



**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**IA No.829/2020  
In  
CP (IB) No.515/Chd/Chd/2019  
(admitted)**

**Under Section 60(5) of the  
Insolvency & Bankruptcy  
Code, 2016**

**In the matter of:**

Parivartan Investment and Finance Company  
....Petitioner-Financial Creditor

Versus

Haryana Telecom limited  
....Respondent-Corporate Debtor

And in the matter of:

**IA No.829/2020**

**State of Haryana**

**through Additional Chief Secretary, Department of Industries**

having its registered office at  
30 Bays Building, 1st Floor, Sector-17C,  
Chandigarh

....Applicant

Vs.

**Sanyam Goel, Resolution Professional**

**Haryana Telecom Limited**

registered office at  
Unit No. 110, First Floor,  
JMD Pacific Square, Sector 15,  
Part II, Gurugram, Haryana-122001

...Respondent

**Order delivered on: 22.03.2023**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

IA No.829/2020  
In  
CP (IB) No.515/Chd/Chd/2019  
(admitted)



**Present**

For the Applicant : Mr. Vishal Garg, Advocate  
For the Respondent : Mr. Abhishek Anand, Advocate  
Mr. Viren Sharma, Advocate

**Per: Subrata Kumar Dash, Member (Technical)**

**ORDER**

**IA No. 829/2020**

In the instant matter, the applicant is seeking direction against the Interim Resolution Professional to treat the claim of the applicant as a financial creditor which has been inadvertently submitted as an operational creditor. Further, seeking direction that the respondent be restrained from finalizing the Resolution Plan and the order dated 21.10.2020 passed by the IRP-respondent be set aside.

2. The proceedings under IBC were initiated against the corporate debtor vide order dated 07.02.2020. It is stated that the State of Haryana had brought a policy in the year 1995 where the state of Government provided an interest-free loan to the extent of sales tax of an industrial unit which was recoverable after a period of five years. As per the policy, for industrial units which were eligible and entitled to the benefit, the amount of their sales tax liability was converted into an interest-free loan for 5 years. Further, out of the sanctioned amount of Rs. 18,68,12,656/-, the corporate debtor repaid only an amount of Rs. 38,59,556/-. However, the principal amount of Rs.



18,29,53,100/- along with interest, i.e., total amounting to Rs. 77,00,72,426/- as on 08.06.2020, is still recoverable from the corporate debtor.

3. It is submitted that the applicant inadvertently submitted its claim in Form B, which is meant for operational creditors, whereas, being a financial creditor, the applicant was required to submit its claim in Form C. The applicant immediately, vide letter dated 22.09.2020, submitted the corrected claim in Form C along with the documents. The respondent, vide order dated 21.10.2020, rejected the claim of the applicant on the ground that there is no disbursement of the amount hence, there is no financial debt. Therefore, the applicant cannot be treated as a financial creditor.

4. It is submitted by the applicant that in the present case, initially, the liability was of tax which was converted into a loan. Further, the respondent has ignored the fact that a charge was created by the corporate debtor in favour of the Governor of Haryana through GM District Industries Rohtak on 14.03.1997. Further, the corporate debtor has treated this amount to be a loan in its books as it has been noted by the IRP in the impugned order dated 21.10.2020 at Para 7 & 8 as under :

*"We understand that the Corporate Debtor was eligible for sales tax exemption/ deferment and hence, applied for and was granted benefit under the Scheme for conversion of its deferred sales tax liability into loan. On 15 May 1995, the Corporate Debtor; through a memorandum, created a second charge pari-passu on its fixed assets for conversion of deferred amount of sales tax of INR 31,03,65,000. Pursuant to such memorandum, on 12 May 1998, the Corporate Debtor availed the benefits of the Scheme and entered into a mortgage deed with the Governor of Haryana*



*through the General Manager, District Industries Centre, Rohtak. By way of the mortgage deed, the Corporate Debtor sought the grant of loan by way of conversion of deferred amount of sales tax into interest free loan amounting to IN 15,66,55,694, as accrued till 31 March 1998. The mortgage deed also stipulated that in case of Corporate Debtor's failure to observe the conditions of such grant of interest free loan, the Corporate Debtor would be liable to pay interest at the rate of 18% per annum.*

