

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
APPELLATE JURISDICTION**

**Company Appeal (AT) (CH) (INS) No. 182 of 2022 & IA No. 415 of
2022**

In the matter of:

**The Regional Provident Fund Commissioner
Employees Provident Fund Organisation
Regional Office
No. 3, Rajaji Salai, Tambaram
Chennai – 600045**

..... Appellant

V

**Mr. Vasudevan
Resolution Professional & Liquidator of
M/s. Titanium Tantalum Products Limited
17B, Maruthi Nagar,
Hasthinapuram
Chennai – 600064**

..... Respondent

Present:

For Appellant : Mr. R. Vishnu, Advocate

For Respondent : Mr. K. Moorthy, Advocate

ORDER

(Virtual Mode)

Justice M. Venugopal, Member (Judicial) :

I.A. No. 415 of 2022 in Comp. App. (AT) (CH) (INS) No. 182 of 2022:

According to the Learned Counsel for the Petitioner/Appellant in
I.A. No. 415 of 2022 in Company Appeal (AT) (CH) (INS) No. 182 of

2022, there has occasioned a delay of 116 days in preferring the Instant Company Appeal before this `Tribunal` and in fact the instant `Appeal` ought to have been filed within 90 days as per the `Order` of the Hon`ble Supreme Court of India in M.A. No. 21 of 2022 in M.A. No. 665 of 2021 in SMW (C) No. 3 of 2020 vide order dated 10.01.2022, a fresh period of limitation of 90 days was granted from 28.02.2022 and that the instant `Appeal`, since it is filed within the limitation, the condonation of delay application I.A. No. 415 of 2022 in Comp. App. (AT) (CH) (INS) No. 182 of 2022 is to be allowed, in the interest of justice.

2. It is evident that the `impugned order` in IA/442/CHE/2021 in TCP/413/IB/CB/2017 was passed by the `Adjudicating Authority`, (National Company Law Tribunal), Division Bench, Court – I, on 17.12.2021, and that the copy of the `impugned order` was obtained by the `Petitioner / Appellant` on the same day.

3. As a matter of fact, the instant `Appeal` is to be filed within 30 days as per the I & B Code, 2016. In this connection, the `Appellant` adverts to the `Order` of Hon`ble Supreme Court of India in M.A. No. 21 of 2022 in M.A. No. 665 of 2021 in Suo Moto Writ Petition Civil No. 3 of 2020 dated 10.01.2022, thereby and whereunder at Paragraphs 5 and 6, it is observed as under:

5. ``Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

6. As prayed for by learned Senior Counsel, M.A. No. 29 of 2022 is dismissed as withdrawn.``

4. Considering the fact that the `Petitioner / Appellant` in I.A. No. 414 of 2022 in Comp. App. (AT) (CH) (INS) No. 182 of 2022 places reliance on the Order of the Hon`ble Supreme Court of India in M.A. No. 21 of 2022 in M.A. No. 665 of 2021 in Suo Moto Writ Petition (C) No.3 of 2020 dated 10.01.2022 and in cases where the limitation would have lapsed in respect of the period from 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation, all persons shall have a limitation of 90 days period from 01.03.2022, etc., the instant Comp. App. (AT) (CH) (INS) No. 182 of 2022, preferred by the `Petitioner/Appellant` before this `Tribunal`, is well within the limitation and only as a matter of abundant care and caution, the `Petitioner/Appellant` has projected I.A. No. 415 of 2022.

5. Viewed in the above perspective, this `Tribunal` in furtherance of substantial cause of justice, allows I.A. No. 415 of 2022 (condone delay application) in Comp. App. (AT) (CH) (INS) No. 182 of 2022. No Costs.

JUDGMENT

(Virtual Mode)

Comp. App. (AT) (CH) (INS) No. 182 of 2022:

Introduction:

6. The Appellant has focussed the instant Comp. App. (AT) (CH) (INS) No. 182 of 2022, as an `Affected Person`, on being dissatisfied with the

`impugned order' dated 17.12.2021 in IA/442/CHE/2021 in TCP/413/IB/CB/2017, passed by the `Adjudicating Authority' (National Company Law Tribunal), Division Bench, Court – I, Chennai.

