

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

**IA Nos.1500/2023 & 1603/2023
In
CP (IB) No. 391/Chd/Pb/2018
(Admitted Matter)**

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

In the matter of:.

PUNJAB NATIONAL BANK

...Financial Creditor

Versus

VALLABH TEXTILES COMPANY LIMITED

....Corporate Debtor

In the matter of IA No. 1500/23:

**MR. RAJIV KHURANA
RESOLUTION PROFESSIONAL
FOR VALLABH TEXTILES COMPANY LIMITED**

...Applicant

Versus

Committee of Creditors and Anr.

...Respondent

In the matter of IA No. 1603/23:

**MR. RAJIV KHURANA
RESOLUTION PROFESSIONAL
FOR VALLABH TEXTILES COMPANY LIMITED
HOUSE NO. 1299, SECTOR 15B, CHANDIGARH - 160015
EMAIL: cirp.vtcl@gmail.com**

...Applicant

Versus

PR. CHIEF COMMISSIONER OF INCOME TAX (NWR),
INCOME TAX DEPARTMENT
AAYAKAR BHAWAN, SECTOR-17-E, CHANDIGARH - 160017
PH NO. - 0172-2544244
EMAIL: chandigarh.dcit.hg.admin@incometax.gov.in ...Respondent

Order delivered on: 07.12.2023

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

Present:

For the applicant in
IA Nos. 1500/2023 and 1603/2023 : Mr. Aman Kashyap, Advocate

Per: Harnam Singh Thakur, Member(Judicial)
Subrata Kumar Dash, Member (Technical)

ORDER

The instant application has been filed by the Resolution Professional for M/s Vallabh Textiles Company Limited under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**the Code**”) read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) seeking directions to the Principal Commissioner of Income Tax to submit its report with regard to carry forward and set off losses to the corporate debtor post approval of the resolution plan by this adjudicating authority.

2. In this case, CIRP was initiated on April 12, 2019, and Mr. Sumat Kumar Gupta was appointed as the IRP.

3. As stated in the application, the successful resolution applicant, in clause 8.2 of Schedule 3 of the resolution plan, has sought relief to allow the corporate debtor to carry forward its unabsorbed business losses/capital losses related to the period upto the approval date beyond the statutory limit of 8 assessment years under Section 72 of the Income Tax Act, 1961, and set off in the subsequent years. The same was discussed by the CoC in its 40th meeting on May 19, 2023 and the RP was directed to pursue the matter. Section 72 of the Act provides that carry forward and set off of losses shall be allowed to a company where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Code after affording a reasonable opportunity of being heard to the jurisdictional Principal Commission

4. A notice was issued to the respondent to show cause as to why this application should not be admitted. An affidavit of service was filed on August 21, 2023, vide diary no. 02078/2. The applicant, in compliance with the order dated September 21, 2023, of this adjudicating authority, also informed the respondent via email the next date of hearing. The affidavit of service has been filed vide diary no. 02078/3 dated October 17, 2023. Despite several opportunities, none appeared on behalf of the respondents.

5. We have heard the learned counsel for the petitioner and have perused the records carefully.

6. In this connection, reference is made Section 79 of the Income Tax Act, 1961, Section 79 of the Income Tax Act, 1961 is reproduced here:

79. Carry forward and set off losses in case of certain companies.—*Notwithstanding anything contained in this chapter where a change in shareholding has taken place in a previous year;-*

(a) in the case of a company not being a company in which the public are substantially interested and other than a company referred to in clause (b), no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, unless on the last day of the previous year, the shares of the company carrying not less than fifty-one per cent. of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent. of the voting power on the last day of the year or years in which the loss was incurred;

(b) in the case of a company, not being a company in which the public are substantially interested but being an eligible start-up as referred to in section 80-IAC, the loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, if, all the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred,—

- i. continue to hold those shares on the last day of such previous year; and*
- ii. such loss has been incurred during the period of seven years beginning*

from the year in which such company is incorporated:

Provided also that nothing contained in this section shall apply to a company where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

(Emphasis supplied)

7. Keeping in view the fact that no response has been received from the jurisdictional Principal Commissioner or Commissioner, it is presumed that there is no objection by the authorities to the proposal to carry forward and set off of losses as prayed for by the applicant.

8. In the result, I.A. No. 1500 of 2023 is allowed and disposed of accordingly.

I.A. No. 1603 of 2023

9. The instant application has been filed by the Resolution Professional for M/s Vallabh Textiles Company Limited under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**the Code**”) read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) seeking directions against the Principal Commissioner, Income

Tax ("Respondent") to handover the original title deed of 1.5 acre of factory land of the corporate debtor situated at Village Bhagwanpura Sahnewal, Dehlon Road, Ludhiana.

10. The brief facts of the application are as follows:

10.1. The Punjab National Bank (Financial Creditor) in its claim submitted on April 25, 2019 stated that it has a 1st pari passu charge on a block of fixed assets, including factory land measuring 21.50 acres situated at Village Bhagwanpura Sahnewal, Dehlon Road, Ludhiana, out of which an EM of 20.00 acres has been created while an EM of 1.50 acres is pending as its original title deed has been taken by the IT Officials of the Respondent during search operations on June 10, 2009.

10.2. It is submitted that the applicant, vide letter dated January 19, 2023, requested the respondent to hand over the original title deed of 1.5 acres of land of the corporate debtor to enable Punjab National Bank to remove the negative lien on the assets of the corporate debtor, to which no response was received from the respondent. Another letter dated January 23, 2023, was sent by the applicant to the respondent requesting the same.

10.3. It is further submitted that the Successful Resolution Applicant requested at the 40th meeting of the CoC, which was held on May 19, 2023, that the original title deeds to the corporate debtor's land be returned to him following approval of the resolution plan by the members

of the CoC and the Applicant. Hence, the applicant has filed the present application.

11. A notice was issued to the respondent to show cause as to why this application should not be admitted. An affidavit of service dated August 21, 2023, vide diary no. 02215/01 has been filed. The respondent was also informed about the next date of hearing by the applicant in compliance of the order dated September, 21, 2023. An affidavit of service has been filed vide diary no. 02215/2 dated October 17, 2023. Despite several opportunities, none appeared on behalf of the respondents.

12. We have heard the learned counsel for the petitioner and have perused the records carefully. Keeping in view the fact that, no response has been received from the jurisdictional Principal Commissioner or Commissioner, it is presumed that there is no objection by the authorities to handover the original title deed of 1.5 acres of factory land of the corporate debtor situated at Village Bhagwanpura Sahnewal, Dehlon Road, Ludhiana. The Income Tax Authorities are directed to handover the original title deeds of above mentioned property of the corporate debtor within one month from the date of this order.

13. In the result, I.A. No. 1603 of 2023 is allowed and disposed of accordingly.

Sd/-

Sd/-

(Subrata Kumar Dash)
Member (Technical)

(Harnam Singh Thakur)
Member (Judicial)

December 07, 2023
PKA/ASG