*8. We understand that to the loan availed of IN 15,66,55,694, further sanctions of INR 2,01,56,962 and IN 1,00,00,000 was also made in 1999, thus computing to a total loan amount of INR 18,68,12,656. We further understand that no payment has been made by the Corporate Debtor in relation to the repayment of the loan and thus interest at the rate of 18% per annum is being charged on the loan amount on account of the default and delay in payment. Therefore, as on 20 February 2020, the amount payable by the Corporate Debtor to the Department stands at INR 77,00,72,426.”*

5. The applicant relied on the judgment of the Hon'ble Supreme Court in the matter of **State Tax Officer vs Rainbow Papers**, wherein it is held that the Government or the Government Authority can be a secured creditor. The applicant further relied on the judgment of the Hon'ble Supreme Court in the matter of **Operator Marketing Private Limited vs. M/S Samtex Desinz Private Limited** (CA No.2231 of 2021, decided on 26.07.2021). The relevant portion of the above judgment is reproduced herein below.



*"31. At the cost of repetition, it is reiterated that the trigger for initiation of the corporate Insolvency resolution process by a Financial Creditor under Section 7 of the IBC is the occurrence of a default by the Corporate debtor. 'Default' means nonpayment of debt in whole or part when the debt has become due and payable and debt means a liability or obligation in respect of a claim which is due from any person and includes financial debt and operational debt. The definition of 'debt' is also expansive, and the same includes inter alia financial debt. The definition of 'financial debt' in Section 5(8) of IBC does not expressly exclude an interest-free loan. 'Financial debt' would have to be construed to include interest-free loans advanced to finance the business operations of a corporate body."*

6. The respondent-Resolution Professional has filed its reply vide Diary No. 01923/01 dated 25.11.2021, wherein it is stated that the claim of the applicant in prescribed Form B dated 21.05.2020 against the corporate debtor was fully admitted by the respondent. Further, the applicant attended all the meetings of the CoC in the capacity of the operational creditor. Subsequently, in the 7th CoC meeting, the objection was raised by the applicant that the applicant is not an operational creditor but is actually a financial creditor after the expiry of 227 days from the commencement of CIRP.

7. It is submitted by the respondent-Resolution Professional that, as per the legal opinion dated 09.10.2020, the applicant is considered an operational creditor. There is no provision under the Code which allows a claimant/creditor to subsequently file another claim to change the nature of the claim from the operational creditor to the financial creditor of the corporate debtor. Further, the claim of the applicant falls within the definition of operational debt as



provided under Section 5 (21) of the Code. It is stated that the applicant has failed to place on record the necessary documents or prove that the applicant has “disbursed” debt to the corporate debtor against the consideration for the time value of money.

8. The respondent-Resolution Professional has not disputed the fact that the debt in question was interest-free. In this context, the Resolution Professional has relied on the judgment of the Hon’ble Supreme court in the matter of **Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited Etc.** in Civil Appeal Nos. 8512-8527/2019 and the decision of the Hon’ble NCLAT in the matter of **Nikhil Mehta and Sons (HUF) vs AMR Infrastructure Ltd.-Company Appeal (AT) (Insolvency) No. 07 of 2017.**

9. It is averred by the respondent-Resolution Professional that statutory dues owed by the corporate debtor to the Central/State government/Local Authority, who are entitled to dues out of existing law, are covered within the meaning of Section 5(20) of the Code as an operational creditor. In this connection, the Resolution Professional has relied on the judgment of the Hon’ble Supreme Court in the matter of **Ghanshyam Mishra and Sons Private Limited through Authorised Signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors.** in Civil Appeal No. 8129 of 2019 and on the decision of the Hon’ble NCLAT in the matter of **Pr. Director General of Income Tax (Admn. & TPS) Vs. M/s. Synergies Dooray Automotive Ltd. & Ors.** in Company Appeal (AT) (Insolvency) No. 205/2017 and Pinaki Shah-Liquidator of M/s. Brew Berry



Hospitalities Pvt. Ltd. vs The Assistant Commissioner of Income Tax in Company Appeal (AT) (Insolvency) No. 32 of 2021.

