

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”**

**IA No.299/2021, 493/2021 and 291/2022
In**

**CP (IB) No.56/Chd/Hry/2018
(Admitted)**

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

In the matter of:

PAN Chemicals Inc.

...Petitioner/Operational Creditor

Vs.

Sainath Texport Limited

....Respondent/Corporate Debtor

In the matter of IA No.299/2021

Mr. Vikas Garg (Liquidator)

Insolvency Professional

Registration No.IBBI/IPA-002/IP-P00189/2017-2018/10506

2045, Sector 15-C, Chandigarh

...Applicant

Vs.

1. Excise & Taxation Department.

Government of Himachal Pradesh

Through the Commissioner (E&T)

B-30, SDA Complex, Kasumpti,

Shimla-171009, Himachal Pradesh.

....Respondent No. 1

2. Department of Revenue,

Government of Himachal Pradesh

Through the Deputy Commissioner (Revenue)

Distt. Solan, Himachal Pradesh

Office of the Deputy Commissioner,

Solan-173212, Himachal Pradesh.

....Respondent No.2

In the matter of IA No. 493/2021

Mr. Vikas Garg (Liquidator)

Insolvency Professional

Registration No.IBBI/IPA-002/IP-P00189/2017-2018/10506

2045, Sector 15-C, Chandigarh.

...Applicant

Vs.

1. **Sub-Registrar, Nalagarh**

Office of the Sub-Registrar, Nalagarh

Distt. Solan, Himachal Pradesh-174101

....Respondent No. 1

2. **Excise & Taxation Department.**

Government of Himachal Pradesh

Through the Commissioner (E&T)

B-30, SDA Complex, Kasumpti,

Shimla-171009, Himachal Pradesh.

....Respondent No. 2

3. **Department of Revenue,**

Government of Himachal Pradesh

Through the Deputy Commissioner (Revenue)

Distt. Solan, Himachal Pradesh

Office of the Deputy Commissioner,

Solan-173212, Himachal Pradesh.

....Respondent No. 3

In the matter of IA No.291/2022

Kuldeep Kaur

Village Haripur Sandoli,

Tehsil Baddi, District Solan,

Himachal Pradesh-173205

..Applicant

Vs.

Mr. Vikas Garg (Liquidator)

Insolvency Professional

Registration No.IBBI/IPA-002/IP-P00189/2017-2018/10506

2045, Sector 15-C, Chandigarh

..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 Liquidator : Mr Vipul Joshi, Advocate
For Applicant in IA No.291/2022 : Mr Karanveer Jindal, Advocate
For the Excise & Taxation Dept. : Mr J.P.Bhatt, Advocate

Per: Mr. Subrata Kumar Dash, Member (Technical)

ORDER

IA No.299/2021, IA No.493/2021 and IA No.291/2022 have been taken up together as the issues are interconnected and interlinked and on similar facts.

IA No.299/2021

1. The present application is being filed by Mr. Vikas Garg, Liquidator of Sainath Texport Limited (herein referred to as Applicant) against the Excise and Taxation Department, Government of Himachal Pradesh (herein referred to as Respondent No.1); the Department of Revenue, Government of Himachal Pradesh (herein referred to as Respondent No.2) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.
2. It is prayed by the applicant to issue appropriate directions to respondents to remove the 'Red-Entry' marked by the Revenue Department, Nalagarh in respect of the land measuring 34 bigas and 06 biswa owned by the Corporate Debtor.
3. The brief facts of the case as mentioned in the applications, are that

- i. The Corporate Insolvency Resolution Process was initiated against the Corporate Debtor on 16.04.2018 and Mr. Vikas Garg was appointed as Interim Resolution Professional. Thereafter, the liquidation has been commenced by order dated 20.02.2019, and the present applicant was appointed as Liquidator.
- ii. After the commencement of the liquidation, the liquidator made public announcements and invited claims. In pursuance of the public announcement the Excise & Taxation Department, Government of Himachal Pradesh, preferred its claim dated 20.03.2019 in Form C of Schedule II of IBBI (Liquidation Process Regulation), 2016.
- iii. During the liquidation process, it came to the notice of the liquidator that the Revenue Department, Nalagarh had marked a 'Red-Entry' against the land of the corporate debtor. The liquidator has written letter dated 22.02.2020 requesting the department to remove the 'Red-Entry' and the specific claims of the department will be dealt in terms of Section 53 of IBC after the liquidation of all assets of the company.
- iv. The Liquidator attempted to sell the land by the process of e-auction and in pursuance of the same Mrs Kuldeep Kaur, Proprietor of Kuldeep Kaur and Co., emerged as a Successful Bidder and purchased a property for an amount of Rs.9,73,80,000/-. After receipt of the full amount, the sale certificate has been issued in favour of the Successful Bidder. The liquidator has attempted to get the sale certificate registered before the concerned Sub-Registrar, Nalagarh. Reliance has

been placed upon the order dated 12.01.2021 passed by the Hon'ble National Company Law Tribunal, New Delhi in the matter of '*Modi Distillery Vs. Gagan Distillers & Beverages Private Limited*' in very similar facts and circumstances. In the said matter, on a similar application moved by the concerned Liquidator, the Hon'ble NCLT, New Delhi was pleased to issue necessary directions to the encumbering-Department as well as to the erring-Patwari in the nature of the directions as are being prayed for in the present application as well as in the earlier application.

