

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

**IA No. 280/2021 & IA No. 281/2021
in
CP (IB) No.298/Chd/Hry/2018**

**Under Section 42 of IBC 2016 &
5 of Limitation Act, 1963**

In the matter of:

M/s. Vardhman Trading Company
Vs.

....Petitioner-Operational Creditor

Allwyn Furniture Private Limited

....Respondent-Corporate Debtor

And in the matter of IA No. 280/2021 & IA No. 281/2021:

**Excise and Taxation Commissioner,
Haryana Sales Tax Deptt.**
through its Excise and Taxation Officer,
Office of Excise and Taxation Commissioner (ST),
Faridabad North. Sale Tax Office, Sector-12,
Near Sport Complex, Faridabad, Haryana

...Appellant

Vs.

Sh. Sunil Kumar Aggarwal,
Liquidator M/s. Allwyn Furniture Private Limited
having its office at
904, Ground Floor, Sector-7-C,
Faridabad-121006

...Respondent

Judgment delivered on: 20.01.2023

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

Present:

For the Applicant in
IA No. 280/2021 &
IA No. 281/2021 : Mr. Piyush Bansal, Advocate

For the Respondent in
IA No. 280/2021 &
281/2021 : Mr. Vaibhav Sahni, Advocate

PER: SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

JUDGMENT

IA No. 280/2021

This application has been filed for condonation of a delay of 283 days in filing the present application against the impugned decision of the liquidator communicated through email on 19.05.2020. It is stated that the delay was caused because of obtaining necessary sanctions from the head office of the department and it is neither intentional nor deliberate and was beyond the control of the applicant.

2. In view of the reasons and in the interest of justice, the delay in filing the present application is hereby condoned and IA No. 280/2021 is allowed and shall stand disposed of accordingly.

IA No. 281/2021

3. The present application has been filed by the Excise and Taxation Commissioner, Haryana Sales Tax Department through its Excise and Taxation Officer with a prayer to issue necessary directions to the liquidator to consider its

claims amounting to Rs. 51,23,547/- for assessment years 2011-12 to 2015-16 and Rs. 25,76,291/- for the assessment year 2016-17 filed on 21.10.2020.

4. In this application, the Applicant Department has stated that it came to know about the proceedings against the corporate debtor and filed the claim before the liquidator on 19.03.2020 for assessment years 2011-12 to 2015-16 and on 21.10.2020 for the assessment year 2016-17.

5. In the response filed vide diary No. 00421/2 dated 02.03.2022, the liquidator rejected the claimed loss for the assessment year 2011-12 to 2015-16 on the ground that the claim was received after a delay of 30 days from the last date of submission of the claim i.e., 19.02.2020. There has been no response to the subsequent claim made by the applicant Department before the liquidator for the assessment year 2016-17.

6. It is submitted by the respondent-liquidator that if the claim of the applicant is allowed, then the liquidator seeks direction to amend the list of stakeholders as per Regulation 31 (3)(4) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

7. We have carefully perused the facts and records available and the demands raised by the Taxation Authorities which are under the Haryana VAT Act, 2003.

8. As observed in our order in the case of Avon Cottex Private Limited vs. Anandtex International Private Limited IA No.232/2022 & IA No. 909/2022 in CP (IB) No.152/Chd/Hry/2018 dated 23.12.2022 under the provisions of the Haryana Value Added Tax Act, 2003, the tax is payable in the manner and at such interval as provided under Section 14 of the Act. The assessment is done under Section 15 (3) of the HVAT, 2003, which is extracted hereinbelow:

“15 (3) Every dealer whose aggregate liability to pay tax under this Act, Act of 1973 and the Central Act for the last year or part thereof according to the returns filed by him is equal to or more than one lakh rupees or such other sum, as may be prescribed, shall, in the manner prescribed, pay on or before the fifteenth day of each month the full amount of tax payable by him for the previous month, computed by him in accordance with the provisions of this Act and the rules made thereunder:

Provided that if he is not able to quantify his tax liability accurately by that time, he shall pay an amount equal to a monthly average of his tax liability in the last year (or such shorter period for which he has been liable to pay tax in that year) as tax provisionally, and he shall pay the balance, if any, on or before the twenty-fifth day of the month, and the excess, if any, he may, adjust with his future tax liability.

(4) Every dealer on whom sub-section (3) does not apply shall, in the prescribed manner, pay in the month immediately following each quarter the full amount of tax payable by him for the quarter, computed by him in accordance with the provisions of this Act and the rules made thereunder.

9. Also, Section 26 of the Haryana Value Added Tax Act, 2003 which creates the first charge on the property of the defaulter assessee, reads as under:

“26. Amount due under this Act recoverable as arrears of land revenue.

Any amount due under this Act including the Tax admitted to be due acceding to the returns filed, which remains unpaid after the last date specified for payment, shall be the first charge on the property of the defaulter and shall be recoverable from him as if the same were arrears of land revenue.”

10. In this context, we summarise the decision of the Hon’ble Apex Court in the case of ***State Tax Officer Vs. Rainbow Papers Limited (Supra)*** as under:

“(1) 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 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)

(IV) Regulation 12 of the 2016 Regulations deals with the time period for submission of a claim along with proof, as stipulated in the public announcement under section 15 of the Code. The time period is, however, not mandatory but only directory. (Para-39)”

(V) In view of the statutory charge in terms of section 48 of the GVAT Act, the claim of the Tax Department of the State squarely falls within the definition of “Security Interest” under section 3(31) of the Code, and the State becomes a secured creditor under section 3(30) of the Code.

(VI) Such security interest could be created by the operation of law. The definition of a secured creditor in the Code does not exclude any Government or Governmental Authority.

11. Thus, respectfully following the decision of the Hon’ble Apex Court in the case of **State Tax Officer Vs. Rainbow Papers Limited (Supra)** we hold that the Excise and Taxation Department is under no obligation to lodge the claim in respect of the statutory dues and the department should have been called upon to produce the materials in connection with their claims. Further, the filing of dues within the prescribed period does not apply to the present case. Section 26 of Haryana Value Added Tax, 2003 creates the first charge for the dues under the said Act on the

properties of the defaulter. The liquidator thus is directed to consider the claims of the applicant after verifying the said claims with respect to the materials produced before him. He is directed to treat this claim under section 53(1)(b)(ii) at par with the debts owed to a secured creditor, ranking equally with other specified debts.

12. In the result, IA No. 281/2021 is allowed with aforesaid directions and disposed of accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

January 20, 2023

PB/ASH

Sd/-

(Harnam Singh Thakur)
Member (Judicial)