



SL. No.2

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

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ – HON’BLE MEMBER (J)  
CORAM: SHRI. SANJAY PURI - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 04.04.2025 at 10:30 AM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>IA (IBC)/1913/2023 in CP(IB) No.326/7/HDB/2018</b>
<b>NAME OF THE COMPANY</b>	<b>Khaitan Electricals Ltd</b>
<b>NAME OF THE PETITIONER(S)</b>	<b>Bank of India</b>
<b>NAME OF THE RESPONDENT(S)</b>	<b>Khaitan Electricals Ltd</b>
<b>UNDER SECTION</b>	<b>7 OF IBC</b>

**ORDER**

**IA (IBC)/1913/2023**

Orders pronounced, recorded vide separate sheets. In the result, the delay is condoned and the Liquidator is directed to decide the claim in the light of aforesaid observations.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**



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

**I.A. (IBC) No. 1913 of 2023**

**in**

**C.P. (IB) No.326/7/HDB/2018**

*[Under Section 42 & 60(5) of Insolvency and Bankruptcy Code, 2016, r/w Rules 11, 13 & 32 of  
National Company Law Tribunal Rules, 2016]*

**In the matter of Bank of India vs. M/s.Khaitan Electricals Limited**

**Between:**

The Central Board of Trustees,  
Employee Provident Fund Organization (EPFO)  
Regional Office- Patancheru,  
12-1, Susheeram Complex, 1<sup>st</sup> Floor, Patancheru,  
Sangareddy District, Telangana,  
Rep. by the Assistant Provident Fund Commissioner- Legal.

**....Applicant**

**Vs.**

Shri Kamlesh Kumar Singhania,  
Liquidator-M/s. Khaitan Electricals Limited,  
Banjarang Kunj, Room No. 412 & 413,  
2B Grant Lane, 4<sup>th</sup> Floor,  
Kolkata- 700012.

**....Respondent**

**Date of Order: 04.04.2025**

**Coram:**

Hon'ble Shri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Shri Sanjay Puri, Member (Technical)

**Counsels Present**

For the Applicant : Mr. E. Venugopal, Advocate

For the Respondent : Mr. Pranay Agarwal, Advocate



**[Per: Rajeev Bhardwaj, Member (Judicial)]**

**ORDER**

1. This application has been filed by the Central Board of Trustees, Employee Provident Fund Organization (**EFPO/Applicant**) against Mr.Kamlesh Kumar Singhania, the **Liquidator** of M/s. Khaitan Electricals Limited (**Corporate Debtor/CD**), seeking the following reliefs:
  - (a) Condone the delay of 1652 days in submitting the claim form before the Respondent; and
  - (b) Direct the Respondent Liquidator to Consider and admit the claim of the Appellant against the Corporate Debtor to “the tune” of Rs.5,18,621/- after determining the veracity of the claim.
2. **Application:**
  - (i) The Employees Provident Fund & Miscellaneous Provisions Act, 1952 (“**1952 Act**”) mandates the provision of social security benefits to employees in any establishment employing more than 20 persons. Both the employees and the employer are required to contribute to the Provident Fund by the 15<sup>th</sup> of every month.
  - (ii) In the event of any delay by the employer in depositing the contributions into the Provident Fund Account, the Employees' Provident Fund Organization (**EPFO**) has the authority under Section 7A of the 1952 Act to initiate a quasi-judicial process to assess the dues owed to the employees and direct the employer to deposit the required amount.



- (iii) The CD falls within the purview of under Section 1(3)(b) of the 1952 Act, bearing Code Number AP/6096/B. Following an inquiry by the EPFO regarding defaults in the period from August 2017 to April 2019, the total amount payable was determined to be Rs.16,72,706/-, which includes interest and penal damages for delayed payments under Sections 7Q and 14B of the 1952 Act.
- (iv) Upon learning about the liquidation proceedings of the CD, the Applicant submitted a claim form to the Liquidator on 11.01.2022 via email, claiming a total amount of Rs.56,51,837/- for the pending dues, contributions, interest, and penal damages. However, the Liquidator rejected the claim on the same day, stating that the Liquidation Order was pronounced on 23.08.2019 and the last date for submitting the claims was 22.09.2019.
- (v) Then I.A. No. 742 of 2023 was filed and vide order dated 29.05.2023, direction was issued to the Liquidator to review the claim. The Liquidator disposed of the claim as per the previous form submitted before filing of I.A. No. 742 of 2023 and disbursed the amount. Pursuant to procedure, the Applicant is required to submit a new claim form, which should include damages and interest for the period from August 2017 to May 2019 and September 2017 to April 2019.
- (vi) Under the old claim submitted to the Liquidator, an amount of Rs.56,51,837/- was paid to the Applicant, and this was acknowledged. On 06.06.2023, the Applicant sent an email to the Liquidator claiming a balance of Rs.5,18,621/- according to the revised claim. The Liquidator rejected this claim on the same day, stating, *"claims filed after expiry of 30 days from the date of liquidation order cannot be admitted without order passed by the Adjudicating Authority."*



