

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

**IA No.43/2022
Under Section
60(5) of the IBC, 2016
in
CP (IB) No.135/Chd/Hry/2018
(Admitted)**

In the matter of:

Bank of India	Petitioner-Financial Creditor
Versus	
M/s Anand Tex India Pvt.	Respondent-Corporate Debtor

And in the matter of:-

<u>IA No.43/2022</u> Haryana through Excise and Taxation Officer, Ward 05, Plot No.179, Sector-25, Part-II, HUDA, Panipat Haryana.	Excise and Taxation Commissioner, ...Applicant/Operational Creditor
Vs.	

**Mr. Anup Sood Resolution Profesional (for M/s Anand Tex
India Pvt. Ltd)**
R/o Flat No.185, Block-H, 5th Floor,
Spangle Condos, Old Ambala Road, Gazipur, Tehsil Dera
Bassi, Mohali, Sahibzada Ajit Singh nagar, Punjab
140603

...Respondent

Order delivered on: 21.09.2022

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

Present through video-conferencing:

For the Applicant/Operational Creditor : Mr. Piyush Bansal, Advocate

For the Respondent	: Mr. Harsh Garg and Mr. Pulkit Goyal, Advocates
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Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA No.43/2022

The instant application has been filed by Excise and Taxation Officer, Panipat Haryana, under Section 60(5)(b) of the IBC, 2016 read with Rule 11 of National Company Law Tribunal, 2016, seeking acceptance of claim regarding statutory dues of the department by the Resolution Professional.

2. It is stated that a petition in the present matter petition was filed against the M/s Anand Tex India Private Limited under Section 7 of the “Code” for initiating the Corporate Insolvency Resolution Process. The Company Petition i.e., CP (IB) No.135/Chd/Hry/2018 was admitted by this Adjudicating authority vide order dated 29.11.2019. In view of the admission, the Interim Resolution Professional issued a public announcement as per Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016 read with Section 15 of the IBC, 2016 in Form-A as prescribed under the Schedule. The CIRP of the Corporate debtor was conducted by the Resolution Professional. During the 12th meeting of the CoC dated 14.05.2021, the sole financial creditor, i.e, Bank of India, being the only member of CoC, had approved the resolution plan with 100% voting share.

3. The brief facts as stated by the applicant are as follows:-

3.1. It is submitted that the applicant is a statutory authority and Government department which is responsible for the collection of revenue and

taxes applicable under VAT and GST Act, and the Corporate Debtor was an assessee of the applicant under the VAT Act and was liable to deposit the tax as per the law for the transaction done during the particular financial year.

3.2. The corporate debtor is the assessee of the applicant department under the Haryana Value Added Tax Act, 2003 and the case of the corporate debtor for the assessment year 2017-18 (1st quarter 2017-18) was taken into scrutiny under Rule 27 of Haryana Value Added Tax Act, 2003. The statutory notice in Form-N-2 was issued and served upon the corporate debtor on 07.11.2019 under Section 15(2) of the HVAT, Act 2003 and the case was taken up for disposal on 28.03.2021. The applicant has raised the demand of Rs.3461630 vide assessment order for A.Y. 2017-18 dated 28.03.2021

3.3. The applicant has served that assessment order along with notice of demand upon the corporate debtor on 19.05.2021. Subsequently, the applicant received a letter dated 07.06.2021 from Resolution Professional that the corporate debtor has been under CIRP since 29.11.2019. Thereafter, the applicant took the necessary steps and filed the claim as performa-B under Regulation 7 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016, on 07.06.2021 with the Resolution Professional along with supporting documents. In response to the above claim, the resolution professional informed the applicant vide email dated 08.06.2021 that the resolution plan has been approved by the CoC on 14.05.2021. Therefore, the Resolution Professional is unable to accept the claim of the applicant department.

4. The respondent-Resolution Professional, has filed its reply vide diary No.01548/01 dated 04.03.2022, whereby it has been stated by the Resolution

Professional that the Resolution Plan has already been approved by CoC in its 12th Meeting dated 14.05.2021. It is further submitted that the claim was filed by the applicant on 07.06.2021 i.e., after a delay of 464 days from the end date of submission of claim, i.e. 28.02.2020. The claim was filed subsequent to the approval of the plan by CoC. On the grounds of delay, the claim of the applicant was rejected by the respondent vide letter dated 08.06.2022.

5. After going through the written submissions made by learned counsel for the applicant and respondent and perusal of the records, it may be noted that the present application of claim filed by the applicant is beyond the time period specified in the public announcement and the extended time period of 90 days included in Regulation 12 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016. The claim was filed by the applicant on 07.06.2021 i.e., after a delay of 464 days from the end date for submission of claim i.e. 28.02.2020 and subsequently, rejected by the Resolution Professional. Furthermore, in the present matter the Resolution Professional has filed an application on 31.05.2021 for approval of the resolution plan.

6. In the present case, the claim for payment of statutory dues was filed before the Resolution Professional after the plan was approved by the CoC. In this context, we may profitably quote the Para 95 from the Judgment of '**Ghanshyam Mishra**', where the Hon'ble Supreme Court dealt with various questions and answered the same as under:

"95. In the result, we answer the questions framed by us as under:

(i) That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members,

creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.”

7. We note that on similar facts, the Hon’ble NCLAT in **Axis Bank Ltd. Vs. Shubhkamna Buildtech Pvt. Ltd. & Anr. – NCLAT New Delhi (2022) ibclaw.in 640 NCLAT** has placed reliance on the decision of the Hon’ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Ors : 2019 SCC Online SC 1478**, which held:

“107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority / Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution Applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the

corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count”.

8. Before parting with this order, we may take note of the recent Judgement of the Hon'ble Supreme Court in **State Tax Officer (1) Vs. Rainbow Papers Limited in Civil Appeal No. 1661 of 2020 with Civil Appeal No.2568 of 2020 order dated case Citation: (2022) ibclaw.in 107 SC**, wherein it is held that the definition of a secured creditor in the IBC does not exclude any Government or Governmental Authority. However, in this case, it is nowhere pleaded or argued that the claimant has any secured interest. Thus, the claim under dispute is that of an Operational-Creditor, not that of a secured creditor as defined under section 3(30) read with section 3(31) of the IB Code. Therefore, the ratio in the above-mentioned case is not applicable to this case.

9. In view of the above, we hold that the applicant has failed to show due diligence in submitting the claim before the Resolution Professional. We, therefore, cannot accede to the request for issuing direction for the acceptance of the claim regarding statutory dues by the Resolution Professional.

10. Consequently, IA No.43/2022 is dismissed and accordingly disposed of.

Sd/-

(Subrata Kumar Dash)

Member (Technical)

Sd/-

(Harnam Singh Thakur)

Member (Judicial)

September, 21, 2022

SD/ASH