

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

**IA No. 307/2021
In
CP (IB) No. 337/Chd/Hry/2018
(Admitted)**

**Under Section 60(5) read with 14 of
the Insolvency and Bankruptcy
Code, 2016.**

In the matter of :-

Suresh Kumar Rakesh Kumar ... Operational Creditor

Vs.

Nav Jyoti Agro Foods Pvt. Ltd. ... Corporate Debtor

In the matter of IA No. 307/2021:

Nav Jyoti Agro Foods Pvt. Ltd.

having its registered office at
105/101, Chhatrapati Marg, Vijay Path,
Mansarover, Jaipur, Rajasthan-302020

... Applicant

Vs.

Department of Income Tax

through the Assistant Commissioner of Income Tax Circle Karnal
having its registered office at
1st Floor, Aayakar Bhawan, Sector-12,
Karnal, Haryana-132001

... Respondent

Judgement delivered on: 15.12.2022

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Applicant in IA No. 307/2021 : Ms. Niharika Sohal, Advocate

For the Respondent in IA No.
307/2021

: Mr. Vaibhav Gupta, Advocate

Per: Subrata Kumar Dash, Member (Technical)

JUDGMENT

In the present matter, Corporate Insolvency Resolution Process (CIRP) against M/s NavJyoti Limited ("Corporate Debtor") was initiated vide order dated 12.02.2019 of this Adjudicating Authority on an application filed under section 9 of the Code. Subsequently, a moratorium under section 14 of the code is declared. Further, the applicant/Resolution Professional was appointed as Resolution Professional by this Adjudicating Authority vide order dated 26.03.2019. Presently, in the instant Company Petition, the Resolution professional has filed an application i.e., IA No. 1107/2019, for liquidation of the corporate debtor, which is pending approval before this Adjudicating Authority.

IA 307/2021

The instant application is filed by the Resolution Professional under section 60(5) read with section 14 of the Code, seeking direction against the income tax department to refund the recovery made on 16.06.2020 and remit Rs. 85,04,845/- (Rupees Eighty-Five Lakh four Thousand Eight Hundred and Forty-Five Only) to the account of the corporate debtor so that the same can be utilized as per the provisions of the Code.

2. It is submitted that according to the intimation order dated 02.10.2019 provided by the income tax department under section 143(1) of the income tax act, 1961, for the assessment year 2018-19, the corporate debtor was entitled to a refund of Rs. 85,04,845/- (Rupees Eighty-Five Lakh Four Thousand Eight Hundred and Forty-Five Only). A copy of the intimation order dated 02.10.2019 under section 143(1) of I.T. Act, 1961 is attached as Annexure-3 of the application. Furthermore, through Form AS26, it was noticed that the income tax department on 16.06.2020 has, on the suo-moto basis, recovered Rs. 85,04,845/- by way of appropriation of advance tax/TDS (eligible for a refund) against some demand for FY 2016- 17. A copy of the form AS26 is attached as Annexure 4 of the application.

3. It is further submitted that immediately on detecting that the income tax department has recovered and adjusted the refund amount against the earlier demands, the resolution professional requested for refund of the same through various letters/e-mails to the assistant commissioner of Income Tax, citing the provisions of the moratorium and demanded to refund the amount to the account of the corporate debtor so that the same can be utilized as per the provisions of the code. A copy of the letters sent to the income tax department is attached as Annexure- 5.

4. The reply of R.S. Sharma, ACIT, Income Tax Office, Circle Karnal, on behalf of the respondent department, has been filed vide Diary No. 00555/4 dated 10.11.2022, wherein it is stated that a huge demand of Rs. 71,70,17,298/- is outstanding against the assessee and in view of the such

fact it is submitted that the refund of Rs. 85,04,845/- for the A.Y. 2018-19 was duly adjusted against the said demand by the systems in view of the provisions of a set-off provided under Section 245 of the Income Tax Act. Further, the applicant has not made any application to the concerned Assessing Officer for a refund of any amount of the tax paid in excess. Secondly, in view of the provisions of Section 245 of the Act, unless the entire demand is satisfied by the assessee, the assessee cannot be treated as entitled to any refund. The assessee can only claim a right over the refund only and only after there is no amount outstanding against the assessee.

5. We have heard the learned counsels for the applicant-Resolution Professional and the respondent. After careful perusal of the records available, it may be noted that the Hon'ble Supreme Court in ***Pr. Commissioner of Income Tax Vs. Monnet Ispat And Energy Ltd.*** MANU/SCOR/25330/2018, held that;

“Given Section 238 of the Insolvency and Bankruptcy Code, 2016, it is obvious that the Code will override anything inconsistent contained in any other enactment, including the Income-Tax Act.”

6. Keeping in view of the above decision, in the instant matter, moratorium under section 14 of the Code was declared on 12.02.2019 whereas the Income Tax Department on 16.06.2020 has, on the suo-moto basis, recovered Rs. 85,04,845/- by way of appropriation of advance tax/TDS. It is noted that in the case of ***Alchemist Asset Reconstruction***

Company Ltd. Vs. M/S. Hotel Gaudavan Pvt. Ltd. & Ors. [2017] ibclaw.in 09 SC, the Hon'ble Supreme Court observed that the mandate of the new insolvency Code is that the moment an insolvency petition is admitted, the moratorium that comes into effect under Section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against corporate debtors. The above-said recovery was made during the period of moratorium, which is in clear violation of the law. Therefore in terms of the above decisions, we direct the respondent Income Tax Department to refund the recovery made on 16.06.2020 amounting to Rs. 85,04,845/- during the moratorium period.

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

Sd/-

(Subrata Kumar Dash)
Member (Technical)

Sd/-

(Harnam Singh Thakur)
Member (Judicial)

December 15, 2022

PB/ASH