7. According to the Learned Counsel for the Appellant the `Adjudicating Authority' (National Company Law Tribunal), Division Bench, Court-I, Chennai, while passing the `Order' in IA/442/CHE/2021 in TCP/413/IB/CB/2017, filed by the `Appellant / Applicant', wherein at paragraphs 4 to 10, had observed the following and dismissed the IA/442/CHE/2021, without costs:

4. `Vide an Order dated 12.06.2018 this Tribunal ordered for liquidation of the Corporate Debtor and the Respondent was appointed as the Liquidator. The Liquidator had issued paper publication inviting the claim from the stakeholders on 18.06.2018. This late date for submission of such claim was 14.07.2018. In response to the public announcement the following claims were received from different stakeholders.

| S.No. | Particulars | Nos. | Claimed | Admitted |
|--------------|--------------------------------------|-------------|----------------|-----------------|
| 1 | Operational Creditors | 18 | 17,90,77,608 | 8,11,88,860 |
| 2 | Financial Creditor | 1 | 90,58,03,723 | 90,58,03,723 |
| 3 | Workmen & Employees | 148 | 7,74,53,925 | 4,57,09,802 |
| 4 | Workmen & Employees (Representation) | 44 | 3,79,97,732 | 20,95,981 |
| 5 | Other Creditors | 1 | 6,75,82,492 | 5,66,93,122 |
| | | | 126,79,15,480 | 109,14,91,488 |

5. *The Liquidator submits that vide Order dated 25.02.2019 this Tribunal directed the Deputy Commissioner of Police Chennai City to provide adequate police protection to the Liquidator since he received the several threats from the ex-employees.*

6. *It is admitted fact that the Provident Fund Department has filed the claim before the Liquidator in Form-G only on 03.02.2021. It is observed that various challans etc for PF were generated post the commencement of liquidation.*

7. *It is submitted in the case of Deputy Commissioner Commercial Taxes (Audit) Raichur – Vs – Surana Industries Ltd (in Liquidation) & Anr. (2020) 180 NCLAT, the National Company Law Appellate Tribunal held that*

“declined to entertain the appeal preferred against rejection of claim of Appellant by the Liquidator on the ground that no specific application seeking condonation of delay was filed beyond the prescribed period of 14 days. Liquidation process is a time bound process and the Liquidator has to conclude his proceedings within one year as prescribed under Insolvency and Bankruptcy Code, 2016, in absence of sufficient cause and cogent reason, we are unable to persuade ourselves to interfere with the impugned order.”

8. *It is therefore submitted that the Applicant was not diligent in filing their claims during the Liquidation period and submitting their claims belatedly during the very end of the Liquidation period is nothing but an attempt to suppress their negligence of not filing their claims within the stipulated time i.e., on or before 14.07.2018 as published for by the Respondent.*

9. *It is also submitted that on 20.09.2019 i.e., after the commencement of the liquidation PF Department has filed Form-F (applicable to CIRP) which was rejected by the Ld. Liquidator. Form-G was filed only on 02.02.2021 i.e., after a delay of 934 days.*

10. We have gone through the rival contentions of both the parties and observed that the EPFO Department has not followed the due process as prescribed under the IBC, 2016. The Supreme Court in the matter of P.K.R. Ramachandran -Vs- State of Kerala [1997] 7 SCC 556 has held that an essential pre-requisite of exercising discretion to condone the delay is that the Court must record its satisfaction that the explanation of delay was either reasonable or satisfactory. Further, in the present case the Applicant is not even aware whether the Company is under Liquidation or under the CIRP. In any case, the insurmountable delay of nearly 936 days cannot be condoned at this belated stage.’

and dismissed the Interlocutory Application/442/CHE/2021, without costs.

Appellant’s Submissions:

8. Questioning the Order of Dismissal of IA/442/CHE/2021 in TCP/413/IB/CB/2017, passed by the ‘Adjudicating Authority’ (National Company Law Tribunal), Division Bench, Court – I, Chennai, the Appellant (The Regional Provident Fund Commissioner - (II) (Legal), has preferred the instant Comp. App. (AT) (CH) (INS) No. 182 of 2022 before this ‘Appellate Tribunal’, contending that the ‘Appellant’ was continuously requesting the Respondent to disburse the sum due to it, in priority over all the dues, as admittedly, the dues of EPFO (or) outside the Liquidation Estate as held by this ‘Tribunal’ and confirmed by the Hon’ble Supreme Court of India.

9. The Learned Counsel for the Appellant submits that the 'Adjudicating Authority' without providing a proper opportunity of hearing to the Appellant had dismissed the IA/442/CHE/2021 in TCP/413/IB/CB/2017, based on the ground that, as if the delay was on the higher side and further that the Appellant was not diligent.

10. According to the Appellant, the Corporate Debtor (M/s. Titanium Tantalum Products Private Limited had failed to remit the Employees' contribution for the Period, from 05/2015 to 10/2017 and 06/2018 to 11/2018, amounting to Rs,1,17,34,011/-, which was arrived at, on the basis of Electronic Challan cum Return (ECR) for the month from 05/2015 to 11/2018. In fact, for the default committed by the Corporate Debtor in regard to the 'payment of dues', the Appellant had issued Summons dated 14.06.2017. The Appellant was informed by the Respondent, on receipt of Summons that the proceedings were initiated under the I & B Code, 2016, and that the Appellant was informed that 'Moratorium' was ordered by the 'Adjudicating Authority' and an Interim Resolution Professional was appointed as per the 'Order' dated 22.12.2017 in the main TCP/413/IB/CB/2017.

