

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT) (CH) (Ins) No. 193/2025

In the matter of:

Employees' Provident Fund Organization,

Regional Office, Pattancheru

H. No. 12-1, First Floor, Susheeram Complex,

Pattancheru-502319, Sangareddy District (TS),

through Authorised Signatory, A Ravikumar,

Regional Provident Fund Commissioner - 1,

Regional Office, Royapettah.

...Appellant

VERSUS

1. Dr. Madurai Sundaram Sankar,

Reg No. IBBI/IPA-001/IP-P00770/2017-2018/11315

RP of M/s. Neueon Towers Limited,

A 1206 S and S Sarvam, 200 Feet Pallavaram,

Thuraipakkam Radial Road, Pallikaranai,

Chennai, Tamil Nadu, 600100.

...Respondent No. 1

2. Consortium between

M/s. Preca Solutions India Private Limited,

Mr. Madala Srinivasu and Ms. Madala Anithaa,

Successful Resolution Applicant of

M/s. Neueon Towers Limited

Plot No. 6, D.No 2-9/5/6, Green land Colony,

Gachibowli, Hyderabad, Telangana,

India, 500019.

...Respondent No. 2

With

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...Respondent No. 2

Present :

For Appellant : Mr. MS Viswanathan, Advocate

ORDER **(Hybrid Mode)**

22.04.2025:

Oral Judgement: Justice Sharad Kumar Sharma, Member (Judicial):

1) The Appellant is a creation of statute and a statutory organization and it is expected in all fairness, that being statutory organization, they owe a responsibility to be fair to the Tribunals or the Courts, while drawing or participating in the proceedings or while pursuing the same and they cannot be permitted to abuse the process of law by recurringly initiating the proceedings either under same provisions or for the same cause of action.

2) The challenge by the Appellant in the instant Company Appeal, is to the impugned order dated 29.01.2025, as it has been passed in **IA No. 2245/2024**, wherein, the Appellant has respectively modulated the following reliefs by invocation of provisions contained under Section 42 of I&B Code. The reliefs were “*to direct the Respondent/Resolution Professional to except the claim of*

this applicant of Rs. 10,06,594/- along with the claim by condoning the delay of ...days.”

3) In the connected **IA No. 2246/2024**, yet again there was an invocation of the provisions contained under Section 42 praying for “*to direct the Resolution Professional to accept the claim of the Appellant of Rs. 41,87,527/-, along with the claim by condoning the delay of ...days.*” The said Interlocutory Application has been rejected by the impugned order on the ground that the issue with regards to the claim or relief as raised by the Appellant, had already been made a subject matter at the behest of the Appellant himself in earlier **IA No. 42/2021**, as preferred in CP(IB) No. 679/7/HDB/2018, which stood adjudicated by a judgement rendered on 02.09.2021. In those proceedings, the Appellant had sought for a direction against the Respondent to accept the claim of the Employees Provident Fund officer, and for a direction against the Committee of Creditors(CoC) the Corporate Debtor to accept the claim in Form-B, which was rejected by them, with the following observations: -

“15. The Resolution Professional and the Committee of Creditors are directed to accept the claim of the applicant/ EPFO with regard to employer’s contribution towards Provident Fund only. We are not inclined to allow claims towards penal interest as claimed by the applicant/ EPFO. Such claims of contributions towards Provident Fund shall be considered and adjusted in the

*Resolution Plan. IA No. 42 of 2021 is disposed of
in the above terms.”*

4) There was yet another proceedings which was drawn by the Appellant by filing an **IA(IBC) No. 236/2021**, in CP(IB) No. 679/7/HDB/2018, by invoking the provisions contained under Section 38, 42, 60(5) of the I&B Code, to be read with Rule 11 of the NCLT Rules.

5) In the instant case, the Applicant had instituted the application IA No. 2246/2024 before the Learned Adjudicating Authority, in August, 2024, where he had prayed for seeking a direction to the Resolution Professional, to accept the claim based on the records, after condoning the delay, which has chanced in preferring the Appeal.

6) The said application, **IA No. 2246/2024**, was preferred by invoking the provisions contained under Section 42 of I&B Code, to be read with Section 60(5). The same has been rejected by the Tribunal on the ground that recurring applications for the same cause of action would not be maintainable, owing to the fact that, earlier similar applications for same relief have already been decided, that the relief sought in **IA No. 2246/2024**, preferred under Section 38, 42 to be read with Section 60(5) of the I&B Code, and has already been decided by way of **IA No. (IBC) 236/2021**, and therefore IA No. 2246/2024, would be barred by the principles of *res judicata*, apart from the fact that in addition to the fact that there was a material concealment and therefore, since, the earlier application

already stood decided the subsequent application as preferred being IA No. 2246/2024, would not be maintainable. Thus, the finding recorded in the impugned order does not at all suffer from any apparent error of law or facts.

