

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI, COURT-III**

CA-39-2023 & IA-4485-2023

In

(IB)-429(ND)/2019

**IN THE MATTER OF (IB)-429(ND)/2019:**

Punjab National Bank

.... Financial Creditor

Vs.

M/s. Tristar Global Infrastructure Pvt. Ltd.

.... Corporate Debtor

**AND IN THE MATTER OF CA-39/2023:**

Employees' Provident Fund Organization

.... Appellant

Vs.

Mr. Arvind Garg

.... Respondent

**AND IN THE MATTER OF IA-4485-2023:**

Employees' Provident Fund Organization

.... Applicant

Vs.

Mr. Arvind Garg

.... Respondent

**Order delivered On: 05.02.2024**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS**

**HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI**

**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the IRP : Mr. Vishal Ganda, Mr. Rahul Narula, Advs.

For the EPFO : Mr. Rajesh Kumar, Mr. Shivam Singh, Advs.

For Liquidator : Ms. Jaismeen Sharma, Adv.

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

**1. CA-39/2023**

The present Appeal has been filed under Section 42 of the Insolvency and Bankruptcy Code, 2016 seeking the following reliefs:

*i. "Set aside the impugned order dated 25.11.2022.*

*ii. Direct the Liquidator to accept the claim of the EPFO.*

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**Date of Order: 05.02.2024**

*iii. Pass such order as this Hon'ble Tribunal may deem fit and proper in the interest of justice."*

- 2.** The Employees' Provident Fund Organization, the Appellant herein has filed the present appeal under Section 42 of the Insolvency and Bankruptcy Code, 2016 against the order of the Liquidator, communicated to the Appellant vide email dated 25.11.2022, rejecting the claim filed by the Appellant on the ground that the claim was submitted after a period of 772 days from the commencement of the Liquidation process.
- 3.** The Appellant has contended that proceedings under Section 7Q and 14B of the EPFO Act were initiated against the Corporate Debtor because of delayed remittance of provident fund dues. An amount of Rs. 8,44,810/- was determined towards damages and an amount of Rs. 4,87,647/- was determined towards interest for the period 01.04.1996 to 13.03.2014 vide order dated 28.11.2014.
- 4.** The Corporate Debtor filed an appeal before the EPF Appellate Tribunal, New Delhi against the order dated 28.11.2024.
- 5.** On 19.05.2016, two orders under Section 7Q and 14B of the EPFMP Act, 1952 were passed for the period of 02/2009 to 04/2015 due to delayed remittance of provident fund dues. The Corporate Debtor filed an appeal on 07.06.2016 before the Employees Provident Fund Appellate Tribunal (EPFAT), New Delhi against the order dated 19.05.2016.
- 6.** On 28.08.2019, M/s. Tristar Global Infrastructure Ltd. was admitted to the Corporate Insolvency Resolution Process (CIRP) on an application filed by the Financial Creditor under

Section 7 of the Insolvency and Bankruptcy Code, 2016 by the Adjudicating Authority, New Delhi Bench, in CP (IB) No. 429/ND/2019.

7. It is submitted that the Corporate Debtor did not inform the EPF Appellate Tribunal regarding initiation of CIRP against the M/s. Tristar Global Infrastructure Pvt. Ltd. (the Corporate Debtor) during the pendency of the appeals before the EPF Appellate Tribunal. The Appellant came to know about the initiation of CIRP of the Corporate Debtor in November, 2022. Thereafter on 15.11.2022, the Appellant has filed its claim for an amount of Rs. 17,30,672/- in Form-B.
8. On 25.11.2022, the Liquidator, vide an email, rejected the claims, stating that the claim filed by the Appellant is time barred. The relevant extract of the email of the Liquidator rejecting the claim of the Appellant is extracted below:

*“We are in receipt of your claim dated 15.11.2022 for an amount of Rs. 17,30,672/- through a registered post on 23.11.2022 which is 772 days post commencement of the liquidation process by the Hon’ble NCLT through an order passed on 12.10.2020. Upon the order of liquidation of the corporate debtor a public announcement was made and published on 15.10.2020 calling for submission of claims from the public at large. In accordance with Section 38 of the Insolvency and Bankruptcy Code, 2016 the last date for submission of claims was 30 days from the commencement of liquidation process, which stands expired far back.*

