

**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 31.03.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/8/2022 in CP (IB) No346/7/HDB/2018
NAME OF THE COMPANY	Metkore Alloys & Industries Ltd
NAME OF THE PETITIONER(S)	Hero Wiretex Ltd
NAME OF THE RESPONDENT(S)	Metkore Alloys & Industries Ltd
UNDER SECTION	7 of IBC

ORDER

IA(IBC)/8/2022

This application is allowed, vide separate orders.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

IA No.8 of 2022
in CP(IB) No. 346/7/HDB/2018
u/s 35(1)(N) R/w Section 53 & 60(5)(C) of IBC, 2016

In the matter of:

M/s. Metkore Alloys & Industries Limited Vs. Employees
Provident Fund organisation

Between:

Mr. Sisir Kumar Appikatla,
Liquidator of M/s. Metkore Alloys & Industries Ltd,
106, First Floor, Bharat Towers,
5th Lane, Dwarakanagar,
Visakhapatnam – 530 016.

...Applicant/Liquidator

Vs

1. The Regional PF Commissioner I,
Regional Office,
Visakhapatnam.
2. The Asst. PF Commissioner,
Employees Provident Fund Organisation,
District Office, Srikakulam.

....Respondents

Date of order: 31.03.2023

CORAM:

Hon'ble Justice Smt. Telaprolu Rajani, Member (Judicial)
Hon'ble Sri Charan Singh, Member (Technical)

Counsels present:

For the Liquidator : Ms. Mano Ranjani, Advocate
For the Respondents : Dr. B. Manoj Kumar, Advocate
Heard on : 28.03.2023

[PER: BENCH]
ORDER

1. This application is filed by the Applicant who is the Liquidator of the Corporate Debtor (CD) Company, seeking for a direction that only the amounts claimed by the Respondent PF Organisation under Section 7A & 7Q of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act) are the sums due to workmen or employees from the Provident Fund and to be considered in priority over other dues and to direct that the damages claimed by the Respondent PF Organisation under Section 14B of EPF & MP Act, 1956 are dues to the Central Government and to be treated under Section 53(1)(e)(i) of IBC, 2016.
2. The facts mentioned in the application are as follows:
3. The Applicant is the Liquidator. The Respondents Organisation submitted its claim in Form C under Regulation 17 of IBBI (Liquidation Process) Regulations, 2016 and demanded for certain amounts which are:

S.No.	Claim Details	Amount (Rs.)
1	EPF Contribution for the period 09/2014 to 07/2016	92,54,794
2	Damages u/s 14B for the period 04/2012 to 11/2014	27,04,605
3	Interest u/s 7Q for the period 04/2012 to 11/2014	14,01,025
4	Damages u/s 14B for the period 09/2014 to 07/2016 as on 24.12.2020	92,49,077
5	Interest u/s 7Q for the period 09/2014 to 07/2016 as on 24.12.2020	58,35,326
	Total :	2,84,43,827

4. PF, Pension & Gratuity are terminal benefits that are basically employees' dues. For the purpose of liquidating the CD, Liquidator has to form Estate of assets of the CD as per Section 36 of IBC, 2016.
5. As per Section 36 Clause 4(a)(iii) of IBC 2016, dedicated funds created internally for PF, Gratuity, Pension, Leave Encashment etc., will not form part of Liquidation Estate. Only the dues to workmen and employees from Provident Fund, Pension Fund and Gratuity Fund form part of Liquidation Estate.
6. Workmen and employees' contribution towards Provident Fund deducted from the salary but not deposited by the employer with EPFO/Exempted PF Trust/NPS.(sentence not completed in the petition). Dues in respect of employees' contribution for Provident Fund, Pension Fund for paid salaries, not deposited with the EPFO.(same). The said amount deducted from the salary of the workmen and employees for onward remittance to EPFO for credit to the PF Account of the respective workmen or employees is fundamentally not the asset of the CD and are to be paid by the Liquidator under the Provisions of Section 36 Clause 4(a)(iii), prior to any distribution of funds under the Provisions of Section 53.
7. In so far as the penal damages and penalties are concerned, these are the charges levied by the PF Department on account of delay in making the payment of employer dues and were not paid to any employee or workman and they are paid only as per their

entitlement. Hence, this application is filed with the above mentioned reliefs.