11. It is represented on behalf of the Appellant that by a Letter dated 07.02.2018, addressed to the Respondent, the Appellant had informed the

Respondent/Resolution Professional of the Corporate Debtor that there were due amount arising under Section 7A of the Employees Provident Fund Act, 1952, and that a sum of Rs.94,75,995/-, was due, in respect of the period from Apr'2016 to Dec'2017, damages under Section 14B of the Act and interest under Section 7Q of the Act for the said period amounting to Rs.30,01,853/- and further that a sum of Rs.9,71,047/- was further sought for, as short remittance.

12. Indeed, the Appellant was required to file Form-F with an affidavit before the Respondent, on 02.03.2018 and in all, a sum of Rs.1,34,55,603/- was sought by the Appellant. And added further, the Respondent had not replied till date, either admitting or rejecting the Appellant's claim.

13. It is projected on the side of the Appellant that the Respondent through his letter dated 26.06.2018 received on the side of the Appellant on 04.07.2018 informed that the Adjudicating Authority through an order dated 12.06.2018 has initiated the liquidation proceedings against the Corporate Debtor and that the Appellant was also informed that the Respondent was appointed as 'Liquidator' on the very same 'Order'. Besides this, the Respondent had directed the Appellant to prefer a 'claim' under I & B Code, 2016, in the specified format without informing the

Appellant that the earlier claim in Form-F would not be taken into account or would not be considered.

14. It is pointed out on behalf of the Appellant on 21.07.2018 the Appellant had issued a reminder letter informing the Respondent / Resolution Professional that the details of the amount due to the Appellant were placed before the Respondent and the Respondent had not replied to the same. In reality, the Appellant again had enclosed the amounts due from the Corporate Debtor along with the statement of assessment of dues and damages and apart from that, the Appellant had made a request to the Respondent to settle the amounts due to the Appellant's Office at the earliest and in fact, a priority of payment was claimed by the Appellant.

15. Not resting with the above, the Appellant through a Letter dated 04.12.2018, had brought to the notice of the Respondent about the due payable amounts and made a request to the Respondent in settling the dues, in 'priority' over all other dues. In this connection, it is the plea of the Appellant, it was quite diligent in pursuing its claim right from the Summons dated 14.06.2017, etc., and despite numerous letters addressed to the Respondent on 07.02.2018, 02.03.2018, 21.07.2018 and 04.12.2018 and the Respondent had not given a reply to the Statutory Authority.

16. The prime contention advanced on behalf of the Appellant is that when the Respondent / Resolution Professional was running the affairs of the Company, it is his duty to make contribution to the Appellant, be it as an 'IRP' or 'RP'. Also, by Letter dated 14.03.2019, the Appellant (EPFO) had brought to the 'Notice' of the Respondent that the Respondent as a RP/Liquidator had failed to contribute to the Appellant from Jan'2018 onwards.

17. As a matter of fact, the Respondent through his Letter dated 04.04.2019 had brought to the Appellant's Notice that an 'Order of Liquidation', passed by the 'Adjudicating Authority' dated 12.06.2018 and further that the Appellant was informed that once a 'Liquidation Order' was passed by the 'Adjudicating Authority', National Company Law Tribunal, Chennai and the business of the 'Corporate Debtor' would get discontinued. In fact, the Respondent had informed the Appellant that the 'Officers', 'Employees' and 'Workmen' of the Corporate Debtor' were discharged, with effect from the date of Liquidation Order i.e., 12.06.2018.

18. The Learned Counsel for the Appellant adverts to the fact that the Appellant brought to the notice of the Respondent through a Letter dated 24.05.2019, as regards the claim made by it on former occasions, and also

the Respondent was informed that he was not communicating on this aspect to the Appellant.

19. It is the version of the Appellant that in the Letter dated 24.05.2019, the Appellant had also filed additional claims under Form-F (Supplementary) and sought for further payment of Rs.1,13,89,308/- for the period from Jan'2018 to Jul'2018 and Jun'2015 to Mar'2016. In fact, the Appellant had made a claim amounting to Rs.1,34,55,603/- relating to the period Jul'2015 to Mar'2016 and Apr'2016 to Dec'2017, the Supplementary Claim made on 24.05.2019 was in the character of an amendment to the initial claim, filed by the Appellant.