*Thus the undersigned expresses its inability to take your claim on record after a period of 772 days post commencement of the liquidation proceedings due to*

*constraints being imposed by the provisions under the Insolvency and Bankruptcy Code, 2016.”*

9. The Respondent/Liquidator in his reply affidavit has stated that the Liquidator made a Public Announcement in Financial Express (English) & Jansatta (Hindi) Newspapers on 15.10.2020, in accordance with Section 33(1) read with Regulation 12 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, calling upon stakeholders of Corporate Debtor to submit their claims against the Corporate Debtor as on the liquidation commencement date.
10. As per Section 38 of the Insolvency and Bankruptcy Code, 2016, the last date for submission of claims was 30 days from the commencement of the liquidation process and therefore, the last day for submission of claim in the present case was 16.11.2020. However, the Appellant filed its claim on 15.11.2023 for an amount of Rs. 17,30,672/- with an inordinate delay of 772 days.
11. The Liquidator has further contended that the present appeal under Section 42 of the Insolvency and Bankruptcy Code, 2016 has been filed with a delay of 207 days from the date of receipt of the decision of the Liquidator and therefore, there is a total delay of 978 days.
12. The Respondent has submitted that the claim of the Appellant is based on the interest payable under Section 7Q of the EPFMP Act, 1952 and demerger under Section 14B of the EPFMP Act, 1952. Under Section 7Q interest is payable which

is a late payment charge and said amount does not accrue to the workers or to the employees and it is a Government due for the delays committed by the Corporate Debtor towards the employers' contribution to the provident fund and the said interest amount is in the nature of statutory due which accrues to the Central Government and therefore, the interest payable under Section 7Q would be payable in accordance with the provisions under Section 53 (1)(e)(i) of the Insolvency and Bankruptcy Code, 2016.

- 13.** It is further submitted that the penal payment for damages under Section 14B of the EPFMP Act, 1952 would also be treated as a Government due as the amount does not accrue to the workers and is payable in accordance with Section 53 (1)(e)(i) of the Insolvency and Bankruptcy Code, 2016.
- 14.** It is further submitted that the assets forming part of the Liquidation estate have been auctioned/sold to M/s. Durga Packaging vide auction conducted on 10.03.2021 and the rights underlying the avoidance provisions have been assigned/transferred to one Mr. Chandrashekhar Arya in pursuance to the order dated 29.08.2023 passed by this Adjudicating Authority.
- 15.** It is submitted that the proceeds from the sale of liquidation assets of the Corporate Debtor have been fully distributed in compliance with Section 53 of the Code and an application seeking dissolution of the Corporate Debtor has been moved by the Liquidator and is pending adjudication before this

Adjudicating Authority. The Respondent has therefore prayed for dismissal of the present Appeal.

16. We have heard the submissions of the Ld. Counsel appearing for the parties.
17. Admittedly, there is a delay of 772 days in submission of the claim. The Appellant has not given any cogent reason or explanation seeking condonation of such a huge delay in submission of the claim to the Liquidator.
18. The Insolvency and Bankruptcy Code, 2016 is a procedural Code and the process stipulated therein needs to be followed in letter and spirit. It is a settled law that once the assets of the Corporate Debtor have been liquidated as per the Provisions of the IBC, 2016, the Adjudicating Authority can't go back to look into the nittygritties involved in the Liquidation of the Corporate Debtor.
19. In view of the above analysis, we do not see any reason to condone the delay of 772 days in filing the claim. Hence, we are of the view that the Liquidator has not committed any illegality in rejecting the claim of the Appellant on the ground of delay.
20. Accordingly, the **CA-39-2023** stands **dismissed**.
21. **IA-4485-2023**
  - i. The Present Application has been filed by the Employees' Provident Fund Organization under Rule 32 of the NCLT Rules, 2016 seeking condonation of delay in filing the Appeal under Section 42 of IBC, 2016.

**ii.** We are not satisfied with the explanation given by the Applicant seeking condonation of delay. The **IA-4485-2023** is devoid of merit and **dismissed**.

Sd/-  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

Sd/-  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**