

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Arguments through web-based video conferencing platform)**

**IA No.232/2022 & IA No. 909/2022
In
CP (IB) No.152/Chd/Hry/2018
(admitted)
Under Section 42 & 60(5) of IBC, 2016**

In the matter of:

Avon Cottex Private Limited

....Petitioner-Operational Creditor

Versus

Anandtex International Private Limited

....Respondent-Corporate Debtor

And in the matter of:-

IA No.232/2022

Excise and Taxation Commissioner,
Haryana Sales Tax Department
through its Excise and Taxation Officer,
Ward 8, office of Excise and Taxation Commissioner (ST), Panipat
having its registered office at
Plot No. 179, Sector 25, Part-II, HUDA,
Panipat-132103, Haryana

...Applicant

Vs.

Hitesh Goel, Liquidator
for Anandtex International Private Limited
having its registered office at
C-4/1002, The legend Apartments,
Sector 57, Gurugram, Haryana-122011

....Respondent

IA No.909/2022

Hitesh Goel, Liquidator
for Anandtex International Private Limited
having its registered office at
C-4/1002, The legend Apartments,
Sector 57, Gurugram, Haryana-122011

...Applicant

Vs.

ETO-CUM-Taxing Authority
having its registered office at

IA No.232/2022 & IA No. 909/2022

In

CP (IB) No.152/Chd/Hry/2018
(admitted)

Ward-8, State GST Department
Seema Theater, 39B, Post Office RD,
Near Hali Park, Model Town,
Panipat, Haryana-132103

....Respondent

Order delivered on: 23.12.2022

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

Present:

For the Applicant in :Mr. Piyush Bansal Advocate
IA No. 232/2022 & respondent in
IA No. 909/2022

For the Applicant in :Mr.Karan Kohli, Advocate
IA No.909/2022
Respondent in
IA No. 232/2022 : Mr. Sanjay Bhatt, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA No. 232/2022

The present appeal filed by the applicant-Excise and Taxation Commissioner, Haryana Sales Department through its Excise and Taxation Officer under Section 42 of the Insolvency and Bankruptcy Code, 2016 against the decision dated 13.12.2021 of the respondent-liquidator, rejecting the claim of the appellant. It further seeks condonation of delay by the applicant in submitting the claim with the respondent-liquidator.

2. It is submitted by the applicant that pursuant to the public announcement made by the liquidator on 12.12.2019, the applicant filed its claim amounting to Rs. 1,55,04,684/- for the assessment year 2017-18 before the liquidator on 17.11.2021. Thereafter, the liquidator rejected the claim filed by the applicant

IA No.232/2022 & IA No. 909/2022

In

CP (IB) No.152/Chd/Hry/2018
(admitted)

vide order/communication dated 13.12.2021. It is further submitted that the liquidator has rejected the claim on the sole ground that it was filed before the due date without going into the merits of the claim at all.

3. The respondent-liquidator in its reply vide Diary no. 00214/01 dated 17.11.2022, stated that in terms of the Public Announcement, the Appellant, in accordance with Regulation 12(a) and (b) of the Liquidation Regulations, was required to file a claim with the Liquidator on or before 11.01.2020. However, no claim was filed by the Appellant on or before 11.01.2020 before the Liquidator. The alleged assessment was made against the Corporate Debtor for the assessment years 2017-18 on 18.03.2021 and an alleged demand dated 18.03.2021 for Rs. 1,55,04,684 /- has been raised against the corporate debtor.

4. It is submitted by the respondent-liquidator that the Applicant has filed its claim in Form B on 17.11.2021 for an amount of Rs.1,55,04,684/- which was received by the Liquidator on 18.11.2021 much after the last date of submission of the claim as prescribed under the Code, i.e. 11.01.2020. Further, the said alleged demand has arisen and has been raised much after the liquidation commencement date and thus, the alleged claim as filed is misconceived and untenable in terms of the provisions of the code.

5. It is further averred by the respondent-liquidator that vide communication dated 13.12.2021, the liquidator informed the applicant that the claim could be considered only pursuant to directions of this Adjudicating Authority.

6. We have heard the learned counsel for the applicant and respondent-liquidator. In the instant matter, the claim was required to be filed

with the Liquidator on or before 11.01.2020, whereas the applicant filed its claim in Form B on 17.11.2021.