8. The Respondent who is the Regional PF Commissioner filed Counter contending that the EPF dues are deemed to be the first charge on the assets of Establishment and to be paid in priority to all other debts.
9. The Liquidator cannot claim that the penal damages are the dues to the Central Government. The Establishment had paid the PF contributions belatedly and the organisation could not invest the contributions at relevant point of time and failed to gain interest on such fund. Had the Establishment/Employer paid the Provident Fund contributions on the day of actual due date, it would have been invested in order to get the interest on the said PF contributions, to enable the Respondent office to extend the interest to the workmen in time.
10. Several rulings are also relied upon and the application was sought to be dismissed.
11. Heard both the Counsel. The Counsel for the Liquidator submits that there are several components in the claim made by the PF Commissioner, out of which, the dues payable under Section 7A & 7Q which includes the monies due from employers and interest payable by the employer have to be paid in accordance with Section 36 Clause 4(a)(iii) of IBC, 2016. Hence, there is no dispute with regard to the payment of the amount under Section 7A & 7Q of EPF & MP Act, 1956, as they would be

in priority to the other debts. The question is with regard to the damages under Section 14(b) of EPF & MP Act, 1956. According to the Liquidator, they are the dues to the Central Government and are to be treated under Section 53 waterfall mechanism. The Counsel for the Respondent relies on a judgement of the Hon'ble Supreme Court in "*Organo Chemical Industries & another Vs. Union of India, 1979 AIR 1803, 1980 SCR(1)61* wherein, it was held as follows:

"There appears to be a misconception that the object of imposition of penalty under Section 14B is not 'to provide compensation for the employees' whose interest may be injured, by loss of interest and the like. There is also a misconception that the damages imposed under Section 14B are not transferred to the Employees' Provident Fund and the Family Pension Fund, of the employees who may be adversely affected, but the amount is transferred to the General Revenues of the appropriate Government. We find that this assumption is wholly unwarranted. In assessing the damages, the Regional Provident Fund Commissioner is not only bound to take into account the loss to the beneficiaries but also the default by the employer in making his contributions, which occasions the infliction of damages. The learned Additional Solicitor General was fair enough to concede that the entire amount of damages awarded under Section 14B, except for the amount relatable to administrative charges, must necessarily be transferred to the Employees' Provident Fund and the Family Pension Fund. We hope that those charged with administering the Act will keep this in view while allocating the damages under Section 14B of the Act to different heads. The employees would, of course, get damages commensurate with their loss i.e., the amount of interest on delayed payments; but the remaining amount should go to augment the 'Fund' constituted under Section 5, for implementing the Scheme under the Act."

From the above judgement, it can be understood that the damages are constituted by not only interest but also other amounts. In this case, the Applicant however has conceded to include the interest in priority and to take it out of the purview of Section 53 of IBC, 2016.

12. We have dealt with a similar issue in IA No.868 of 2022 and IA No.1004 of 2022 and it was held that the damages and the interest do not have any preferential rank in the waterfall mechanism under Section 53 IBC, 2016. Even in this case, the Respondent could not satisfy us that the damages are constituted by the contribution of the employees. The liquidator seeks for including interest also under Section 36 Clause 4(a)(iii). Hence the argument of the respondent that interest need to be paid in priority need not be discussed. The respondent could not show any provision or rule that the damages apart from the interest would be paid to the employees. Since the damages do not have any preferential rank in the waterfall mechanism, the claim in respect of the said damages can be considered only as an unsecured debt.
13. In the result, we allow the application as prayed for.

Sd/-

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

Sd/-

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

VL