



**IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH**

*[Through Physical hearing/ VC Mode (Hybrid)]*

**ITEM No.08**  
**I.A.Nos.428/2024 & 239/2025 in**  
**C.P.(IB) No.122/BB/2017**

**IN THE MATTER OF:**

M/s. New Age Real Properties, LLP ... Petitioner  
Vs.  
M/s. Bhuvana Infra Projects Pvt. Ltd. ... Respondent

**Petition under Section 7 of I & B Code, 2016**

**Order delivered on: 04.09.2025**

**CORAM:**

**SHRI SUNIL KUMAR AGGARWAL**  
**HON'BLE MEMBER (JUDICIAL)**

**SHRI RADHAKRISHNA SREEPADA**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Liquidator : Ms. Raina Birla

**ORDER**

**I.A.No.428/2024 is disposed of** vide separate Order with directions that the proposal of OEDPL shall be taken by the Stakeholders Committee instead of a decision being taken by this Authority. It is expected that the SCC will take an appropriate decision in the matter expeditiously, either by accepting one of the proposed options or by suggesting a better alternative for recovery of dues of the Corporate Debtor.

**I.A.No.239/2025 is allowed** vide separate Order.

**C.P.(IB) No.122/BB/2017:** List the case on **27.10.2025.**

**-Sd-**  
**RADHAKRISHNA SREEPADA**  
**MEMBER (TECHNICAL)**

**-Sd-**  
**SUNIL KUMAR AGGARWAL**  
**MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH**

*(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)*

**I.A. 239/BB/2025 in C.P. (IB) No.122/BB/2017**

**Under Section 60 (5) of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016**

**IN THE MATTER OF:**

**The Income Tax Officer (TDS), Ward-1(1),**

No. 59, Room No. 408, 4th Floor,

HMT Bhavan, Ganga Nagar,

Bellary Road, Bengaluru-560032

**...Applicant**

**VERSUS**

**1. M/s Bhuvana Infra Projects Private Limited (Under CIRP),**

218, Koramangala, 19th Main,

6th Block, Bangalore-560095

**...Respondent No.1**

**2. Vijay Pitamber Lulla, Resolution Professional,**

201, Satchitanand Building,

12th Road, Khar West,

Mumbai-400052

**...Respondent No.2**

**In the matter of:**

**New Age Real Properties LLP**

**...Financial Creditor**

**VERSUS**

**Bhuvana Infra Projects Private Limited (In Liquidation)**

**...Corporate Debtor**

**Order Delivered on: 04.09.2025**

**Coram:** 1. Hon'ble Shri Sunil Kumar Aggarwal, Member (Judicial)

2. Hon'ble Shri Radhakrishna Sreepada, Member (Technical)

**O R D E R**

1. The Application has been filed for the following reliefs:

- (a) To give direction to the Liquidator (Respondent No. 2) to clear the claim of Rs. 59,43,080/- TDS dues as it is public money which has been held by the company (Respondent No. 1) and further direction may be given to make the payment in the Govt. Account immediately because it does not come under the purview of the IBC.*
- (b) Set aside the impugned order dated 11.11.2023 passed by the 2nd Respondent rejecting the claim of the Applicant in respect of the updated claim filed by the Applicant.*
- (c) **Condone the delay of 1,423 days from 10.12.2019 to 07.11.2023** in submission of the updated claim by the Applicant before the 2nd respondent in the CIRP proceedings of the 1st Respondent;*
- (d) Consequently, direct the 2nd respondent to verify, admit and process the claim of the Applicant dated 07.11.2023 in accordance with the provisions of the Insolvency and Bankruptcy code,2016 and regulations framed there under in the CIRP proceedings of the 1st Respondent; and*
- (e) Pass such other or further orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case, in the interest of justice and equity.*

2. Brief facts germane to the application are as follows:

- a) M/s Bhuvana Infra Projects Private Limited (“Corporate Debtor”) is currently undergoing liquidation pursuant to the order dated 10.12.2019, with Mr. Vijay Pitamber Lulla appointed as Liquidator under the provisions of the IBC.
- b) Prior to the commencement of liquidation, a TDS survey was conducted by the Income Tax Department on 17.11.2016, which indicated that certain amounts deducted as TDS by the Corporate Debtor during the period 01.01.2016 to 17.11.2016 had not been remitted to the Government, and additional statutory dues were identified based on TRACES demands and subsequent proceedings under the Income Tax Act, 1961.
- c) Orders under sections 201(1) and 201(1A) of the Income Tax Act, 1961 were passed for relevant financial years, resulting in aggregate outstanding demands. The Income Tax Department, treating itself as an operational creditor, submitted its initial claim before the Liquidator, which was admitted. Following further proceedings and assessment, the Department submitted updated claims, the latest of which was filed in November 2023.
- d) The Liquidator declined to accept the updated claim citing the passage of over four years since the commencement of liquidation and procedural constraints regarding submission of claims. The Department asserts that various factors,

including pandemic-related disruptions and lack of communication, contributed to the timing of the updated submission.