7. In this connection, we are of the view that the decision of the Hon'ble Supreme Court in the case of ***State Tax Officer (1) Vs. Rainbow Papers Limited in Civil Appeal No.1661 Of 2020 With With Civil Appeal No.2568 OF 2020 order dated 06.09.2022 Case citation: (2022) ibclaw.in 107 SC***, summarised below, is squarely applicable to the present case:

“(I) Under the unamended provisions of regulation 12(1) of CIRP Regulations, the StateTax 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) If the Resolution Plan ignores the statutory demands payable to any State Government or legal authority, altogether, the Adjudicating Authority is bound to reject the Resolution Plan. (Para 52)

(VI) Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of the IBC. Under Section 53(1)(b)(ii), the debts owed to a secured creditor, which would include the State under the GVAT Act, are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date. (Para 56)

(VII) 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 the operation of law. The definition of a secured creditor in the IBC does not exclude any Government or Governmental Authority. (Para 57)

8. Following the decision of the Hon'ble Supreme Court in the case of ***Rainbow Paper (supra)***, we hold that there is no obligation on the part of the Taxation Department to lodge a claim in respect of such statutory dues, which have been intimated to the corporate debtor. The said claim is also to be treated as a debt owed to a secured creditor under Section 53 (1)(b)(ii) as security interest has been created by operation of law. The liquidator is therefore directed to consider the claim of the Excise and Taxation Authorities on the lines of the above observations.

9. In the result, the present application is allowed and disposed of accordingly.

IA No.909/2022

The present application has been filed by the liquidator of M/s. Anandtex International Private Limited under Section 60 (5) of IBC, 2016 seeking quashing of the assessment order dated 18.03.2021 and notice of demand dated 18.03.2021 subsequent to the assessment order. Further, it seeks exparte ad-interim stay on the assessment order dated 18.03.2021 as well as the resultant demand notice. Further, seeks direction for vacation/release of charge of the Input Tax Credit of the corporate debtor to the tune of Rs. 83,34,208/- in terms of Section 32 A of the Code.

10. In the present matter, CIRP was initiated vide order dated 20.02.2019 of this Adjudicating Authority. Further, vide order dated 06.12.2019 of this Adjudicating Authority, the liquidation process in respect of the corporate debtor was initiated and subsequently, appointed the applicant herein as the Liquidator.

11. It is submitted by the applicant-liquidator that the corporate debtor received a Notice of Demand dated 18.03.2021 from the ETO-cum-Taxing Authority, Panipat (i.e. the Respondent) informing that the corporate debtor is liable to pay a sum of Rs. 1,54,08,311 (Rupees One Crore Fifty-Four Lakhs Eight Thousand Three Hundred Eleven only) under Haryana Value Added Tax Act, 2003 ("HVAT Act") and Rs. 96,373/- under Central Sales Tax Act, 1956 ("CST Act") under Section 15(2) of the Haryana VAT Act as tax/ penalty/ interest vide Order dated 18.03.2021 for the Assessment Year 2017-18. The Respondent further directed the Corporate Debtor to deposit the sum within 30 days of receipt of such notice. It is further submitted that the applicant has intimated the respondent through various emails with respect to the liquidation process of the corporate debtor.

12. It is stated by the applicant-liquidator that the respondent has blocked the Input Tax Credit of Rs. 1,16,49,167 (Rupees One Crore Sixteen Lakh Forty-Nine Thousand One Hundred Sixty Seven Only) against its demand of Rs. 1,55,04,684/- (Rupees One Crore Fifty-Five Lakhs Four Thousand Six Hundred Eighty Four only) for the assessment year 2017-18. That the Applicant further informed the respondent that they have not filed a claim against the corporate debtor in pursuance of the public announcement dated 12.12.2019. Further, the applicant has requested the respondent to release the charge over Input Tax Credit and not to take coercive steps through various emails dated 25.11.2021 and 13.12.2021.

13. It is further stated by the applicant that the respondent has only released a charge on the ITC for Rs. 33,14,959/- and the charge on the ITC for an amount of Rs. 83,34,208/- is still pending to be released.

