of the decision taken by the Liquidator admitting the claim of the APFC under unsecured debt.

26. The counsel for the Liquidator contends that the PF of the employees is already paid and what is now claimed is only damages and the interest and hence, they can be categorized only as an unsecured debt and as such, the Liquidator admitted the claim under the category of an unsecured debt.
27. The damages and the interest do not have any preferential rank in the waterfall mechanism under Section 53 IBC, 2016. The counsel for APFO could not satisfy us on the plea that the damages are constituted by the contribution of the employees. Hence the act of the liquidator in admitting the claim under the category of unsecured debt cannot be found fault with.
28. Hence, in view of the above, the IA No.868/2022 is allowed and IA No.1004/2022 is dismissed.
29. The Prohibitory and Restraining Order dated 17.08.2022 vide Reference No. TS/RO/KKP/Recovery/54300/2022-23 issued by the Respondent is set aside and the attachment made by the Indian Overseas Bank is lifted.

**Sd/-**

**(CHARAN SINGH)  
MEMBER (TECHNICAL)**

**Sd/-**

**(JUSTICE TELAPROLU RAJANI)  
MEMBER (JUDICIAL)**

**VL**