7) The Appellant in the Interlocutory Application, has modulated the relief to the effect that a direction may be issued to the Respondent to consider and admit the claim of the Applicant against the Corporate Debtor to the tune of Rs. 5,40,715/-. The said application was closed by the order passed by the Tribunal on 02.09.2021. The observations made therein while closing the said application is extracted hereunder: -

“11. In the result, delay occurred in submitting the claim by the applicant is condoned. The Resolution Professional is directed to consider the claim of the applicant only with regard to employer’s contribution towards Provident Fund. If any, we are not inclined to entertain any claims towards damages, interest or penal interest. Such claim of the applicant with regard to employer’s contribution towards Provident Fund shall be considered and adjusted in the Resolution Plan. IA No. 236 of 2021 is disposed of accordingly.”

8) The applicant was facing the hurdle on these two subsisting orders which had attained finality and where his claims have been rejected and even the proceedings drawn under Section 42 has been closed against him. **It was rather a 3rd recurring set of applications, being IA No. 2245/2024 and IA No.**

2246/2024, which was preferred by the Appellant for the same relief, which has been rejected by the impugned order on the ground, whereby the Tribunal has observed while considering the rival contentions that, the relief sought for by recurring resorting to the proceedings under Section 42, may not be a scope, which is available to the appellant because, it will amount to be an abuse of process of law. At the stage, when the Appellant has preferred IA No. 2245/2024, on 30.08.2024, the issue qua his relief under Section 42 of I & B Code, had already stood closed, in view of the preceding orders, as already passed earlier and observed above. In the finding which has been recorded by the Learned Tribunal, it rather shows that recurring resort to the judicial proceedings for the same cause of action, under Section 42 would be an abuse of process and that cannot be permitted to be perpetuated by filing the recurring applications and the observation in that regard has been made in Para 11 & 12 of the Impugned Order which is extracted hereunder: -

“11. Now, despite adjudication on this issue twice in L.A.No.41 of 2021 and again L.A.No.236 of 2021, the applicant has again filed the present two interlocutory applications i.e., I.A.No.2245 of 2024 and L.A.No.2245 of 2024 seeking claims as under:

<i>Sl.No.</i>	<i>Interlocutory Application</i>	<i>Claim Amount</i>
<i>1</i>	<i>IA.No.2245 of 2021</i>	<i>Rs.10,06,594/-</i>
<i>2</i>	<i>IA.No.2265 of 2021</i>	<i>Rs. 41,87,527/-</i>

12. The Applicant has not made it clear that why these applications with different amounts have been filed again and again, when the matter was already adjudicated upon. We further find that Successful Resolution Applicant has already made a provision of Rs.47,28,242/- for EPF dues and in view of the same there remains no cause for the Applicant to file these present interlocutory applications i.e., I.A.No.2245 of 2024 and I.A.No.2245 of 2024.”

9) Therein, the Tribunal has observed that since the issue pertaining to the claim, and the issue pertaining to the proceedings under Section 42, has already been laid to rest by the earlier orders at the behest of the Appellant, he cannot be permitted to abuse the process of law by filing a fresh application under an *akin* provision for the same cause, which has already been decided against him.

10) Because the rights of the applicant in the application under Section 42, has been closed by the orders passed by the Tribunal under on 02.09.2021, the same cannot be permitted to be perpetuated and reagitated by filing the instant Company Appeal.

11) Exclusively, on that ground only, this Appellate Tribunal is refraining to make any observations pertaining to the arithmetical calculations attempted to be pressed by appellant with regard to the claim, which the Appellant expected to have been awarded by the Tribunal, because the arithmetic calculations of the

claim would not allure us, as that would be a chapter which stands closed by the decision rendered on earlier application being, IA No. 42/2021 and IA No. 236/2021 and the same cannot be permitted to be reopened to be argued by preferring the application in IA No. 2245/2024, on 30.08.2024. The proceedings drawn by virtue of an appeal, since it only reflects an apparent abuse of process of law. This Appellate Tribunal is not inclined to interfere in these Appeals. The Company Appeals would stand dismissed. However, with no orders as to cost.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

RO/MS/RS