

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

**IA No. 1854/2022
in
CP (IB) No.73/Chd/Chd/2018**

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

In the matter of:

ICICI Bank Ltd.

Vs.

...Operational Creditor

Lakshmi Energy and Foods Ltd.

...Corporate Debtor

And in the matter of IA No. 1854/2022:-

Principal Commissioner of Income Tax (Central), Ludhiana
Third Floor, opposite Bhartiya Vidya Mandir School,
Kitchlu Nagar Market, Ludhiana

....Applicant

Vs.

Mohit Chawla, Liquidator
Lakshmi Energy and Foods Ltd.
Level-1, Sector-22-C, Chandigarh-160022

...Respondent

Order delivered on: 06 .07.2023

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

Present:

For the Applicant : None

For the respondent : Mr. Pulkit Goyal, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

The present application has been filed by the Principal Commissioner of Income Tax (Central), Ludhiana (herein referred to as “**applicant**”) for setting aside letter dated 07.11.2022 issued by Mr. Kuldip Kumar Bassi, the liquidator of Lakshmi Energy & Foods Ltd. (herein referred to as “**respondent**”) rejecting the claims of the applicant.

2. The brief facts of the case are mentioned below:

- a) The Corporate Insolvency Resolution Process (herein referred to as “**CIRP**”) was initiated against the corporate debtor, Laxmi Energy & Foods Ltd. in CP(IB) No. 73/Chd/Chd/2018 vide order dated 03.09.2019 by this tribunal and Mr. Ravinder Agarwal was appointed as Interim Resolution Professional. Subsequently, vide order dated 27.02.2020, the IRP was replaced, and Mr. Kuldip Kumar Bassi was appointed as the Resolution Professional. (Annexure A-1 and A-2 of the application)
- b) Thereafter, on 27.07.2021, this tribunal in IA No. 949/2020 passed an order for the commencement of the liquidation process and appointed Mr. Kuldip Kumar Bassi as the liquidator for the liquidation of the corporate debtor. (Annexure A-3 of the application)
- c) Upon the knowledge of the initiation of CIRP against the corporate debtor, the applicant filed their claims in Form-B before the resolution professional amounting to Rs.126,58,50,964/- vide letter dated 16.03.2022, 25.08.2022, 04.11.2022. (Annexure A-4, A-5 and A-6 of the application)

Sr. No.	Assessment Year (A.Y.)	Demand raised u/s	Outstanding Demand (Rs.)
1.	2010-11	143(3)	Rs. 80,09,12,017/-
2.	2011-12	143(3)	Rs. 2,03,19,835/-
3.	2012-13	143(3)	Rs. 18,11,96,457/-
4.	2013-14	143(3)	Rs. 9,245/-
5.	2014-15	143(3)	Rs. 26,728/-
6.	2017-18	144	Rs. 72,02,200/-
7.	2013-14	147 r.w.s. 144	Rs. 16,54,81,619/-
8.	2013-14	271(1)(c)	Rs. 6,798/-
9.	2014-15	271(1)(c)	Rs. 20,096/-
10.	2011-12	271(1)(c)	Rs. 91,562/-
11.	2017-18	270A	Rs. 1,10,25,936/-
12.	2013-14	271(1)(c)	Rs. 7,95,58,471/-
Total			Rs. 126,58,50,964/-

- d) The liquidator, vide its letter dated 07.11.2022 rejected the claim of the department stating that the claim was received subsequent to the last date of submission of the claim which was specified to be 25.08.2021. (Annexure A-7 of the application)
- e) It has been stated that since the liquidation is yet to be finalized, the claims of the applicant ought to have been considered by the liquidator. Reliance has been placed on the provisions of Section 40 of the Insolvency and Bankruptcy Code, 2016 which provides that:-

*“40. Admission or rejection of claims. -(1) The liquidator may, after verification of claims under section 39, either admit or reject the claim, in whole or in part, as the case may be:
Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.*

(2) The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within seven days of such admission or rejection of claims.”

- f) It has been further stated that even during CIRP, the protection has been provided under Regulation 12 to the effect that a claim can be considered by the resolution professional even after the expiry of the last date fixed in the public announcement that is till the resolution plan is approved. It has been stated that the delay in filing the claim is totally bona fide, not intentional, and deserves to be condoned.
 - g) The applicant has placed reliance on the judgment of a decision of NCLT Kolkata bench in CA (IB) No. 31/KB of 2018 titled “***In re, UCO Bank***”, wherein the bench after considering the provisions of the IBC Code and Companies Act, condoned the delay in filing the claims before the liquidator and issued directions to the liquidator to consider the claims of the applicant.
3. The respondent has filed his reply by Dairy No. 2963/01 dated 10.04.2023 in which the following contentions are raised:
- a) Mr. Mohit Chawla having Registration No. IBBI/IPA-001/IP-P00524/2017-2018/10949, was appointed as the liquidator replacing the previous liquidator Mr. Kuldip Kumar Bassi, vide order dated 07.07.2021. (Annexure R-2 of the reply)
 - b) The liquidation commencement date of the corporate debtor is 26.07.2021 erstwhile the liquidator made a public announcement in Form-B on 30.07.2021, whereby claims were sought from the creditors of the corporate debtor. The last date for filing the claim was 25.08.2021. The public announcement in Form-B is attached as

Annexure R-1 of the reply.