10. We have heard the learned counsels for the parties and perused the available record carefully.

11. For a proper appreciation of the issue, a reference is made to the definitions of Sections 5(7) & 5(8) of the Code as below:

(7) “**financial creditor**” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

(8) “**financial debt**” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

(a) money borrowed against the payment of interest;

(b) ...

12. It is noted that a charge was created by the corporate debtor by way of the mortgage deed in favour of the Governor of Haryana through GM District Industries Rohtak on 14.03.1997. Further, in the context of statutory dues, the relevant paragraphs from the decision of the Hon’ble Apex Court in the case of **State Tax Officer Vs. Rainbow Papers Limited (Supra)** is extracted below:

*28. The learned Solicitor General of India submitted that a reading of Sections 3(30) and 3(31) of the IBC makes it clear that the finding of the NCLAT that the State is not a secured creditor is erroneous and contrary to the clear definition of secured creditor under the IBC.*



36. Referring to Section 30(2) of the IBC, the learned ASG argued that the afore-mentioned provision mandates the RP to ensure that the Resolution Plan conforms to the parameters/requirements laid down in the said provision. It was the duty of the Resolution Professional to examine, ensure and verify that the resolution plan conformed to the parameters/requirements laid down under Section 30(2) of the IBC. Further, Section 29 of the IBC casts a statutory duty and/or obligation on the Resolution Professional to prepare the information memo after following the procedure laid down in the Court.

53. In other words, if a company is unable to pay its debts, which should include its statutory dues to the Government and/or other authorities and there is no plan which contemplates dissipation of those debts in a phased manner, uniform proportional reduction, the company would necessarily have to be liquidated and its assets sold and distributed in the manner stipulated in Section 53 of the IBC.

54. In our considered view, the Committee of Creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owed to any Government or Governmental Authority or for that matter, any other dues.

55. In our considered view, the NCLAT clearly erred in its observation that Section 53 of the IBC over-rides Section 48 of the GVAT Act. Section 53 of the IBC begins with a non-obstante clause which reads :- “Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority.....”



57. As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) of the IBC defines secured creditor to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of secured creditor in the IBC does not exclude any Government or Governmental Authority

13. In the present case, the amount of debt of Rs.18,68,12,656/- along with the interest at the rate of 18% per annum is being charged on the loan amount is never in question, and neither is the fact that this amount is due to the Government. The issue of the creation of mortgages in favour of the Government of Haryana is also nor in dispute. Hence, the Resolution Professional is directed to treat this claim under section 53(1)(b)(ii) at par with the debts owed to a secured creditor, ranking equally with other specified debts in compliance of the ratios in the case of Rainbow Papers Limited (supra).

14. For a proper appreciation of the nature of the claim made by the applicant to be treated under the category of Financial Creditor, the relevant paragraph from the communication from the Resolution Professional with the Department of Haryana dated 20.10.2020 is extracted below for the sake of clarity:

“Under the provisions of the Haryana General Sales Tax Act, 1973 (“Sales Tax Act”) and the Haryana General Sales Tax Rules, 1975 (“Sales Tax Rules”), the State Government could frame policies for providing incentives to industries in respect of exemption/deferment from payment of tax;



3. Pursuant thereto, the Excise and Taxation Department of the Haryana Government provided incentives to the eligible industrial units by way of sales tax exemption/ deferment in payment of sales tax for a period of 5 years. The procedure for claiming sales tax exemption/ deferment was laid down in the State Government, Excise and Taxation Department Notification No. GSR46/H.A.20/73/S-64/89, dated 17 May 1989.

4. Under the provisions of Section 43-B of the Income Tax Act, 1961, the deferred sales tax was being considered as income of the assessee for the purpose of computing his income tax liability. Hence with a view to give relief to the industries which were already entitled to get the benefit of deferment of payment of sale tax, in 1992, the State of Haryana (Industries Department) notified a scheme for conversion of deferred sales tax into interest free loan ("Scheme").