- (vii) The Liquidator is obligated to pay the EPFO amounts claimed, along with interest and damages, but the Liquidator has failed to do so. The Applicant has relied on the decision of the Principal Bench of the Hon'ble NCLAT in ***Tourism Finance Corporation of India Pvt. Ltd. v. Rainbow Papers Ltd. & Ors.***, wherein the claim of the RPF was allowed along with interest, as EPF dues are considered as assets not forming part of the liquidation estate
- (viii) Furthermore, the Hon'ble NCLAT partially modified the Order approving the Resolution Plan, stating that EPFO funds must be released, as these funds do not constitute part of the CD's assets. This order was subsequently challenged before the Hon'ble Supreme Court, which dismissed the challenge on the grounds of lack of merit.

### 3. **Counter**

- (i) The Applicant submitted its claim on 11.01.2022, claiming Rs.56,51,837/-, which includes contributions, interest, and penal damages for the period from August 2017 to May 2019 and September 2017 to April 2019. The claim was rejected due to the delay. However, the delay was condoned in I.A. No. 742 of 2023 for submitting the claim. The claim was then considered, verified, and paid by the Liquidator, a fact which was confirmed by the Applicant in an email dated 06.06.2023.
- (ii) Despite the disbursement of claim amount, the Applicant has again approached this Authority seeking an interest amount of Rs.5,18,621/- concerning the already paid EPF dues. Moreover, the interest and penal damages cannot be applied post-liquidation, and as such, the present petition is to be dismissed.



4. **Written Submissions by the Respondent/Liquidator**

- (i) The Liquidator reiterates the contentions presented in the Counter and asserts that the interest amount of Rs.5,18,621/- sought in this application pertains to the already disbursed EPF dues.
- (ii) The Liquidator places reliance on the ruling in ***DBS Bank India Limited v. Kuldeep Verma, Company Appeal (AT) (Insolvency) No. 1048 of 2024***, emphasizing that no claim can be filed after the due date for submission of claims.

5. Heard both the Counsels for both the parties and perused the entire records.

6. **Findings**

- (i) The CD was admitted into Corporate Insolvency Resolution Process (**CIRP**) by an Order dated 28.11.2018, and was later admitted into liquidation by an Order dated 23.08.2019. The Applicant initially filed a claim of Rs.56,51,837/-, which was approved and disbursed by the Liquidator following the intervention of this Authority. This was confirmed through an email dated 06.06.2023. Alongwith the said email, the Applicant submitted an additional claim of Rs. 5,18,621/- in Annexure-A, which covered actual damages and interest under Sections 7Q and 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, for the periods from 08/2017 to 05/2019 and 09/2017 to 04/2019.
- (ii) Upon examining Sections 7A, 7Q, and 14B of the Act, 1952, it is evident that the Employees' Provident Fund Organization has the authority to levy interest and damages. Additionally, as per Section 36(4)(iv) of the Insolvency and Bankruptcy Code, 2016, Provident Fund dues, pension fund, and gratuity fund are excluded from the



liquidation estate and cannot be used for liquidation purposes. As per Section 53 of the IB Code, the workmen dues are given the top priority in the waterfall mechanism. It has been held by the Hon'ble Supreme Court in **Sunil Kumar Jain and Ors. vs. Sundaresh Bhatt and Ors. (2022)7 SCC 540** that only with respect to those workmen/employees who actually worked during CIRP when the Corporate Debtor was a going concern, their wages/salaries are to be included in the CIRP costs and they shall have the first priority over all other dues as per Section 53(1)(a) of the IB Code. Any other dues towards wages and salaries of the employees/workmen of the corporate debtor shall have to be governed by Section 53(1)(b) and Section 53(1) (c) of the IB Code.