- e) Consequently, the Department has filed the present application, seeking condonation of delay and appropriate directions for consideration of its updated claim by the Liquidator.
3. The Applicant stated that the delay in filing the updated claim before the Liquidator had occurred due to circumstances beyond its control, including disruptions caused by the Covid-19 pandemic and the absence of formal communication regarding the status of the liquidation process. The Applicant maintained that the delay was not deliberate or attributable to any negligence, and requested that the same be condoned in the interest of justice and fairness.
  4. The Applicant further contended that its claim pertained to statutory TDS deductions, which represented public money required to be held in trust for the Government under the Income Tax Act, 1961. The Applicant argued that such amounts did not form part of the Corporate Debtor's assets available for liquidation, as they were excluded from the liquidation estate by virtue of Section 36(4)(a)(i) of the IBC.
  5. In support, the Applicant cited earlier decisions of tribunals where delays on the part of statutory authorities in submitting claims during insolvency proceedings had been condoned. The Applicant submitted that no prejudice would be caused to other stakeholders if the updated claim was admitted and processed, particularly since the liquidation process continues to be pending and has not yet concluded.
  6. The Applicant asserted that rejection of its claim solely on the ground of delay would cause irreparable injury to a statutory authority and undermine the objectives of the insolvency framework, which recognizes the importance of statutory dues. Accordingly, the Applicant prayed that the delay in submission of the claim be condoned, the impugned order of the Liquidator refusing the updated claim be set aside, and necessary directions be issued for the verification, admission, and payment of the statutory TDS dues in accordance with law.

**Reply by Respondent No. 2**

7. Respondent No. 2, the Liquidator, generally denied all allegations, contentions, and statements in the Application that were inconsistent with the facts. The Respondent did not admit the veracity or correctness of the Applicant's claims for lack of specific traverse, and reserved the right to file a detailed reply, if required.
8. The Respondent submitted that the liquidation of the Corporate Debtor was at an advanced stage, with substantial distributions already made to various stakeholders. The Applicant's revised claim was filed over four years after the commencement of liquidation and after the initial claim had already been admitted. Such belated submission undermined the time-bound process mandated by the IBC.
9. It was argued that the Applicant originally filed its claim as an Operational Creditor, and this claim was verified and admitted by the Liquidator in accordance with the status designated by the Applicant. The subsequent attempt to revise and reclassify the claim after four years is impermissible, since the Liquidator had no authority under the IBC to alter or reclassify admitted claims beyond the claimant's original submission.
10. The Respondent submitted that, under Section 53 of the IBC, Operational Creditors do not enjoy priority over Secured Creditors or other categories in the waterfall mechanism for distribution of assets. The Applicant's request for preferential or priority treatment for its claim was therefore not tenable under the statutory framework.
11. Respondent No.2 contended that the Applicant failed to produce evidence demonstrating that the outstanding TDS amounts had not already been recovered by the Income Tax Department from the deductees. The prevailing practice of the Department is to recover such dues against the respective parties whose tax credits do not reflect the unpaid TDS, and it was likely that recovery had already taken place. No supporting documentation was submitted by the Applicant to refute this.
12. Upon review of the documents, the Respondent submitted that only Rs. 63.55 lakhs and Rs. 32.93 lakhs were reflected as balance TDS not deposited as per departmental

calculations, rather than the entire amount claimed by the Applicant. Total payable amounts for relevant financial years were derived from calculations and not the higher sum sought by the Applicant.

13. The Respondent relied on judicial precedents, including *LML Limited v/s Commissioner of Income Tax (NCLT)* and *Leo Edibles & Fats Limited v/s Income Tax Department*, wherein it was held that Section 178 of the Income Tax Act, 1961 is excluded in liquidations under IBC, and therefore the Tax Department cannot claim statutory priority in respect of dues. Reference was also made to cases involving Employee Provident Fund dues, clarifying the treatment of government dues under Section 53 of IBC.
14. The Respondent argued that claims for interest liability must be computed only up to the date of commencement of liquidation. The Applicant's calculation extended till June 2023, which was not admissible and had been previously communicated to the Applicant.
15. The Respondent submitted that no documentary evidence had been provided by the Applicant regarding unpaid amounts or to justify calculation of interest beyond the relevant date. The Application was stated to be belated, lacking bona fide intent, and capable of disturbing the finality of the ongoing liquidation process.
16. The Respondent No. 2 prayed that the Applicant's request for priority treatment or special status for its claim be dismissed in its entirety as not maintainable in fact or law, unsupported by evidence, and inconsistent with the statutory provisions and judicial precedent under the IBC.
17. The application raises the issue of unremitted TDS dues deducted by the Corporate Debtor prior to commencement of liquidation, as reflected in assessments and TRACES records, and whether such sums can now be considered by the Liquidator in view of the updated claim filed belatedly by the Applicant. It is further apparent that the Applicant has filed an updated claim for Rs. 59,43,080/- after a delay of 1,423

days, which was rejected by the Liquidator primarily on the grounds of delay and the advanced stage of liquidation.