5. With the framing of the Scheme, entire amount of deferment of tax was converted into interest free loan to be advanced by the Industries Department to the eligible industrial units. which in turn was to be transferred to the Excise & Taxation Department. There was no cash transaction. As a consequence, the industrial units were able to claim deduction under the Income Tax Act, 1961

6. The Scheme provided for eligibility, procedure for claiming benefit, repayment of loan and power of attorney in case of default. Clause 2 of the Scheme defines eligibility. Only the units in whose favour eligibility certificate had been issued by the Industries Department and entitlement certificate had been issued by the concerned Deputy Excise & Taxation Commissioner, were eligible to avail the benefit of the Scheme. Clause 3 provides for procedure for applying for interest free loan. Clause 4 provided that interest free loan granted in lieu of deferred amount of sales tax was to be recoverable after a period of five years. Clause 7 of



*the Scheme provided for powers to the General Manager of the District Industries Centre to recover the loan as arrears of land revenue, in case there is any default. In that eventuality, interest/penalty was also chargeable as provided for under the Sales Tax Act and the Sales Tax Rules.*

*7. We understand that the Corporate Debtor was eligible for sales tax exemption/ deferment and hence, applied for and was granted benefit under the Scheme for conversion of its deferred Sales tax liability into loan. On 15 May 1995, the Corporate Debtor, through a memorandum, created a second charge pari-passu on its fixed assets for conversion of deferred amounting, Sales tax of INR 31,03,65,000. Pursuant to such memorandum, on 12 May 1998, the Corporate Debt availed the benefits of the Scheme and entered into a mortgage deed with the Governor of Haryana through the General Manager, District Industries Centre, Rohtak. By way of the mortgage deed, the corporate debtor sought the grant of loan by way of conversion of deferred amount of sales tax into interest free loan amounting to INR 15,66,55,694/- as accrued till 31 March 1998. The mortgage deed also stipulated that in case of corporate debtor's failure to observe the conditions of such grant of interest free loan, the corporate debtor would be liable to pay interest at the rate of 18% per annum."*

15. As is apparent from the aforementioned descriptions, this policy converts deferred sales tax into an interest-free loan of the State of Haryana, was meant to promote industries in the state and did not lay down any provision for charging of interest. Only in the case of ineligible industries the provision for a payout of interest is provided, and it did not apply to all the beneficiaries of the Scheme. It is, thus, clear that there is no consideration of time value for



money in these transactions as the payment of interest is not an integral part of the Scheme.

16. We also note that the respondent-Resolution Professional, in an affidavit dated 10.02.2020 filed in IA No. 823/2022, dealing with the approval of the Resolution Plan, has admitted in Para 4 of the affidavit that the claim of the Department of Industries and Commerce, Rohtak, i.e. the applicant is amounting to Rs. 77,00,72,426/- and has further stated in para 10 that the Resolution Plan submitted by the Resolution Applicant be remanded back to the CoC of the corporate debtor for considering the distribution under the Resolution Plan in terms of the current judgment passed by the Hon'ble Supreme Court in the matter of **State Tax Officer (1) vs. Rainbow Papers Limited**, Civil Appeal No. 1661 of 2020.

17. In this context, a reference may be made to the decision of the Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and Sons Private Limited through Authorised Signatory(Supra)** held that dues payable to Government Authorities would come within the ambit of operational debt. Therefore, we are not inclined to accept the aforesaid contention of the applicant. Hence, the applicant's debt falls within the category of operational debt as defined under Section 5(21) of the Code.

18. In the result, we are of the view that though the debt is payable to the Government Authorities, it is not a financial debt. To reiterate, the amounts payable to the applicant are an operational debt and to be treated at par with debts owed to a secured creditor under Section 53 as per the decision of the



Hon'ble Supreme Court in the matter of ***State Tax Officer (1) vs. Rainbow Papers (Supra)***.

19. In the result, this application, i.e. IA No. 829/2020, is partly allowed with the aforesaid direction and disposed of accordingly.

Sd/-  
**(Subrata Kumar Dash)**  
**Member (Technical)**

Sd/-  
**(Harnam Singh Thakur)**  
**Member (Judicial)**

March 22, 2023

PB/ASH