20. The Learned Counsel for the Appellant proceeds to make a mention that the Respondent through a Letter dated 09.07.2019 had admitted the claim earlier preferred by the Appellant, paid a sum of Rs.21,18,637/- (as part payment). In fact, the Appellant through a communication dated 12.07.2019 had mentioned to the Respondent that an outstanding sum of Rs,2,27,26,274/- remains to be paid in priority over all other claims. But the Respondent, through a Letter dated 01.08.2019 had informed the Appellant with ECR text files with bifurcation of individual code relating to the PF payment of Rs.21,18,637/-. Even the two reminder Letters dated

28.01.2020 and 11.03.2020 given by the Appellant addressed to the Respondent had not yielded any positive response from the Respondent.

21. The Learned Counsel for the Appellant contends that the amount due to the Provident Fund is not an asset of the 'Operational Creditor' and it is an asset of the 'Employees' and hence this cannot be included in the 'Liquidation Asset' and shall not be used for 'recovery' in Liquidation. In short, the plea taken on behalf of the Appellant is that an 'earned emolument' of an 'Employee' can never form part of the 'Liquidation Asset'.

22. The Learned Counsel for the Appellant submits that the 'Adjudicating Authority', (National Company Law Tribunal), Chennai, had committed an error in dismissing the IA/442/CHE/2021 in TCP/413/IB/CB/2017, without adverting to the specific argument raised on behalf of the Appellant that there was no delay in preferring the claim before the Respondent and that the 'Petition for condonation of delay' was filed only as an 'abundant precaution'.

23. The Learned Counsel for the Appellant has come out with a plea that admittedly, the claims in 'Form-F' and in 'Supplemental Form F' were already filed in the Year 2018 and 2019 which was either accepted or rejected by the Respondent till date.

24. The forceful contention of the Appellant is that the `Adjudicating Authority' had failed to take into account the fact that the Respondent/Resolution Professional/Liquidator of the Corporate Debtor had himself paid the PF contribution to the Appellant on 09.07.2019 and in fact, the Hon'ble Supreme Court of India in the Judgment in Maharashtra State Co-operative Bank Ltd. V. Assistant Provident Fund Commissioner and Another (Vide Civil Appeal No.6893 of 2009) had considered the effect of Section 11 of the Employees Provident Fund Act and considering the Social Security benefit made available, had held that dues under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, would always remain as a `First Charge' and shall be paid firstly out of the asset of the Establishment.

25. The Learned Counsel for the Appellant raises an argument that the amount due to the Employees Provident Fund Organisation is exempted under the provisions of the I & B Code, 2016. Also that, the `Adjudicating Authority' had failed to appreciate that the `Appellant' need not file `any claim' before the `Resolution Professional' since the sums due to the `Fund' are exempted because of the fact the Appellant is not an `Operational Creditor'.

Appellant's Decisions:

26. The Learned Counsel for the Appellant relies on the `Judgment' of the Hon'ble Supreme Court of India in the matter of Employees Provident Fund Commissioner V O.L. of Esskay Pharmaceuticals Limited, reported in MANU / SC / 1327 / 2011, wherein it is observed that sub-section 2 of Section 11 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, declares that the amount due from an `Employer' shall be the `First Charge of the Assets of the Establishment', and should be paid in priority to all other debts.

27. The Learned Counsel for the Appellant refers to the Judgment of this Tribunal in Company Appeal (AT) (INS.) No. 354 of 2019 with Company Appeal (AT) (INS.) 364 of 2019, Company Appeal (AT) (INS.) No. 404 of 2019 and Company Appeal (AT) (INS) No. 1001 of 2019 dated 19.12.2019, wherein at paragraph 44 and 45, it is observed as under:

44. `However, as no provisions of the `Employees Provident Funds and Miscellaneous Provisions Act, 1952 is in conflict with any of the provisions of the I & B Code, and, on the other hand, in terms of Section 36 (4) (iii), the `provident fund' and the `gratuity fund' are not the assets of the `Corporate Debtor', there being specific provisions, the application of Section 238 of the `I & B Code' does not arise.

45. Therefore, we direct the `Successful Resolution Applicant' – 2nd Respondent (Kushal Limited) to release full provident fund and interest thereof in terms of the provisions of the `Employees

Provident Funds and Miscellaneous Provision Act, 1952, immediately, as it does not include as an asset of the 'Corporate Debtor'. The impugned order dated 27th February, 2019, approving the 'Resolution Plan' stands modified to the extent above.'''

28. The Learned Counsel for the Appellant refers to the Order dated 12.09.2018 in M.A.No. 576 and 752 of 2018 in CP (IB) 1339 (MB) / 2017, in the matter of Precision Fasteners Limited V Employees Provident Fund Organisation, wherein it is observed as under:

''When it comes to sums due to any workmen or employees from the provident fund, pension fund and the gratuity fund under sub clause (iii), they shall not be included in the liquidation estate.'''