18. Having heard the learned counsel from both sides and on perusal of the pleadings, case record, and documentary evidence, the Tribunal is called upon to determine (i) whether the updated claim of the Income Tax Department for unpaid TDS can be admitted at this stage of liquidation, and (ii) whether condonation of delay is warranted in the unique statutory context of the case.
19. We note a fundamental distinction between those authorities and the facts of the present case. *S. Kumars Nationwide Ltd. v. Chief Commissioner of Income Tax (TDS)* and related decisions primarily concern situations where TDS is deducted or demanded after commencement of liquidation (i.e., relating to transactions or sales occurring during liquidation), and not in respect of TDS liabilities which arose and became payable before the liquidation commencement date. Here, the obligation to deduct and remit TDS crystallized in the ordinary course of the Corporate Debtor's operations prior to liquidation and those sums were, in law, required to be held in trust for the government.
20. Section 36(4)(a)(i) of the IBC expressly excludes from the liquidation estate "assets held in trust for any third party." It is well-established that where a specific statutory trust is created such as with unremitted TDS deducted from payments to third parties prior to liquidation the company acts as a trustee for the government and not as beneficial owner of those funds. The NCLT has held that property clearly impressed with trust including, where proven, statutory TDS trust money must be excluded from the assets available for general distribution among creditors.
21. Judicial reasoning, including *The Official Liquidator, High Court, Madras v. N. Chandranarayanan* (Madras HC, 1972) and NCLT Hyderabad IA 350/2021 in CP (IB) No. 294/7/HDB/2017, reaffirms that property held under a fiduciary arrangement on statutory or contractual grounds will not be part of the liquidation estate. In *The Official Liquidator, High Court, Madras v. N. Chandranarayanan (1972 SCC Online Mad 158)*, the Madras High Court held:

*“It is held therein that it is settled law that where a fiduciary relationship is established between the company and a third party and moneys are paid by the third party to the company in a situation in which the company occupies a fiduciary relationship, with an obligation to either use the money for a specified purpose or to retain and keep it with the company to meet certain contingencies, the said sum would be impressed with a fiduciary character and would not form part of the general assets of the company. Property thus held by an insolvent company in a fiduciary capacity, burdened with certain fiduciary obligations, is treated as property held in trust for the purposes of the insolvency laws and property held for a specific purpose. Such property or money held for a specific purpose is by law treated as clothed with a species of trust governed by the same principles and rules which apply to property held in express trust.”*

Similarly, in NCLT Hyderabad IA 350/2021 in CP (IB) No. 294/7/HDB/2017 (decided on 03.04.2024), the Tribunal observed:

*"In view of section 36(4)(a) IBC, the trust is created when assets owned by a third party is in possession of the Corporate Debtor and this definition is further enlarged by including that assets held in trust for the third party is also 'trust' for the transactions under the IBC... Property thus held by an insolvent company in a fiduciary capacity, burdened with certain fiduciary obligations, is treated as property held in trust for the purposes of the insolvency laws."*

22. In the present case, the Income Tax Department has established that, prior to commencement of liquidation, the Corporate Debtor deducted but did not remit TDS amounts, which by operation of law were held in a fiduciary capacity for the Government. Accordingly, such sums must be excluded from the Corporate Debtor's liquidation estate under Section 36(4)(a)(i) of the IBC and remitted directly to the Government, subject to verification.
23. With regard to delay, the Tribunal is satisfied that the Applicant, a statutory authority tasked with assessment and recovery of tax, has shown sufficient cause for not filing the fully updated claim within time, having regard to the pandemic, the complexity of

quantification, and the ongoing supervision of the liquidation process. The interests of justice therefore require that the updated claim be adjudicated on its statutory merits.

24. At the same time, for any other tax/government dues or for additional liabilities relating to periods after commencement of liquidation, no deviation can be allowed from the priorities and distribution prescribed under Section 53 of the IBC.

25. Accordingly, the following directions are issued:

- a. The delay in submission of the updated claim dated 07.11.2023 is condoned.
- b. The impugned order dated 11.11.2023 rejecting the updated claim is set aside.
- c. The Liquidator is directed to verify, by cross-reference to TRACES/26AS and statutory records, the precise quantum of TDS amounts deducted but not remitted prior to commencement of liquidation (together with any legally admissible interest up to that date), and to treat such sums as excluded trust property under Section 36(4)(a)(i) of the IBC to be paid directly to the Income Tax Department.
- d. Any other amounts admitted as government/operational dues which do not qualify in the above category shall be distributed in accordance with Section 53 of the IBC, along with other similar claims, and without any preferential treatment.

26. The **application is partly allowed** to the extent indicated above.

**-Sd-**

**(RADHAKRISHNA SREEPADA)**  
**MEMBER (TECHNICAL)**

**-Sd-**

**(SUNIL KUMAR AGGARWAL)**  
**MEMBER (JUDICIAL)**