- c) Thereby, the respondent received the claim of the applicant on 25.08.2022, which was filed with a delay of 365 days, and therefore, rejected the above-mentioned claim of the applicant vide letter dated 27.08.2022. It has further been stated that the applicant did not challenge the said order of the liquidator and therefore, the same has attained finality.
- d) It has been stated that the applicant without challenging the order dated 27.08.2022 of the liquidator, rather filed a new claim dated 04.11.2022 was filed just to fall in the purview of the limitation criteria, as a period for filing the appeal against the order of the liquidator is 14 days as provided under Section 42 of the Code.
- e) The claim dated 04.11.2022 was again rejected by the liquidator, vide letter dated 07.11.2022, as the same was filed within the delay of 436 days as per Regulation 12 of the IBBI Liquidation Regulations, 2016 which has been reproduced below:

"12. Public announcement by liquidator.

(1) The liquidator shall make a public announcement in Form B of Schedule II within five days from his appointment.

(2) The public announcement shall-

(a) call upon stakeholders to submit their claims or update their claims submitted during the corporate insolvency resolution process, as on the liquidation commencement date; and

(b) provide the last date for submission or updation of claims, which shall be thirty days from the liquidation commencement date.

(3) The announcement shall be published-

(a) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations;

(b) on the website, if any, of the corporate debtor; and

(c) on the website, if any, designated by the Board for this Purpose"

- f) Further, reliance has been placed by the respondent on the judgment of Hon'ble NCLAT, Chennai, wide order dated 11.07.2022 in the matter of ***“The Regional Provident Fund Commissioner Employees Provident Fund Organisation Vs. Mr. Vasu, Devan, RP and Liquidator of M/s. Titanium Tantalum Products Ltd.”*** whereby it has been stated that:-

*“44. Just because the Appellant is a Statutory Organization, no 'indulgence' or 'latitude' can be shown, since the 'Law' applies to one and all in a level playing field. In reality, the Officials must act with as much as diligent as is expected from a 'Litigant', as per the decision in District Board, Sargodha V Shemas Din123 I C 83
46. Speed' is the essence of I & B Code, 2016. 'Time Wasted'/Lost' cannot be revisited/regained. The process of Liquidation is time bound, to be completed within one year in the teeth of the I & B Code, 2016. Undoubtedly, the Code is an inbuilt and self-contained one and the object of the I & B Code, 2016, is that a time-barred 'Debt' cannot be resurrected or given a fresh tenure of life, as opined by this 'Tribunal'.”*

- g) It has been contended that the present application filed for acceptance of claim dated 04.11. 20 to 2 of the applicant needs to be dismissed on the ground that the applicant has already filed its claim on 25.08.2022, and the same was rejected wide order dated 27.08.2022, and the applicant, instead of challenging the said order have filed another claim dated 04.11.2022.

4. We have heard the parties and have gone through the relevant records.
5. It is seen from the records that the Income Tax Department has filed its claim with the Resolution Professional during the CIRP process. The liquidation in the present case has been initiated on 26.07.2021. Regulation 12(2) of IBBI (Liquidation Process) Regulations, 2016 which come into effect on 25.07.2019 and the same is reproduced as below:-

12. “(2) The public announcement shall-

(a) call upon stakeholders to submit their claims or update their claims

submitted during the corporate insolvency resolution process, as on the liquidation commencement date; and

(b) provide the last date for submission or updation of claims, which shall be thirty days from the liquidation commencement date.]

(c) provide that where a stakeholder does not submit its claims during the liquidation process, the claims submitted by such a stakeholder, and duly collated by the interim resolution professional or resolution professional, as the case may be, during the corporate insolvency resolution process under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, shall be deemed to be submitted under section 38.

6. As per Regulation 12(2) of IBBI (Liquidation Process) Regulations, 2016, It is the duty of the liquidator to treat the claims submitted by the Income Tax Department during the CIRP process as the claim filed under liquidation process. Even the claim of the liquidator that claims has been filed very late and hence, not legally tenable.
7. Further, we refer to 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, which held that 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

8. 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 discussed 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."

9. 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)***:

"(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)"

(Emphasis Supplied)

10. In view of the aforesaid discussions, we direct the Liquidator to include the claim of the Income Tax Department which is already filed in the list of stakeholders after verification of the same. Thus, IA No. 1854/2022 is allowed and stands disposed of accordingly.

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

July 06 , 2023

JGS

-sd-
(Harnam Singh Thakur)
Member (Judicial)