It was further observed thus:-

''.....it is an operation of law that says when provident fund is payable to the workmen or employees, such payment dues have to be deemed as an asset of the workmen or the employees, it makes no difference whether it has been maintained in a separate account or not, in view of this deeming fiction, the workmen/employees not need prove that whether any sum (interest) has been explicitly vested with them or not an overreaching interest and title has been created in favour of the workmen in respect to provident fund, etc. Under the old regime to say that provident fund dues will have overriding effect over all other dues including secured and unsecured creditors, Court used to fall back upon EPF Act provisions, but whereas now by exclusion of provident fund dues to the workmen/employees from the liquidation estate, it has not only extended the earlier law that was in existence but also strengthened the right of workmen regarding PF/Pension/Gratuity fund dues, by altogether excluding this asset from the liquidation estate leaving it to open to the workmen or to the PF Authority to realize their provident fund/pension fund/gratuity fund dues without standing in the line of water-fall mechanism.'''

“that provident fund dues are excluded from the liquidation estate so as to enable the workmen realize their saving as well as the matching contribution comes from the employer giving priority even above the costs of liquidator, because the liquidator is also entitled to realize the costs from the liquidation estate only, whereas the workmen for Provident Fund dues need not remain in the line to realize their PF dues from the liquidation estate.”

29. The Learned Counsel for the Appellant points out the Order dated 12.09.2018 in MA No. 576 and 752/2018 in CP (IB) – 1339 (MB)/2017, passed by the ‘Adjudicating Authority’, (National Company Law Tribunal), Mumbai Bench, wherein at Paragraphs 30, 38 and 42, it is observed as under:

30. “I believe that the right of all other creditors over the assets of the company is a property right, whereas workmen dues, more specially PF dues of workmen, are interwoven with Right to Life because the workmen all through their life save some portion of the hard earnings for their later life after retirement, if such sums are being interlinked on part with debts of the creditors of the company, secured or unsecured as the case may be, then it is nothing but diluting most valuable and inalienable right of a person on par with a property right subordinate to right to life. Workmen normally fall back on their earnings after retirement, if realisation of such dues also put in jeopardy, how could they survive and sustain in their old age, they can’t do anything in life, life becomes by that time already vestigial, can they rally around courts to realise these sums, I believe it can’t be so and law cannot be so, and the law is also not so. May be for this reason alone, EPF Act has been strengthened from time to time, in addition to it, now under IBC, PF/Pension/Gratuity fund dues have been taken out from the spectrum of liquidation estate asset by giving a mandate that the PF/Pension/Gratuity fund dues to the workman/employee shall be treated as an asset of the workman lying in the possession of corporate

debtor. So, it is not treated as a claim on par with other creditors, it is in fact treated as an asset of the workmen lying with corporate debtor.

38. However, since liquidation process should not get obliterated by the attachment taken against the assets of the Corporate Debtor, the only viable answer to this situation is, the liquidator shall pay the dues that are payable under the head of Provident Fund/Pension Fund/Gratuity Fund earmarking it as asset of the workmen and pay off the same to the respondents in priority to the waterfall mechanism made under section 53 of the Code. In view of the law in force, we hereby hold that by virtue of EPF Act and section 34(4) (a) (iii) of the Code, the charge will remain in force against the assets of the corporate debtor until it has been paid off before making any payment to any entity falling under waterfall mechanism devised under section 53 of the Code.

42. Therefore, for the reasons stated above, the Petitioner is directed to pay the Provident Fund dues from the liquidation estate before distributing the liquidation estate of the Corporate Debtor to the claimants, to which, since the Liquidator has to sell the asset of the Corporate Debtor, the respondents are directed to allow this Liquidator to sell the assets of the Corporate Debtor and pay off the Provident Fund dues in priority to all other claims payable by the Corporate Debtor in liquidation.’’

Discussions:

30. Before the ‘Adjudicating Authority’ (National Company Law Tribunal), Chennai Bench, the ‘Appellant/Applicant’ had filed IA/442/2021 in TCP/413/IB/CB/2017, seeking an ‘Order’ in directing the ‘Resolution Professional’ to make provision in the ‘Information Memorandum’ and corresponding ‘Resolution Plan’, if any, for the

payment of Claim of Rs.3,09,88,511/- as per the revised Form G Establishment wise under Section 14B, 7Q on 02.02.2021 for the period from 05/2015 to 11/2018 due to the applicant herein by condone the delay of 936 days in claiming the EPF & MP Act, 1952, dues.

