

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**COMPANY APPEAL 43 OF 2023**

Under Section 42 of Insolvency &  
Bankruptcy Code, 2016

Department of State Tax

Through the Assistant Commissioner of  
State Tax

**...Applicant**

V/s

Texorange Corporation Limited

**...Respondent**

In the matter of

C.P.(IB) No. 4102/MB/2018

Bank of Baroda

**.... Financial Creditor**

Vs.

Texorange Corporation Limited

**...Corporate Debtor**

***Order delivered on: 01/11/2023***

***Coram:***

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice Shri V.G. Bisht**  
Hon'ble Member (Judicial)

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*Appearances:*

For the Appellant : Ms. Sonal Darbar a/w Mr.  
Amar Mishra, Advocates

For the Respondent : None

For the Liquidator : Mr. Aniruth Purusothaman, Adv

**ORDER**

***Per: V.G. Bisht, Member (Judicial)***

1. This Appeal 43 of 2023 was filed by the Assistant Commissioner of State Tax, MUM-VAT-D-706, Mumbai (“Applicant”) in the matter of M/s Texorange Corporation Limited (“Corporate Debtor”) under Section 42 of The Insolvency and Bankruptcy Code, 2016 (“Code”), seeking an order of this Tribunal for the condonation of delay in filing the claim in the Liquidation of the Corporate Debtor and for direction to the Liquidator (“Respondent”) to admit the claim.
2. The Corporate Insolvency Resolution Process (“CIRP”) was initiated on an application by M/s Bank of Baroda vide Order dated 11.10.2019 passed by this Tribunal in C. P. (IB) No. 4102/NCLT/MB/2018 (“Petition”) in terms of section 7 of the Code and Mr. Sudip Bhattacharya was appointed as the Interim Resolution Professional for Corporate Debtor, who made public announcement published on 16/10/2019, inviting the claims under the CIRP and the last date of receipt of proof of claim was 29/10/2019. Later on, the Corporate Debtor was admitted to Liquidation Process on 22.06.2023.

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- 2.1. The Appellant filed their claim through Form B dated 15/09/2022 amounting to INR.1,70,91,371/- for the period of 2008-09, 2014-15, 2015-16, 2016-17 in Form B dated 15/09/2022 and further requested, by their letter dated 10/02/2023, the Liquidator to admit their claim and consider them as a secured creditors. The IRP by their email dated 20/02/2023 replied to Appellant and informed that the liquidation proceedings has been initiated in the matter. Thereupon, the Appellant registered their claim through Form C dated 03/04/2023 amounting to INR.1,70,91,371/- for the period of 2008-09, 2014-15, 2015-16, 2016-17.
- 2.2. The Appellate states that the liquidator has rejected the claim on 13/04/2023 with the reason "the claim cannot be treated as secured creditor well in the meaning of IBC, 2016, and refered to one decision rendered by NCLAT.
- 2.3. The Appellant states that there is a delay of 1052 days in lodging the claim. The Appellant states that the said delay is not intentional and the same is due to the reason mentioned in the Affidavit provided by the previous officer in charge. Further the Appellant has obtained a ROC record of the Corporate Debtor reflecting the claim of the Appellate in the note of accounts and balance sheet of the Corporate Debtor.
- 2.4. That the Appellant is a statutory authority and Govt. Department which is responsible for collection of revenue and taxes applicable under GST Act and the Corporate Debtor was an assesses of the applicant/Department under the GST Act

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and was liable to deposit the tax as per law for the transactions done during the particular financial year.

2.5. The claims were duly filed along with all supporting documents and sent to the Liquidator for consideration. The Appellant has relied upon the decision in State Bank of India v. ARGL Ltd. rendered by the Principal Bench of the Hon'ble NCLT, New Delhi, while considering an application of similar nature filed by Central Board of Goods and Service Tax Department indicated that it was irrelevant whether the claim is considered or not, since the government dues would always be reflected in the books of accounts of the corporate debtor and the RP/PR would be required to take cognizance of the dues as per the books of accounts. Therefore, the application was allowed. The relevant portion of the order is reproduced herein below:

*"It is true that the regulation 12(2) after amendment has granted liberty to a creditor who has failed to submit the claim with the proof within the time stipulated in the public announcement and such a claimant could submit the claim with proof to the IRP/RP on or before 90th day of Insolvency commencement date. The aforesaid time obviously has expired as the CIR Process and in the present matter was commenced on 16.03.2018 and the claims were initially invited by fixing the last date as 30.03.2018. It is strange situation which is adopted by the RP because in the books of accounts the governmental dues are always reflected. It is nowhere stated as to how the claims which are to be filed alone are to be collated in terms of Section 21. First of all, as a matter of fact as the first step the IRP/RP has to prepare the list in accordance with the books of accounts and then invite the claims otherwise the dues reflected in the books of accounts would be rendered completely meaningless. It is only in case there is any discrepancy in the books of accounts that the claim needs to be modified or additions are required*

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*to be made. Therefore, we allow the application and direct the IRP/RP to collate the claim of the Central Board of Goods and Service Tax the needful shall be done within three days."*

2.6. The Appellant had relied upon the decision of Hon'ble Supreme Court in the case of State Tax Officer (1) vs Rainbow Papers Limited | 2022 LiveLaw (SC) 743 | CA 1661 OF 2020 to contend that the statutory dues qualifies to be secured creditors in liquidation as well as decision of Hon'ble NCLAT, New Delhi in the matter of Principal Commissioner of Income Tax Vs. M/s. Assam Company India Ltd. in Company Appeal (AT) (Insolvency) No.243 of 2022.

3. We have heard the Learned Counsel and perused the material available on record.

3.1. We find that the Liquidation process in the case of Corporate Debtor commenced on 22.06.2023, and the appellant had filed claim in Form C, as applicable to the Liquidation process, on 3.4.2023. Accordingly, the claim has been lodged even before the commencement of liquidation, but during the pendency of application of liquidation before this Tribunal. Accordingly, we are of considered view that there is no delay in filing the claim so as to warrant any condonation. The Liquidator shall treat the Form C filed on 3.4.2023 as claim received in Liquidation process and admit the same after verifying the same.

3.2. As regards contention of the Appellant that its claim ought to be admitted as in the category of Secured Operational Creditor relying upon decision in the case of Rainbow Papers

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Pvt Ltd (Supra). However, this decision has been distinguished later on by the Hon'ble Supreme Court in the case of **Paschimanchal Vidyut Vitran Nigam Ltd (PVVNL) v. Raman Ispat Private Limited { CIVIL APPEAL NOS. 7976 OF 2019 }**.

4. In view of the foregoing, we direct the Liquidator to admit the claim of the Appellant as Unsecured Operational Creditor under Statutory Dues Category subject to verification thereof.
5. Accordingly, Appeal (IB) 43 of 2023 is partly allowed.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)