IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.306

IA/1347(AHM)2024 in CP(IB) 616 of 2018

Proceedings under Section 60(5) of the IBC,2016 r/w Rule 11 of the NCLT Rules,2016

IN THE MATTER OF:

Kiran Shah Liquidator of M/s. Shri Jalaram Rice Industries Pvt Ltd ....**Applicant**

V/s

Deputy Commissioner of Income-Tax Circle 4(1)(1) Ahmedabad & Others ....**Respondent**

Order delivered on: 17/09/2025

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced is open court vide separate sheet.

Sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
AT AHMEDABAD BENCH (COURT- II)

IA No./1347/AHM/2024
IN
CP (IB) No./616/AHM/2018

[Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016]

Kiran Shah, Liquidator of M/s Shri
Jalaram Rice Industries Private Limited
608, Sakar - 1, Near Gandhigram Railwav
Station, Opp. Nehru Bridge, Ashram Road
Ahmedabad, Guiarat - 380 009, India' **...Applicant**

Versus

1. Deputy Commissioner of Income-tax,
   Circle 4(1)(1), Ahmedabad
   Pratyaksha Kar Bhawan, Ambawadi,
   Ahmedabad. Guiarat - 380 014, India

2. Principal Chief Commissioner of Income-tax
   Gujarat
   P. B. No. 211, Aaykar Bhawan, Ashram Road'
   Ahmedabad, Gujarat - 380 009, India'

3. Chief Commissioner of Income-tax (TDS),
   Ahmedabad
   Navjivan Trust Building B, B/h Gujarat
   Vidyapith, Off Ashram Road, Ahmedabad,
   Gujarat - 380 014, India. **...Respondents**

Order pronounced on 17.09.2025

Sd-

Sd-

Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G. VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Appearance:

For the Applicant : Mr. Jaimin Dave, Adv
For the Respondents : Ms. Maithili D. Mehta, Adv

JUDGMENT

1. This application has been filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 ("IBC, 2016/the Code") by the Kiran Shah, Liquidator of M/s Shri Jalaram Rice Industries Private Limited seeking following prayers:

   a) *Quash and set-aside the action of the Respondents in adjusting the amount of Income-tax Refund for the AY:2022-23 against the pre-CIRP Income-tax dues of the Company under Liquidation, being de hors the provisions of the Insolvency and Bankruptcy Code, 2016;*

   b) *Direct the Respondents to refund the amount of Rs.19,39,039/ - (Rupees Nineteen Lakhs Thirty-Nine Thousand Thirty-Nine Only) in the account of the Company under Liquidation; and/or*

   c) *Allow the Applicant herein to distribute the said amount of Rs.19,39,039/- (Rupees Nineteen Lakhs Thirty-Nine Thousand Thirty-Nine Only) in accordance with Section 53 of the Insolvency and Bankruptcy Code,2016; and*

   d) *Pass any other order as may be deemed fit in the interest of justice.*

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2. The brief backdrop of the case is that CIRP was initiated against the Corporate Debtor vide order dated 12.04.2019. Further, this Tribunal passed an Order of liquidation on 19.09.2019 and appointed the applicant as a Liquidator. The Applicant made public announcement on 01.10.2019 in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and called upon the stakeholders to submit their claims before the Applicant – Liquidator. Pursuant thereto, the Applicant had received various claims from different stakeholders and a Stakeholder's Consultation Committee was formulated comprising of four members i.e. State Bank of India, Union Bank of India, Corporation Bank and Bank of Baroda.

3. During the liquidation process, the Applicant had duly conducted multiple auctions for selling the assets of the corporate debtors. All the assets forming part of the liquidation estate of the Company under Liquidation has since then been sold by the Applicant. Further, sale proceeds realized on account of disposal / sale of the assets of the Company under Liquidation has also been appropriated/distributed.

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4. In order to comply with the relevant provisions of the Income-tax Act, 1961, the Successful Bidder had deducted TDS from the sale consideration payable to the Company under Liquidation and deposited the same with the Income-tax Department. the Successful Bidder had deducted an amount to the tune of Rs. 18,77,000/- during the A.Y.: 2022-23 towards TDS, for which the Applicant was required to file an Income-tax Return in compliance of the provisions of the Income-tax Act, 1961 for A.Y.: 2022-23 in order to claim refund of the same, after meeting with other tax liabilities of the Company under Liquidation for the said assessment year.

5. On 31.10.2022, the Applicant had filed an income-tax return for a refund of an amount of Rs. 18,64,640/- along with interest of Rs. 74,576/- totalling to an amount of Rs.19,39,039/-. On 04.11.2022, the Income-tax Department had sent an intimation under Section 143(1) of the Income-tax Act, 1961 stating that there is no payment due to the Company under Liquidation, in as much as the claim for income-tax refund has been adjusted against the outstanding demand and interest payable under Section 220(2) of the Income-tax Act,

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1961 for an earlier assessment year i.e., a demand pertaining to the A.Y.: 2011-12.

6. On 05.11.2022, Applicant had immediately apprised the Income-tax Department that the outstanding demands of previous years cannot be adjusted against the refund for A.Y.: 2022-23. It is stated by the applicant that on 13.05.2024, he had filed grievances before the IT department and also on CPGRAMS. Various reminders were sent between 15.05.2024 to 11.08.2024. It is stated by the applicant that the department should have filed its claim for claiming pre CIRP dues. As the subject amount forms the part of liquidation estate, the same could not have been adjusted by the department. Further department cannot claim any priority in distribution of the amount by unilaterally adjusting the refund of corporate debtor. The applicant further stated that the TDS amount was not refunded nor any reply was made by the respondent.