31. According to the Applicant/Appellant, the Applicant had intimated the Respondent that there was a due sum of damages Rs.6,56,113/- and an interest of Rs.3,14,934/- and totalling in all Rs.9,71,047/- to the Applicant and requested to forward a `Demand Draft` for the said amount. In fact, the Applicant/Appellant had intimated on 02.03.2018 that the provisional assessment of PF dues for the period from 04/2016 to 12/2017 along with damages, amounting to Rs.1,34,55,603/- was prepared and placed in `Form F`. Furthermore, the Respondent had intimated through his letter dated 26.06.2018 about the `initiation of Liquidation Process` and hence, to prefer the Claim, if any, in the prescribed format.

32. According to the Learned Counsel for the Appellant/Applicant, the Applicant/Appellant had intimated through letter dated 11.07.2019 that the outstanding due was of Rs.2,27,26,274/- to the Applicant and issued reminders on 25.01.2020 and 11.03.2020 to the Respondent for the outstanding due sum of Rs.2,27,26,274/-.

33. The Learned Counsel for the Appellant/Applicant points out that after coming to know of the information that the State Bank of India had issued a 'Notification for E-auction' of the properties in respect of the Company under Liquidation, issued an 'Order' under Section 8F on the Employee's Provident Funds and Miscellaneous Provision Act on 24.12.2020 and after the E-auction, the Appellant/Applicant issued an order dated 05.01.2021 under Section 8F(iv) and 8F(3) (x) EPF and MP Act, 1952.

34. The Respondent had replied to the Appellant on 04.02.2021 (for the Form G filed dated 02.02.2021 by the Appellant) that there was a delay and that the Interim Resolution Professional' had no power to condone the delay and to approach the 'Adjudicating Authority' (National Company Law Tribunal), Chennai Bench.

35. It is the clear cut stand of the Appellant/Applicant that the 'Defaulter' was admitted into the 'Corporate Insolvency Resolution Process' and that the Respondent came to be appointed as 'Interim Resolution Professional' who is endowed with the duty of collating the claims, damages, and interests pertaining to the 'Defaulter' amounting to Rs.3,09,88,511/-.

36. According to the Appellant/Applicant, it being a Government Statutory Organisation, catering the Workmen interests, the protection of the interests of Workmen of the Applicant would be in line with larger public interest and if the delay is not condoned, the Appellant will suffer an irreparable loss and hardship.

37. The Respondent/Liquidator in his 'Reply/Counter' to IA/442/2021 in TCP/413/IB/CB/2017 at paragraphs 14 to 17, had averred as under:

14. ``The Answering Respondent submits that the averments made in Paragraph 1 of the Application pertain to the particulars of the Corporate Debtor which are matters of record and the same need not be specifically traversed herein by the Answering Respondent. However, the Applicant has alleged that the Corporate Debtor concern failed to remit the contributions of their employees for the period from 05/2015 to 11/2018 for a sum of Rs.1,17,34,011/-. It is submitted that this allegation is baseless without any substantiation. However, assuming without admitting the only claim value that can be admitted to Rs,1,01,96,123/- for a period of 05/2015 to 10/2017 a period before the initiation of CIRP.

15. Furthermore, in this Hon'ble Adjudicating Authority in MA/57/2019 in TCP/413/2017 considered the application filed by the employees for (i) payment of salary for the month of August 2018 to December 2018, i.e. during the liquidation period when all the employees were discharged and no operation of the Corporate Debtor; (ii) categorically confirm the Corporate Debtor is continued as a going concern and pay wage and salaries; (iii) to obtain fresh claim applications from employees and workers for all lawful claims. The Hon'ble Adjudicating Authority had rejected the application as it is not maintainable either in law or on facts, is devoid of merits. In accordance with the same, the present

application of the Applicant is also not maintainable in law and facts.

16. With regard to averments in paragraph 2, it is submitted that the Corporate Debtor was ordered for liquidation by the Hon'ble Tribunal vide order dt. 12.06.2018 and the same was intimated to the Applicant through both Public Announcement dt. 18.06.2018 and the Liquidator had sent a communication to the Provident Fund department intimating the initiation of Liquidation Process of the Corporate Debtor to the Regional Provident Commissioner, West Tambaram, Chennai dated 26.06.2018. Despite the communication, the Provident Fund department filed its claim in Form G on 03.02.2021 and the Liquidator had not accepted the claim form by sending a letter dated 04.02.2021 as the claim was filed belatedly.

