

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

**IA No. 129/2022  
in  
CP (IB) No.121/Chd/Hry/2017  
(Admitted)**

**Under Section 42 of the IBC, 2016  
read with Rule 11 of NCLT Rules, 2016**

**In the matter of:**

Brij Lal Ashok Kumar ...Operational Creditor

Vs.

Tara Chand Rice Mills Private Limited ...Corporate Debtor

**And in the matter of IA No. 129/2022-**

Principal Commissioner of Income Tax, Rohtak  
Income Tax Office, C.R. Building, Near Mansarovar Park,  
Rohtak, Haryana-124001

...Applicant

Vs.

Rakesh Ahuja (Liquidator)  
Having its registered address at  
2238, Sector-18, HUDA,  
Panipat, Haryana-132103

...Respondent

**Order delivered on: 02.05.2023**

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

**Present:**

For the Applicant in  
IA No. 129/2022 : Mr. Vaibhav Gupta, Advocate  
For respondent in

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in  
CP (IB) No.121/Chd/Hry/2017  
(Admitted)

IA No. 129/2022 : Mr. Harsh Garg, Advocate  
Mr. Pulkit Goyal, Advocate

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

**ORDER**

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1. This application has been filed by the Income Tax Department for condonation of delay in filing its claim before the liquidator and with a prayer to direct the liquidator to consider the claim.

2. It is stated that CIRP commenced in the case of the corporate debtor on 16.03.2018. As the resolution process was not successful, this Tribunal, by its order dated 12.02.2019, directed the commencement of the Liquidation Process. The claim of Rs. 53,45,54,200/- was initially filed before the Resolution Professional, but no communication was received from the RP. Subsequently, in reply to the enquiries raised by the applicant on 28.12.2021, the RP stated that the Department could file its claim under Regulation 16 of IBBI (Liquidation Process) Regulations, 2016, as the liquidation proceedings were commenced by that time. The Department filed its claim in Form C with the liquidator on 31.12.2021, and the same was rejected by the liquidator on 03.01.2022, stating that the claim is time-barred. The Department has relied on the decision of the Co-ordinate Kolkata Bench in CA(IB) No. 31/KB of 2018 titled "In re, UCO Bank",

wherein it is stated that a similar delay by the Income Tax Department was condoned and the Department has allowed filing its claim before the liquidator.

3. In its reply filed by diary No. 00309/01 dated 09.06.2022, the respondent-liquidator has pointed out that the last date for submission of the claim in liquidation was 14.03.2019, and the Department filed its claim on 31.12.2021, i.e. with a delay of 1023 days. It is submitted that as per Regulation 16 of the IBBI (Liquidation Process) Regulations, 2016, the stakeholder to submit his claim on or before the last date as mentioned in the public announcement, which is in the present case was 14.03.2019. Thus, there was a very long delay in the filing of the claim before the Department.

4. On merits also, it is stated that the demands were raised against the corporate debtor by the Department on 31.12.2018, 28.03.2019 and 27.04.2021, during the period of moratorium under Section 14 of the IBC, which came into operation in the present case after the admission of the CIRP.

5. It is further stated that the corporate debtor is about to file the dissolution application for the entire assets of the corporate debtor except for the motorcycle and other non-realizable assets, and the proceeds had already been distributed amongst the shareholders. It is thus submitted that no useful purpose would be served by allowing the present application.

6. We have heard the learned counsel for the parties and pursued the available records carefully.

7. In the present case at hand, the respondent-liquidator has pointed out that a major part of the demands raised by the Income Tax Department has been

during the moratorium period. It is further argued that by the time the applicant-Income Tax Department filed its claim, the proceeds under liquidation had already been distributed, and there is no justification for admitting such a belated claim. With regard to the issue of demands raised in contravention of the provisions of the moratorium, we profitably quote the following extracts from the decision on the same issue of Hon'ble Apex Court in the case of **Sundaresh Bhatt, Liquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs, bearing Civil Appeal No. 7667 of 2021, decided on 26.08.2022** wherein it has been held that:-

*“44. Therefore, this Court held that the authorities can only take steps to determine the tax, interest, fines or any penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium. We are of the opinion that the above ratio squarely applies to the interplay between the IBC and the Customs Act in this context.*

*45. From the above discussion, we hold that the respondent could only initiate assessment or reassessment of the duties and other levies. They cannot transgress such boundary and proceed to initiate recovery in violation of Sections 14 or 33(5) of the IBC. The interim resolution professional, resolution professional or the liquidator, as the case may be, has an obligation to ensure that assessment is legal and he has been provided with sufficient power to question any assessment, if he finds the same to be excessive.”*