14. The applicant has relied on Section 238 of the Code and on the decision of the Hon'ble Supreme Court in the case of **Innoventive Industries Ltd. V. ICICI Bank (2018) 1 SCC 407**, wherein the provisions under Section 13 and 14 of the Code pertaining to moratorium have been discussed and further relied on Section 32 A of the Code. In view of the above decisions, the applicant seeks direction against the respondent to vacate/release the charge created by the respondent on the Input Tax Credit of the corporate debtor to the tune of Rs. 83,34,208/- (Rupees Eighty-Three Lakh Thirty Four Thousand Two Hundred and Eight only).

15. Notice of the present application has been issued to the respondent. Pursuant to the notice, the respondent has filed its reply vide Diary No. 01220/01 dated 24.11.2022, wherein it is stated that the claim pertains to the Haryana Value Added Tax Act, 2003 where the tax is payable in the manner and at such interval

as provided under Section 14 of the Act. The assessment were 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 files 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 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-fifty 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.

16. It is submitted by the respondent that the provision of Section 26 of the Haryana Value Added Tax Act, 2003 is of utmost importance, as it creates the first charge on the property of the defaulter assessee, the said provision is reproduced herein after for the kind perusal of this Hon'ble Court.

"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."

17. It is further submitted by the respondent that Section 142 (8) of the Goods And Services Act 2017, hereafter referred to as "GST Act 2017"

empowers the deponent to take necessary steps for recovery of Tax, further gives rights to recover, it as an arrear of tax under this Act.

18. It is stated that as per the recent judgment of the Hon'ble Supreme Court titled **State Tax Officer (1) Vs. Rainbow Papers Ltd.** Civil Appeal No. 1661 of 2020, as the present claims relate to the period prior to the amendment date in Regulation 12 of IBBI (Insolvency Resolution Process for Corporate person) Regulation, 2016, therefore the claim of the applicant should have been accepted as the state dues have priority over other dues in view of section 26 of the Haryana Value Added Tax, 2003, being secured creditor.

19. Per contra, the applicant-liquidator has filed written submissions vide Diary No. 01220/4 dated 06.12.2022, wherein it is stated that the respondent, in its reply, has referred to various provisions of Haryana VAT as well as the GST Act, 2017. However, the respondent has deliberately omitted that Haryana VAT Act stands repealed and that the Haryana GST Act 2017 is in place. Section 82 of the Haryana GST Act reads as under:

"82. Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (Central Act 31 of 2016), any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person"

Further, it is stated that the Haryana Act acknowledges the existence of Code and gives way to the Code in Section 82 of the Haryana GST Act. Hence, the provisions of the Code shall prevail over Section 82 of the Haryana GST Act, 2017, and therefore the respondent cannot be treated as a secured creditor of the corporate debtor.

20. We have heard the learned counsel for the applicant-liquidator and respondent. It may be noted that in the present matter, the ITC has been blocked for the demand against Assessment Year 2017-18.

21. As regards the prayer for setting aside the assessment order dated 18.03.2021, it is clarified that the provisions of IBC lays down the procedure for consideration of such claim and in our order in IA No. 232/2022, the same is directed to be followed by both the parties.

22. In the course of the present proceedings, the Excise and Taxation Authority has not clarified under which Section the charge has been created on the Input Tax Credit of the corporate debtor. However, it is noted that under Section 142 (8) of the Goods and Services Act, 2017, the authorities can take necessary steps to recover taxes. We have also perused the copy of the order dated 18.03.2021 directing the corporate debtor to pay a sum of Rs. 15408311/- under HVAT Act, 2003 and Rs. 96373/- under CST Act, 1956, under Section 15(2) of the Haryana VAT Act as tax/penalty/interest vide order dated 18.03.2021. We have already directed the liquidator in our order in IA 232/2022 to consider the claim of the Excise and Taxation Department as per the relevant provision of the Act.

23. Thus, as the claim of respondent-Excise and Taxation Authorities is already directed to be considered by the liquidator as per the provisions of IBC, there is no justification for attaching the ITC of the corporate debtor by the authorities, as this would adversely affect the business of the corporate debtor and is in the teeth of the objectives of the Code. Consequently, the respondent is hereby ordered to unblock/remove the charge on the Input Tax Credit to the tune of Rs. 83,34,208/- under GST available to the Corporate Debtor.

24. Thus, the present application is allowed and disposed of accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

December 23, 2022
PB/ASH

Sd/-

(Harnam Singh Thakur)
Member (Judicial)