17. Further, it is submitted that on perusal of the claim filed by the Provident Fund department, the Liquidator noticed that the PF department had claimed PF dues for the period May 2015 to November 2018 except for the period November 2017 to May 2018 i.e., CIRP Period. On perusal of the TRRN No and the Challan date it is observed that all the challans were raised after September 2018 which is well after the initiation of the Liquidation Commencement Date i.e. 12.06.2018. Pursuant to Section 33(7) of the Code `the order of the liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor...'. In an application filed by six employees of the Corporate Debtor against the Corporate Debtor wherein the Hon'ble Adjudicating Authority had dismissed the application as it is not maintainable either in law or facts and devoid of merits.'`

38. Apart from the above, the Respondent / Liquidator in his `Reply' to IA/442/CHE/2021 in TCP/413/IB/CB/2017 at paragraphs 18 to 24, had averred as under:

18. ``With regard to para 3 and 4, it is submitted that the Liquidator intimated the Applicant about the Liquidation Process of the Corporate Debtor as early as 26.06.2018. The Provident Fund Commissioner is very well aware of the fact of the initiation of Liquidation Process with effect 12.06.2018, however, the Provident Fund Commissioner has failed to recognise the same wherein the TRRN Challans were uploaded after September 2018 i.e. well after the Liquidation Commencement Date. The Liquidator has neither uploaded the TRRN Challans nor given authorisation to anyone including the employees to do the same. In this regard, the Liquidator suspect of a collusion between the employees and the Provident Fund Department which fall within the provision of Section 66 of the Code which deals with fraudulent trading or wrongful trading. The Liquidator filed the additional report in MA/1313/2020, wherein the Liquidator appraised the Hon'ble Tribunal the status of the Liquidation process of the Corporate Debtor company. Furthermore, the Respondent submitted before the Hon'ble Tribunal with regard to the collusion between the employees and the present Applicant. Therefore, the present application is with an intent to defraud the Corporate Debtor concern and to make unlawful gain which is subject to be investigated by this Hon'ble Tribunal.

19. It is submitted that the PF due claim was for the period from 05/2015 to 10/2017. On perusal of the claim filed by the RPF dated 02.02.2021 it is observed that the TRRN and the ECR was generated between 27.09.2018 and 04.10.2018. Further, these challans appeared to have been generated by some employees of the CD without any authority in collusion with the PF authorities which well after the commencement of the Liquidation Process. These filings do not have the approval or authority of the Liquidator and as such the same is not binding on the Liquidator to consider the same.

20. Furthermore, the TRRN & ECR was also generated for the period from June 2018 to November 2018 i.e. after the Liquidation Commencement date when all the Employees, Officers and Workmen were discharged from office with effect from the Liquidation Order

i.e. 12.06.2018. Even these TRN & ECR were generated on the dates given here below:

| | |
|-----------------------|-------------------|
| <i>June 2018</i> | <i>27.09.2018</i> |
| <i>July 2018</i> | <i>27.09.2018</i> |
| <i>August 2018</i> | <i>21.09.2018</i> |
| <i>September 2018</i> | <i>08.10.2018</i> |
| <i>October 2018</i> | <i>15.11.2018</i> |
| <i>November 2018</i> | <i>10.12.2018</i> |

21. With regard to paragraph 5 to 12, the Liquidator had intimated upon the initiation of Liquidation Process on 26.06.2018, instead of filing a claim before the Liquidator, the Applicant was sending demand letters. Also, the Applicant's first letter was dated 21.07.2018 i.e. after the last date for filing the claim being 14.07.2018. Further, the Applicant had filed its claim during CIRP. Hence, they are well aware of the ongoing Insolvency and Liquidation process and now cannot claim ignorance.

22. Further, the Liquidator has intimated upon the initiation of Liquidation Process on 26.06.2018 and on 04.04.2019 categorically mentioning, the Officers, Employees and Workmen were discharged from office with effect of passing of the Liquidation Order i.e. 12.06.2018. It is submitted that on both occasions the order copy was attached with the letter for the information of the EPF. Despite of these communications, the EPF authorities had neglected the process. Also, based on the aforementioned circumstances, the discharged employees of the Respondent Company had colluded with the EPF authorities by generating the TRRN & ECR for the period from 05/2015 to 10/2017 and from 06/2018 to 11/2018 after the Liquidation Commencement date. This tantamount to fraud and unlawful gain in accordance with Section 66 of the Code by the discharged employees.

23. Furthermore, post 12.06.2018, in order to complete the pending order on hand and for the purpose of other Liquidation related work,

the Liquidator had engaged some workers and employees for whom a compensation in form of ex-gratia in lieu of salary was paid. The Liquidator had not issued any engagement letter for the employees/workmen for the period June to November 2018. The discharged employees were creating hindrances by approaching the Police to restrain the Liquidator making the handover of the premises to the SBI and ensuring the financial creditors to not participate the liquidation.

