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. 174/2021
In
CP (IB) No. 104/Chd/Hry/2017
(Admitted Matter)

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

<u>In the matter of:</u>

Punjab National Bank …Financial Creditor

Vs.

M/s Dinesh Polytubes Pvt. Ltd. …Corporate Debtor

<u>And in the matter of IA No. 174/2021:</u>

Excise and Taxation Commissioner,
Haryana Sales Tax Department
Through its Excise and Taxation Officer
Ward 4, 3rd Floor, Mini Secretariat
Hisar (Haryana)- 1250001 ….Applicant

Vs.

Jalesh Kumar Grover, Resolution Professional
of M/s Dinesh Polytubes Pvt. Ltd.
818, 2nd Floor, NAC, Manimajra
Chandigarh- 160101 ….Respondent No. 1

Sanjay Satrodia S/o Sh. Hanuman Parshad
R/o House No. 1138, Sector-14
Hisar (Haryana)- 125001 ….Respondent No. 2

Anoop Singh S/o Sh. Kashmir Singh
R/o V.P.O Ludas, District and Teh. Hissar
Hissar (Haryana) ….Respondent No. 3

Order delivered on: 08 .12.2022

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

<u>Present through Video Conferencing:</u>

For the applicant : Mr. Piyush Bansal, Advocate

For the respondent-Liquidator : Mr. G.S. Sarin, PCS

For the Successful Resolution Applicant : Mr. Deepankur Sharma, Advocate

<u>Per: Subrata Kumar Dash, Member (Technical)</u>

<u>ORDER</u>

The present application is filed under Section 60(5)(b) of the Insolvency and Bankruptcy Code, 2016, by Excise and Taxation Commissioner, Haryana Sales Tax Department Through its Excise and Taxation Officer (hereinafter referred to as 'Applicant') against Mr. Jalesh Kumar Grover- Resolution Professional, Sanjay Satrodia and Anoop Singh- Resolution Applicants (hereinafter referred as 'Respondents') seeking acceptance of claim/ revise claim regarding statutory dues of the department by the Resolution Professional and for modifying/ setting aside the Resolution Plan as approved by Committee of Creditors (hereinafter referred to as CoC).

2. The brief facts as submitted are that the petition under Section 9 of the Insolvency and Bankruptcy Code, 2016, was admitted on 11.12.2017. The Insolvency Resolution Professional (hereinafter referred as 'IRP') constituted the Committee of Creditors (hereinafter referred as 'CoC'). The public announcement was made on 02.01.2018. The Resolution Professional filed an application bearing CA No. 363/2018 for approval of the resolution plan under Section 31 of the Insolvency and Bankruptcy Code,2016, which was approved vide order dated 12. 07.2019 passed by this bench. Thus, the present claim has been filed after the approval of the resolution plan by this Adjudicating Authority. Corporate Debtor i.e. Dinesh Polytubes, was liable to pay VAT (the assessment year 2010-11) and GST Tax as applicable. The assessee was called for assessment and the assessment order was passed on 28.03.2014, creating an additional demand of VAT and CST amounting to Rs. 14,00,937/-. The assessee submitted the annual return VAT R2 but did not submit the audit report for the year 2011-12. After giving due notice, the assessment order was passed on 24.03.2015 creating additional demand of VAT and CST amounting to Rs. 12,65,900/-. For the assessment year 2012-13 and 2013-14, the order was passed on 29.03.2016 creating additional demand of VAT and CST of Rs. 89,37,288/- and Rs. 43,71,075/-. The Revenue Department made entry for an encumbrance on the property upon the Corporate Debtor vide Rapat No. 413 dated 14.08.2014 (Annexure-A1). Much after that, Under Section 7 of IBC, 2016, the matter was admitted on 11.12.2017 by the Adjudicating Authority. A letter dated 10.07.2020 was received on 13.07.2020 from Resolution Applicant, Respondent No. 2, intimated the department to remove the lien. The applicant

thereafter filed a claim with Resolution Professional in Form-B dated 12.11.2020 for consideration of the amount (Annexure A-5), and a reply dated 17.11.2020 was received wherein the claims of the Applicant were rejected.

3. It is submitted by the applicant that the rejection of claims was illegal and unsustainable under Section 25 of IBC and Regulation 14 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It is further submitted the claims of the applicant are statutory dues and are reflected in the financial statements of the Corporate Debtor; when a Resolution Professional take charge of account books, then RP is duty-bound to get the books audited and check the assets and liabilities of the Corporate Debtor so that proper resolution plan can be evolved. The IRP rejected the claim without considering the objection raised by the applicant and without examining the claim properly.

4. The respondent filed a reply vide Diary No. 00183/02 dated 18.08.2021 wherein it is stated that the assessment and demand created upon Corporate Debtor were not in knowledge of the erstwhile Resolution Professional since books of accounts were not provided by suspended directors and applicant had not filed claim despite the fact that intimation about the initiation of CIRP proceedings was in the public domain as the public announcement was done. The applicant to be directed to vacate the lien on properties of the Corporate Debtor as liquidation values towards their dues are nil.

5. The short written submissions were filed by the applicant vide Diary No. 00183/3 dated 31.10.2022, reiterating the facts narrated in the foregoing paragraphs.

6. We have heard the counsels for the Parties and have perused the records.

7. On the face of it, the claim of the applicant is to be considered as per Regulation 14 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations 2016. Regulation 12 of CIRP Regulations, 2016 provides for an outer limit of 90 days from the Insolvency commencement date for submission of claims.

8. In the present case, the claim is submitted after a period of more than one year after the approval of the resolution plan by this Adjudicating Authority. We are aware of the fact that this claim of the Haryana Sales Tax Department has the first charge under Section 26 of Haryana Value Added Tax, 2003. This Bench is conscious of the decision of the Hon'ble Supreme Court in the case of ***State Tax Officer Vs. Rainbow Papers*** Civil Appeal Nos. 1661 of 2020 and 2568 of 2020. The facts of the case at hand are distinguishable from those of the Rainbow Papers (supra) as the claim by the Sales Tax Officer, in that case, was rejected by the Adjudicating Authority in its order approving the Resolution Plan, whereas in the present case, the claim was made more than one year after the approval of the Resolution Plan by this Adjudicating Authority. We, therefore, with due deference to the decision of Hon'ble Supreme Court in the Rainbow Papers (supra) are of the considered view that ratio laid down in the said case is not applicable to the facts and circumstances of the present case.

9. In our considered view, this Adjudicating Authority has no jurisdiction to review its own order as held in the case of ***T.S. Murali and Ors. Vs. Liquidator of Helpline Hospitality Pvt. Ltd.***; Company Appeal (AT) (Insolvency) No. 234 of

2021 dated 18.10.2022 passed by the Hon'ble National Company Law Appellate Tribunal.

10. Moreover, allowing a claim well after the approval of the Resolution Plan would derail the entire post-CIRP process and will negate all the efforts put at the Insolvency Resolution of the corporate debtor. The CIRP Process is a strict time-bound process with the objective of maximizing the value of the corporate debtor. Thus, any admission of a claim after the approval of the plan by the Adjudicating Authority is in the teeth of the objectives of the Insolvency and Bankruptcy Code, 2016.

11. In the result, the application is dismissed and disposed of accordingly.

-sd-
(Subrata Kumar Dash)
Member (Technical)

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(Harnam Singh Thakur)
Member (Judicial)

December 08, 2022
SM/TB