- (iii) About interest and damages, the Hon'ble NCLAT in **Mr. Anuj Bajpai vs. Employee Provident Fund Organization and others, Comp. App. (Ins) No. 1141 of 2023 & I.A No. 3979 of 2023, decided on 10.07.2024** after relying on the Hon'ble Supreme Court judgment in **Maharashtra State Cooperative Bank vs. Assistant Provident Fund Commissioner & Others (2009) 10 SCC 123** held that interest and damages under Sections 7Q and 14B are an integral part of provident fund dues. It was made clear that the term "any amount due from an employer" under Section 11(2) of the EPF Act includes not only the contributions determined under Section 7A but also interest and damages. It was held:

*"50. In this regard, we would like to refer to the judgement of the Hon'ble Supreme Court of India in case **Maharashtra State Cooperative Bank (Supra)** which gives clear ratio as laid down by the Hon'ble Supreme Court of India in Para 67 to 69. These paras reads as under :-*

*"67. The expression "any amount due from an employer" appearing in sub-section (2) of Section 11 has to be interpreted keeping in view the object of the Act and other provisions contained therein including sub-section (1) of Section 11 and Sections 7-A, 7-Q, 14-B and 15(2) which provide for determination of the dues payable by the employer, liability of the employer to pay interest in case the payment of the amount due is delayed and also pay damages, if there is default in making contribution to the Fund. If any*



*amount payable by the employer becomes due and the same is not paid within the stipulated time, then the employer is required to pay interest in terms of the mandate of Section 7-0. Likewise, default on the employer's part to pay any contribution to the Fund can visit him with the consequence of levy of damages.*

*68. As mentioned earlier, sub-section (2) was inserted in Section 11 by Amendment Act 40 of 1973 with a view to ensure that payment of provident fund dues of the workers are not defeated by the prior claims of the secured and/or of the unsecured creditors. While enacting sub-section (2), the legislature was conscious of the fact that in terms of existing Section 11 priority has been given to the amount due from an employer in relation to an establishment to which any scheme or fund is applicable including damages recoverable under Section 14-B and accumulations required to be transferred under Section 15(2). The legislature was also aware that in case of delay the employer is statutorily responsible to pay interest in terms of Section 17. Therefore, there is no plausible reason to give a restricted meaning to the expression "any amount due from the employer" and confine it to the amount determined under Section 7-A or the contribution payable under Section 8."*

*51. The Hon'ble Supreme Court laid down that there is no reason to give restrictive meaning of expression "any amount due from the employer" and confine to only amount determine under Section 7A of the EPF Act. The **Hon'ble Supreme Court further held that interest payable by the employee under Section 7Q and the damages levied under Section 14B of the EPF Act will also be covered as dues from the employers for the purpose of Section 11(2) of the EPF Act.**"*

7. The contention of the Liquidator that interest and damages can be claimed only for those amounts prior to the liquidation order is passed is unfounded. The Hon'ble NCLAT, New Delhi in **Employees Provident Fund vs. Jaykumar Pesumal Arlani, RP of Decent Laminates Pvt., Company Appeal (AT) (Ins.) No. 1062 of 2024** ruled that the assessment of provident fund dues is not prohibited after the liquidation order is passed. While Section 14 of the Insolvency and Bankruptcy Code imposes a moratorium during the CIRP, this moratorium ends upon liquidation, and a different moratorium under Section 33(5) takes effect. This provision only restricts the initiation of suits or legal proceedings but does not prevent statutory authorities, including the Employees' Provident Fund Organization, from conducting assessments., as outlined below:



“23. ....We, thus, are of the view that once order of liquidation is passed, moratorium under Section 14 comes to an end and moratorium under Section 33(5), which is differently worded, comes into play. Under Section 33(5), the expression used are "suit or other legal proceeding", which occurs in Section 446 of sub-section (1) noticed above. Thus, bar is only against suit or legal proceeding and there is no bar against assessment proceeding to be conducted by statutory Authorities, including the EPFO. Thus, after the liquidation, it is open for EPFO to carry on the assessment. Section 33(5), cannot be held to apply on assessment proceedings. However, while looking to the expression used in Section 14(1), assessment proceedings before the EPFO, cannot be continued after initiation of CIRP.

24. In view of the aforesaid, we answer Question Nos.(1) and (2) in following manner:

(1) We hold that after initiation of moratorium under Section 14, sub-section (1), no assessment proceedings can be continued by the EPFO. If after an order of liquidation is passed, **Section 33, sub-section (5), does not prohibit initiation or continuation of assessment proceedings.**

(2) No claim on the basis of assessment carried during the moratorium period, which is prohibited under Section 14(1) can be pressed in the CIRP.”

8. In view of the position of law as discussed above, it was incumbent upon Liquidator to calculate the interest upto the date of payment, in accordance with the statutory provisions. Even in the absence of a specific request from the Applicant, the Liquidator was obligated to determine the correct amount payable, including interest and damages, as mandated under the Employees’ Provident Fund & Miscellaneous Provisions Act, 1952. In light of these circumstances, there are valid and compelling grounds to condone the delay in filing the appeal against the rejection of the subsequent claim.

9. Accordingly, the delay is condoned and the Liquidator is directed to decide the claim in the light of aforesaid observations.

**Sd/-**  
**SANJAY PURI**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**RAJEEV BHARDWAJ**  
**MEMBER (JUDICIAL)**