24. With regard to the averments and allegation made in para 13 to 15, it is vehemently denied as false and misleading. The allegation that the corporate debtor company being admitted to insolvency or liquidation was not within the knowledge of the Applicant is utterly surprising to believe. The Applicant is the Regional Provident Fund Commissioner – II is well aware and has information with regard to the Corporate Debtor being admitted to insolvency and the Respondent had called for the claims from all creditors, vide his paper publication dated 16.12.2017. The Respondent received a claim from the Applicant corporation on 29.05.2019, which is about two years after the Corporate Debtor concern entered into insolvency. The belatedness of the claim from the Applicant concern entered into insolvency. The belatedness of the claim is not substantiated with valid explanation neither to the Respondent herein or the Adjudicating authority. Moreover, the Applicant's motive was only to send demanding letters requesting for the dues from Corporate Debtor concern being fully aware that the Respondent Liquidator has no power to allot the requested funds which was not filed in accordance as claims when published for by the Respondent company.''

39. The crystalline stand of the Respondent/Liquidator is that the Appellant / Applicant was not assiduous / meticulous in projecting its claims all through the Liquidation period and furnished its claims lately at

the fag end of Liquidation period, especially it had not filed its claim prior to 14.07.2018.

40. In the instant case, the Respondent/Liquidator had issued the paper publication inviting the claim from the Stakeholders on 18.06.2018 and the last date for submission of such claim was 14.07.2018. Admittedly, the Appellant/Applicant in IA/442/CHE/2021 in TCP/413/IB/CB/2017 before the `Adjudicating Authority` (National Company Law Tribunal), Chennai Bench, had prayed for condonation of delay of 936 days in claiming the EPF and MP Act, 1952, dues. The Form F, filed by the Appellant's side, after the `beginning of the Liquidation` on 20.09.2019 was not accepted by the Respondent/Liquidator. No wonder, the `Form G` was filed by the Appellant on 02.02.2021.

Aspect of Delay:

41. It is to be remembered that the length of the delay is immaterial. However, the acceptability of an explanation furnished by the `Party` is the `prime criterion`. A `Tribunal` or a `Court of Law` 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`.

42. An unpardonable lackadaisical approach / attitude of the 'Party' in pursuing a matter before the 'Competent Authority' / 'Tribunal' is not to be accepted. The 'Law of Limitation' being harsh, will affect a 'Litigant', but it has to be pressed into service with all its vigour and rigour in the considered opinion of this 'Tribunal'.

43. In 'Law', a 'Tribunal' / a 'Court of Law' has no power to find out a device in granting 'Relief' to a 'Party' who may appeared to have been hard done by. To put it precisely, an 'Application' for condonation of delay undoubtedly create a 'jurisdictional fetter' against 'consideration of tangible / substantive matter on merits'. A 'Tribunal' cannot determine the 'sufficiency of cause', apart from the facts pleaded and made out in a given case.

44. Just because the Appellant is a Statutory Organisation, no 'indulgence' or 'latitude' can be shown, since the 'Law' applies to one and all in a level playing field. In reality, the Officials must act with as much as diligent as is expected from a 'Litigant', as per decision in District Board, Sargodha V Shemas Din 123 I C 83.

Appeal against Liquidator's Decision:

45. To be noted, that Section 42 of the I & B Code, 2016, enjoins that as against the decision of the Liquidator either accepting or rejecting the

claims, a 'Creditor' may prefer an 'Appeal' before the 'Adjudicating Authority' and it cannot be gainsaid that the 'process of Liquidation' is to be completed, within the prescribed time and conclusion of proceedings in this regard, is to be made within one year as enunciated under I & B Code, 2016.

Aim of I & B Code:

46. 'Speed' is the essence of I & B Code, 2016. 'Time Wasted'/'Lost' cannot be revisited/regained. The process of Liquidation is time bound, to be completed within one year in the teeth of the I & B Code, 2016. Undoubtedly, the Code is an inbuilt and self-contained one and the object of the I & B Code, 2016, is that, a time barred 'Debt' cannot be resurrected or given a fresh tenure of life, as opined by this 'Tribunal'.

47. In the light of foregoing discussions, this 'Tribunal' keeping in mind the present facts and circumstances of the instant case, in a conspectus fashion and also considering the submissions of the Appellant side and the stand taken on behalf of the Respondent/Liquidator, comes to a consequent conclusion that the view arrived at by the 'Adjudicating Authority', (National Company Law Tribunal), Division Bench, Court – I, in dismissing the IA/442/CHE/2021 (in condoning the delay of 936 days in claiming the EPF & MP Act dues) in TCP/413/IB/CB/2017, through its

`impugned order' dated 17.12.2021 is free from `legal infirmities'.
Resultantly, the `Appeal' fails.

Conclusion:

In fine, Company Appeal (AT) (CH) (INS) No. 182 of 2022 is dismissed. No costs. The IA No. 413 of 2022 (For Urgent Listing) and IA No. 414 of 2022 (For Stay) filed by the Appellant/Petitioner are Closed.

**[Justice M. Venugopal]
Member (Judicial)**

**[Mr. Kanthi Narahari]
Member (Technical)**

11/07/2022

SR/TM