7. The applicant has relied upon the judgment of Hon'ble National Company Law Appellate Tribunal (NCLAT) in *Om Prakash Agrawal v. Chief Commissioner of Income Tax (TDS) & Ors.:*

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Company Appeal (AT) (Insolvency) No. 624 of 2020. The relevant extract is reproduced herein under:

"30. Ld. Adjudicating Authority has erroneously held that the deduction of Tax at source does not mean raising demand for collection of tax by the Department. Actually TDS under section 194 IA, is an advance capital gain tax recovered through transferee on priority with other creditors of the company. Hence, inconsistent with the provision of Section 53(1)(e) of the Code and by virtue of Section 238 of the Code the provision of Section 53(1)(e) shall have overriding effect. Thus, the impugned order is not sustainable in law. Therefore, it is hereby set aside."

8. The applicant has also relied upon the judgment of Hon'ble National Company Law Appellate Tribunal (NCLAT) in *Mr. Devarajan Raman v. Principal Commissioner of Income Tax & Ors.: Company Appeal (AT) (Insolvency) No. 977 of 2023*. The relevant extract is reproduced herein under:

"22. Admittedly, the Respondent had exercised the set-off by adjusting the tax refunds payable to the Corporate Debtor. This set-off clearly reduced the total kitty of funds available to the other creditors awaiting distribution as per the provisions of the IBC. The assets therefore available for distribution amongst the general body of creditors would thus stand reduced to the extent of the set-off while it would put the Respondent in a more beneficial position. Such action of the Respondent-Income Tax Department is clearly unwarranted because the Department did not have the right to adjust the past income tax demands with the money belonging to the liquidation estate. The refund from the Income Tax fell under the asset of the Corporate Debtor and would require to be added to the liquidation assets. In such

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Company Appeal (AT) (Insolvency) No. 977 of 2023 circumstances, the adjustment of the said amount of Rs 90 lakhs towards tax demands prior to liquidation amounted to a sort of recovery by the Respondent in violation of the moratorium and hence the Respondent is liable to return or pay the adjusted amount to the Corporate Debtor. Hence, this bench is of the considered view that there is a need to refund the amount in question to the Corporate Debtor."

9. The respondents have objected to the present application vide its reply dated 25.11.2024. The respondents have also tendered its written submission on record. By way of the same, the respondent stated that the adjustment of the refund was a valid set-off performed in accordance with the statutory provision of the Income Tax Act, 1961. Due process was followed by issuing a prior intimation to the assesse on 04.11.2022. The refund was extinguished against a larger debt, no net refundable asset ever materialized to become part of the liquidation estate for distribution under the waterfall mechanism of Section 53. The respondent therefore prayed to dismiss the application.

10. Heard Ld. Counsels for the Parties and perused the record.

11. It is observed that the while the assets of the Corporate Debtor were liquidated through e-auctions, the successful bidders

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have deducted the TDS in terms of the provision of the income Tax Act. The applicant has filed the income tax return of the corporate debtor on 31.10.2022. As per the said return, the corporate debtor was entitled for a refund of an amount of Rs. 18,64,640/- along with interest of Rs. 74,576/- totalling to an amount of Rs.19,39,039/-. However, the respondent department has adjusted the said refund against outstanding demand on 04.11.2022. The applicant on 05.11.2022, has appraised the department that the said refund cannot be adjusted against outstanding demand. The applicant has also raised the grievances before the respondent and has made follow up and sent various reminders but the said refund is not yet credited to the account of the Corporate Debtor.

12. It is a settled position that as per Section 238 of the IBC 2016, the provisions of the Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Also, Section 178(6) of the Income Tax Act, 1961 creates an exception in relation to the Insolvency and Bankruptcy Code by giving primacy over the Income Tax Act, 1961. As per Section 36 of the IB Code, the said refund amount

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forms the part of the Liquidation Estate and therefore, it could only have been realised in accordance with Section 53 of the IBC. Therefore, the objection of the department regarding valid set-off under Income Tax Act appears to be inconsistent. Hence, we do not find any merit in the submissions made by the respondents.

13. Considering the judgement passed by the Hon'ble National Company Law Appellate Tribunal (NCLAT) in *Om Prakash Agrawal v. Chief Commissioner of Income Tax (TDS) & Ors.: Company Appeal (AT) (Insolvency) No. 624 of 2020* and *Mr. Devarajan Raman v. Principal Commissioner of Income Tax & Ors.: Company Appeal (AT) (Insolvency) No. 977 of 2023,* it is amply clear that refund cannot be adjusted by the Income Tax Department against outstanding demand and it must be paid following the waterfall mechanism outlined in Section 53 of the Code. Therefore, the TDS was erroneously adjusted and liable to be refunded to the applicant.

14. Hence, we pass the following order:

ORDER

i. The application IA No./1347/AHM/2024 is allowed;

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ii. The Respondents are directed to refund the entire amount of TDS amounting to Rs.19,39,039/- to the account of the Corporate Debtor within a period of one month, for its inclusion in the liquidation estate and necessary distribution by the liquidator.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

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