



# IBC AU-COURANT

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**Tuesday, 15<sup>th</sup> July, 2022**

**"Business opportunities are like buses, there's always another one coming."**

## ➤ **NCLT Mumbai Directs Income Tax Authority To Refund TDS To Corporate Debtor Undergoing Liquidation**

The National Company Law Tribunal ("NCLT"), Mumbai Bench, comprising of Justice P. N. Deshmukh (Retd.) (Judicial Member) and Shri Shyam Babu Gautam (Technical Member), while adjudicating an application filed in Asset Reconstruction Company (India) Ltd. v Precision Fasteners Ltd., has directed the Deputy Commissioner of Income Tax to refund the TDS charged from the Corporate Debtor when the latter was under liquidation.

### Brief Background

Asset Reconstruction Company (India) Ltd. ("Financial Creditor") had filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against Precision Fasteners Ltd. ("Corporate Debtor"), which is an auto component manufacturer. The NCLT Mumbai Bench had initiated CIRP against the Corporate Debtor and subsequently an order for liquidation was passed. Mr. Divyesh Desai was appointed as the Liquidator.

The liquidator had filed an application under Section 60(5) of the IBC against Deputy Commissioner of Income Tax, Mumbai ("Respondent"), seeking a direction to the Assessing Officer/Income-tax Department to refund Tax Deduction at Source (TDS) aggregating to Rs. 93,81,464/- to the Corporate Debtor. The TDS amount was charged from the Corporate Debtor after the order of liquidation had been passed. The dues of the statutory authorities, including the Income Tax Department, are considered operational debt under IBC and are paid as per the waterfall mechanism under Section 53 of the IBC. NCLAT has previously held that a company under liquidation has no liability to fulfill income tax obligations.

When the Respondent did not enter appearance despite several opportunities, the NCLT Bench proceeded ex-parte in the application and directed the Deputy Commissioner of Income Tax, Mumbai, to remit back the TDS amount to the Corporate Debtor.

Case Title: Asset Reconstruction Company (India) Ltd. v Precision Fasteners Ltd.,  
CP.(IB) 1339/MB/2017

Counsel For the Applicant: Mr. Pankaj Soni, Advocate

**Source: *Livelaw.in***

**Read Full news at:** <https://www.livelaw.in/news-updates/nclt-mumbai-income-tax-authority-insolvency-and-bankruptcy-code-tax-deduction-at-source-tds-corporate-debtor-203796>

## ➤ **NCLAT Chennai Rejects Claim Of PF Department For Delay Of 936 Days**

The National Company Law Appellate Tribunal ("NCLAT"), Chennai Bench, comprising of Justice M. Venugopal (Judicial Member) and Shri Kanthi Narahari (Technical Member), while adjudicating an appeal filed in The Regional Provident Fund Commissioner v Mr. Vasudevan, has dismissed a claim filed by the Provident Fund Commissioner after a delay of 936 days and held that no indulgence or latitude can be shown for a Statutory Organization, since the law applies to all. The officials must act with as much as diligent as is expected from a Litigant.

### Background Facts

M/s. Titanium Tantalum Products Limited ("Corporate Debtor") had undergone Corporate Insolvency Resolution Process ("CIRP") and subsequently an order for liquidation was passed on 12.06.2018. The Liquidator ("Respondent") had issued a public announcement that the last date for submission of claims was 14.07.2018. The Regional Provident Fund Commissioner of the Employees Provident Fund Organization ("Appellant"), which is a Government functionary, submitted its claim amounting to Rs. 3,09,88,511/- on 02.02.2021 i.e. after 936 days of delay. The Liquidator rejected the Appellant's delayed claim while stating that the liquidator had no power to condone the delay.

The Appellant had filed an application before the NCLT Chennai Bench ("Adjudicating Authority") seeking condonation of delay of 936 days in claiming the dues under Employee's Provident Funds and Miscellaneous Provision Act, 1952. The Appellant further sought a direction to the Resolution Professional/Liquidator to make provision in the Information Memorandum and corresponding Resolution Plan, if any, for the payment of Claim of Rs. 3,09,88,511/- due to the Appellant.

The Adjudicating Authority had dismissed the application vide an order dated 17.12.2021 while observing that:

"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."

Consequently, the Appellant filed an appeal before the NCLAT challenging the order dated 17.12.2021 passed by the NCLT.

#### Contentions Of The Appellant

The Appellant submitted that it had intimated the Liquidator through various correspondences and demand notices regarding the outstanding dues. When State Bank of India had issued a Notification for E-auction of the Corporate Debtor's assets, the Appellant had issued an Order under Section 8F on the Employee's Provident Funds and Miscellaneous Provision Act ("EPF & MP, Act") on 24.12.2020 and after the E-auction, the Appellant had issued an order dated 05.01.2021 under Section 8F(iv) and 8F(3) (x) of the EPF & MP Act, 1952.

It was argued that the Appellant being a Government Statutory Organization, catering the Workmen interests, the protection of the interests of Workmen of the Appellant would be in line with larger public interest and if the delay is not condoned, the Appellant would suffer an irreparable loss and hardship.

#### Contentions Of The Liquidator

The Liquidator submitted that despite several communications and reminders, the Provident Fund department filed its claim on 03.02.2021. The Appellant was not meticulous in projecting its claims all through the Liquidation period and furnished its claims lately at the fag end of Liquidation period.

Further, on perusal of the Appellant's claim the Liquidator noticed that the Provident Fund 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 Number and the Challan date, it was observed that all the challans were raised after September 2018, which is well after the Liquidation Commencement Date i.e. 12.06.2018. The Liquidator had neither uploaded the TRRN Challans nor given authorisation to anyone including the employees to do the same.

It was argued that collusion is suspected between the employees and the Provident Fund Department which fall within the provision of Section 66 of the IBC, dealing with fraudulent trading or wrongful trading. The Appellant had filed the application with intent to defraud the Corporate Debtor and to make unlawful gain which is subject to be investigated by the Tribunal.

#### Decision Of The NCLAT

##### Aspect of Delay

The NCLAT Bench observed that in cases where delay has occurred due to inaction, laches, bad faith or negligence of the litigant, a Tribunal or Court of Law would be reluctant to condone the delay.

"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 is 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."

While observing that no sufficient cause can be made out for delay, the Bench held that "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 Din123 I C 83."

#### Appeal Against Liquidator's Decision

The Bench opined that speed is the essence of IBC and time wasted or lost cannot be regained. The process of Liquidation is time bound, to be completed within one year in the teeth of IBC. "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'."

The Bench declined to condone the delay and dismissed the appeal.

Case Title: The Regional Provident Fund Commissioner v Mr. Vasudevan, Company Appeal (AT) (CH) (INS) No. 182 of 2022

Counsel For Appellant: Mr. R. Vishnu, Advocate

Counsel For Respondent: Mr. K. Moorthy, Advocate

**Source:** *Livelaw.in*

**Read Full news at:** <https://www.livelaw.in/news-updates/nclat-chennai-provident-fund-commissioner-corporate-insolvency-resolution-process-cirp-nclt-203797>