- v. It is further stated by the liquidator that the claims of the Excise & Taxation Department will be dealt in terms of Section 53 of IBC, 2016 after the liquidation of all assets of the company. The claims of the department against the company stand merged with the process of liquidation and will be satisfied in accordance with the law. The act of the department not to remove the 'Red-Entry' mark despite service of the notice dated 22.10.2020 is illegal and in violation of law of the land.

IA No.291/2022

4. The present application is being filed by Ms. Kuldeep Kaur, (herein referred to as Applicant) against Mr. Vikas Garg, Liquidator of Sainath Texport Limited (herein referred to as Respondent) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

5. It is prayed by the applicant to issue appropriate directions to respondent to effect the registration of sale certificate dated 12.08.2021 issued by the liquidator in favour of the applicant.

6. It is stated by the successful auction purchaser that the applicant has been emerged as Successful Auction Purchaser in the e-auction dated 02.08.2021 and after the payment of total consideration, the liquidator has issued sale certificate dated 12.08.2021. In terms of Section 32A(2) read with Section 238 of IBC, 2016, the charge of the Excise Department has no force of law and the said sale certificate is final and binding upon everyone. The Excise Department has not registered any charge with the Registrar of Companies and the Excise Department is either a Secured Creditor nor holds any Security Interest in the property of the Corporate Debtor. The basic principles of IBC is quick and time bond liquidation of the Corporate Debtor and the delay in getting the sale certificate registered is against the basic principles of the IBC.

IA No.493/2021

7. The present application is being filed by Mr Vikas Garg, Liquidator of Sainath Texport Limited (herein referred to as Applicant) against the Sub-Registrar, Nalagarh (herein referred to as Respondent No.1); the Excise and Taxation Department, Government of Himachal Pradesh (herein referred to as Respondent No.2); the Department of Revenue, Government of Himachal Pradesh (herein referred to as Respondent No.3) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

8. It is prayed by the applicant to issue appropriate directions to respondent No.1 to register the sale certificate dated 12.08.2021 in favour of Kuldeep Kaur, Proprietor of Kuldeep Kaur & Co. in respect of the land measuring 34 bigas and 06 biswa owned by Corporate Debtor in Nalagarh, Himachal Pradesh. It is further

prayed by the applicant to direct respondent No.2 to issue No Objection Certificate in respect of the registration of the sale certificate for the land mentioned above.

9. The Excise & Taxation Department has filed its reply by Diary No.00547/01 dated 13.04.2022 in IA No.299/2021 and by Diary No.01079/01 dated 13.04.2022 in IA No.493/2021 wherein it is stated that an amount of Rs.11,39,21,222/- has been accrued under HPVAT Act, 2005 and the demand has been statutory created against the corporate debtor and the State Government has first charged under the statute to recover the aforesaid amount. Therefore, in order to safeguard the Government revenue, the department has created red-entry on the properties of the Corporate Debtor. The claim of the aforementioned amount has been already lodged by the respondent on 20.03.2019 in the prescribed Form C before the liquidator. Due to the failure of the Corporate Debtor to deposit the tax demand notice issued by the department, the FDR amounting to Rs.36,249/- has also been forfeited and the red-entry was created in the revenue record after following the procedure under the provisions of VAT Act. The respondent has also relied upon the judgment of the Hon'ble Apex Court in the cases of **Central Bank of India vs. State of Kerala & Others** (2009) 21, VST 505 (SC); **State Bank of Bikaner and Jaipur Vs. National Iron and Steel Rolling Cor. & Others** (1995) 96, SCT 612; **Dena Bank Vs. Bhikhabhai Prabhudas Parekh & Co. & Ors.** (2000) 5, SCC 694; **Union of India Vs. Soma Sundaram Mills (P) Ltd.,** (1985) 2 SCC 40 and **M/s Tishu Fibres Ltd. Vs. Excise & Taxation Commissioner HP and Ors.** in CA No.63/2005 in CP No.440/1998 d.o.d 30.05.2005, Delhi High Court.