*(Emphasis Supplied)*

8. We also note that after the decision of the Hon'ble Apex Court in the case of **State Tax Officer Vs. Rainbow Papers Limited, Civil Appeal Nos. 1661 of 2020 and 2568 of 2020, dated 06.09.2022**, the State is to be treated as a secured creditor. The relevant paragraphs from the decision of the Hon'ble Apex Court in this case is extracted below for the sake of clarity:

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

9. Furthermore, as regards the nature of the Income Tax dues, we refer to the decision of the Hon'ble NCLAT in the case of **Principal Commissioner of Income Tax & Anr. v M/s Assam Company India Ltd. Company Appeal (AT) (Insolvency) No. 241 of 2022 dated 07.02.2023**, wherein it considered the nature of Income Tax dues and has held that “Admittedly, in view of the judgment passed by the Hon'ble Supreme Court in the case of “State Tax Officer (1) Vs. Rainbow Papers Limited, Civil Appeal No. 1661 of 2020 dated 06th September 2022”, the dues of the Appellants are ‘Government dues’, and they are Secured Creditors.”

10. On the issue of belated filing of claims before the liquidator, it would be apt to refer to the following extract from the decision of the Hon'ble Apex Court in the case of **State Tax Officer Vs. Rainbow Papers Limited (Supra)**:

“(I) Under the unamended provisions of regulation 12(1) of CIRP Regulations, the State Tax Officer (appellant) was not required to file any claim. Read with regulation 10, The appellant would only be required to substantiate the claim by the production of such materials: as might be called for. The time stipulations are not mandatory as is obvious from sub-regulation (2) of regulation 14, which enables the Interim Resolution Professional (IRP) or the

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RP, as the case may be, to revise the amounts of claims admitted, including the estimates of claims made under the Sub-Regulation (1) of the said Regulation as soon as might be practicable, when he came across additional information warranting such revision. (Para-24)

(II) There was no obligation on the part of the State to lodge a claim in respect of dues which are statutory dues for which recovery proceedings have also been initiated. The state was never called upon to produce materials in connection with the claim raised towards statutory dues. (Para-25)

(III) The Books of Accounts of the Corporate Debtor would have reflected the liability of the Corporate Debtor to the State in respect of its statutory dues. In abdication of its mandatory duty, the RP failed to examine the Books of Accounts of the Corporate Debtor, verify and include the same in the information memorandum and make provision for the same in the Resolution Plan. The Resolution Plan does not conform to the statutory requirements of the Code and is, therefore, not binding on the State. (Para-26)

(Emphasis Supplied)

11. On the conjoint reading of the above judicial decisions, it is clear that the dues of the Income Tax Department are Government dues, and the applicant-Income Tax Department is to be treated as a secured creditor while distributing the proceeds as per Regulation 42 of IBBI (Liquidation Process) Regulation, 2016 during liquidation. Furthermore, in view of the decision of the Hon'ble Apex Court in the case of **Rainbow Papers (Supra)**, the Income Tax Department is not required to file its claim before the Liquidator, and the statutory debts, including Income Tax dues, reflected in the books of accounts of the corporate debtor, need to be considered by him. In the present case, the liquidator has failed to consider the claims of the applicant department and has gone ahead with the distribution of the proceeds during liquidation. Furthermore, the contention that the demands were raised during the moratorium period in

contravention of the provisions of the Code is not acceptable in view of the decision of the Hon'ble Supreme Court in the case of the **ABG Shipyard (supra)**. Thus, we are of the considered view that the liquidator has failed to carry out the distribution of amounts in the liquidation process as per the provisions of the IBC.

12. In the course of the proceedings, it was pointed out that the proceeds of the liquidation had already been distributed by the liquidator, and there is hardly any asset left for further distribution. While going through the case records, we note that substantial amounts have been realized by the liquidator during the Liquidation Process, including huge amounts of refunds issued by the applicant-Income Tax Department. The Code specifically provides for a situation where the proceeds under liquidation have been distributed in contravention of the provisions of the Code in this regard. In this context, we refer to Regulation 43 of IBBI (Liquidation Process) Regulations, 2016, which is extracted below:

*“43. Return of money- A stakeholder shall forthwith return any monies received by him in distribution, which he was not entitled to at the time of distribution, or subsequently became not entitled to.*

13. The liquidator is, therefore, directed to re-distribute the proceeds from the realization of the liquidation process as per the provisions of Section 53 of the Code by treating the Income Tax Department as a secured creditor within three weeks of this order. And also to direct the stakeholders who have received money beyond their entitlement to return the money as per the provisions of the aforementioned Regulation 43. This exercise shall be completed within a period of two months of this order.

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14. In the result, this appeal is allowed and disposed of accordingly.

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

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

May 02, 2023  
PB