10. The liquidator has filed written submission by diary No. 01079/02 dated 14.11.2022 wherein it has been stated that the applicant has assured respondent

No.2 that their claim would be released in accordance with Section 53 of IBC, 2016. Thus, the piece of land and some machinery has already been sold to the successful bidder. However, the respondents have failed to remove the red-entry mark on the said piece of land. The respondent has claimed its first charge over the properties of the Corporate Debtor in terms of Section 26 of HPVAT Act. However, the judgments are irrelevant as the same has been hit by provisions of Section 238 of IBC, 2016 which has an overriding effect on other provisions of law. The claim of respondent No.2 will be dealt as per Section 53 of IBC, 2016 which provides for the waterfall mechanism to disburse the proceeds from the liquidation of assets of the corporate debtor. To support its contention, reliance is placed on the judgment of **Modi Distillery Vs. Gagan Distillers & Beverages Pricate Limited** (supra) and in the case of **Punjab National Bank Vs. Union of India & Ors., 2022 (7) SCC 260 decided on 24.02.2022.**

11. The Excise & Taxation Department has filed written submission by diary No. 01079/03 dated 29.11.2022 wherein it has been stated that In the case of **State Tax Officer Vs. Rainbow Papers Ltd., CA No.2568/2020 decided on 06.09.2022**, in which it has been observed that the State is a Secured Creditor under GVAT (Gujarat Value Added Tax) in favour of whom security interest could be created by the operation of law and the definition of Secured Creditors does not exclude any Government Authority. It is submitted that Section 48 of GVAT Act and Section 26 of HPVAT are analogous provisions and the claim of the respondents fall within the Secured Creditor and are to be equally ranked with the other specified debts as per Section 53 of IBC Act.

12. We have heard the learned counsel for the applicant and respondent and have pursued the records carefully.

13. In the present application, the Excise & Taxation Department has marked 'Red-Entry' on the assets of the Corporate Debtor for the recovery of its claims, it is also seen that the Department has filed the claim in Form C dated 20.03.2019. The filing of the claim with the liquidator shows that the department is well-aware of the liquidation proceedings of the Corporate Debtor. It is undoubted that the Department will be considered as 'Secured Financial Creditor' in terms of judgment of Hon'ble Apex Court in the case of '**State Tax Officer Vs. Rainbow Papers Ltd.**' (supra). However, the claims of the Department will be met by the liquidator while distributing the liquidation proceeds in terms of Section 53 of the Code.

14. In this connection, we profitably refer to the following observations of the co-ordinate NCLT Delhi Bench on similar facts.

"In our opinion the Excise and Taxation Department has erred in 'red marking' the property of the Corporate Debtor because, once the CIRP is initiated and a moratorium is imposed under section 14 of the code, the RP shall take control and custody of assets and properties over which the Corporate Debtor has ownership rights in order to resolve the debt and adjudicate the claims of the creditors. Similarly the control and custody of the assets and properties shall be transferred to the Liquidator from the RP after the Adjudicating Authority passes an order allowing the liquidation. The provision of IBC are meant to find a resolution to company under CIRP. To achieve this object, all attachments or any kind of charges created over the asset of the corporate debtor will be bound by the provisions of IBC, so as to restructure the company or to liquidate those assets to distribute the proceeds among the creditor as per the water fall mechanism set out under Section 53 of the Code.

Section 238 of IBC deals with the assets of the corporate debtor, it has to be governed by IBC not by some other enactment. Even though any attachment or injunctory order is passed against the Corporate Debtor, the same will be subject to having effect considering the inconsistency if any, as provided under section 238 of the code. Therefore we allow the present application No. 3016/ND/2020 and direct Excise Dept Bhatinda to remove the attachment and also direct Tehsildar Abohar for removing the red mark/ attachment from Agriculture land property of the Corporate Debtor situated at Village Kallar Khera, Tehsil Khuian Sarwar. District Fazilla under Khewat No. 150 & 362 admeasuring 403.16 Kanals.”

15. Keeping in view the objectives of the Insolvency & Bankruptcy Code, the auction purchaser is entitled to the property of the Corporate Debtor for which the consideration has been paid. The Excise & Taxation Department cannot refuse to remove the ‘Red-Entry’ over the assets of the Corporate Debtor especially when the department has already filed its claims with the liquidator.

16. In view of the aforesaid discussions, we direct Excise & Taxation Department, Government of Himachal Pradesh to remove the attachment and also direct the Department of Revenue, Government of Himachal Pradesh for removing the Red-Entry/attachment from land measuring 34 Bigas and 06 Biswa owned by Sainath Texport Limited in Nalagarh, Dist Solan, Himachal Pradesh. The Sub-registrar Nalagarh is directed to register the Sale Certificate dated 12.08.2021 after the removal of Red-Entry/attachment. The resolution Professional is directed to conclude the process of registration within one month of this order.

17. Thus, IA Nos.493/2021, 299/2021 and 291/2022 are allowed and disposed of accordingly.

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

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

July 06, 2023
PRF/SA