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.580/2021
in
CP (IB) No.67/Chd/Pb/2017
(admitted)

Under Section 60(5) of the IBC, 2016

<u>In the matter of:</u>

Allahabad Bank ….Petitioner-Financial Creditor
Versus
M/s Supreme Tex Mart Limited …Respondent-Corporate Debtor

And in the matter of:-
<u>IA No.580/2021</u>
Sh. Ravinder Kumar Goel, Liquidator
of M/s Supreme Tex Mart Limited …..Applicant/Liquidator
Vs.
Excise and Taxation Commissioner, Ludhiana ….Respondent

Order delivered on: 07.02.2022

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

<u>Present through video-conferencing:</u>

For the Applicant/Liquidator : 1. Mr. Atul V Sood, Advocate
2. Mr. Nahush Jain, Advocate

For the Respondent : None

<u>Per: Mr. Harnam Singh Thakur, Member (Judicial)</u>

<u>ORDER</u>

<u>IA No.580/2021</u>

The present application is filed by Applicant-Liquidator and he is seeking stay of the operation and effect of the impugned notice issued by the respondent i.e. Excise and Taxation Commissioner, Ludhiana pertaining to

Blocking of Input Tax Credit of the Corporate Debtor. Notice of the present application has been issued and served upon respondent. Affidavit of service has been filed. None appeared on behalf of respondent proceeded against ex parte vide order dated 09.12.2021.

2. It is submitted by the applicant that the Corporate Insolvency Resolution Process, in the present matter, was triggered by Allahabad Bank, Financial Creditor under Section 7 of Insolvency and Bankruptcy Code, 2016. The application of Financial Creditor was admitted by this Tribunal vide order dated 29.09.2017 and moratorium was declared under Section 14 of the Insolvency and Bankruptcy Code,2016. The period of 180 days of CIRP expired on 28.03.2018, after this Tribunal extended the period for completion of resolution process further by 90 days vide order dated 23.03.2018. After the expiration of 270 days, this Tribunal allowed liquidation of the Corporate Debtor vide order dated 08.08.2018 as no resolution plan was approved by the Committee of Creditors.

3. It is further submitted by the applicant that he was appointed as Liquidator of the Corporate Debtor, replacing the then Liquidator Mr. Bhupesh Gupta, vide order dated 01.11.2019 passed by this Tribunal in CA No.941 of 2019. That pursuant to the same, applicant took charge of physical assets of the Corporate Debtor on 10th and 11th November 2019.

4. It is further submitted by the Applicant that the Corporate Debtor has a GST input tax credit available as asset to the tune of Rs.11,01,38,076/- available in electronic credit Ledger of GSTIN03AAHCS9897DIZY of the Corporate Debtor.

5. It is averred by the Applicant that Respondent i.e. Excise and Taxation Commissioner, had purportedly sent notices of assessment under Section 29(3) of the Punjab Value Added Tax Act, 2005 and CST Act,1956 u/s 9(2) for the years 2014-15, 2015-16 & 2016-17 during different months of the year 2021 (dated 22.02.2021, 23.02.2021, 18.06.2021 and 04.07.2021), notices of assessment are attached with the application and marked as Annexure-A3.

6. It is alleged by the Applicant that the aforesaid notices, are shown to have addressed to corporate debtors at the address 424, Industrial Area-A, Ludhiana, which is an old address. Nobody operates from this address. The actual address for all communications to corporate debtor is its registered office address B71, Focal point, Phase 7, Industrial Area, Ludhiana. None of the aforesaid notices were received by the office of the applicant.

7. It is further submitted that applicant first came to know of this issue only when mail dated 30.07.2021 was received by the applicant regarding intimation of blocking of input tax credit under GST of Rs.11,01,38,076/- available to the Corporate Debtor. Before the said mail, the applicant had no other information or notice of the said issue. It is further submitted by the applicant that he came to know of the aforesaid assessment notice being issued by respondent, only after the applicant inquired/ investigated into the issue of blocking of the input tax credit of Corporate Debtor. It is submitted by the applicant that respondent has failed to consider the Scheme of IBC with regard to claims and legal proceedings against a Corporate Debtor during liquidation. It is further submitted by the applicant that as per the Code the

stakeholders have to submit their claims within 30 days of the liquidation commencement date as per Section 38 of the Code read with Regulation 12 of Liquidation Process Regulations. The operational creditor had to submit the same in Form C under Regulation 17 of the liquidation regulations.

8. It is submitted by the applicant that the respondent has failed to consider and adhere to the various circulars issued by the central board of indirect taxes and customs, with regard to the applicability/ non applicability of regards of GST law on the companies against whom CIRP process has been initiated. It is pertinent to mention here to note that the central board of indirect taxes and customs had issued a clarificatory Circular No.134/04/2020-GST, dated 23.03.2020. A copy of clarificatory Circular No.134/04/2020-GST, dated 23.03.2020, is attached with the application as Annexure- A4.

9. It is further submitted by the applicant that the action of blocking credit Ledger of Input Tax Credit of Corporate Debtor is in violation of principles of natural justice. The corporate debtor has not received any notice regarding blocking of input tax credit and no opportunity of being heard was given before blocking of input tax credit. It is an established law that when any action is to be taken against anyone, minimum requirements of principles of natural justice must be followed. The minimum requirements include show cause notice and opportunity of being heard. Admittedly, the notices were addressed and sent to an old address which no longer exists.

10. It is submitted by the applicant that the blocking of Input Tax Credit of the Corporate Debtor is in violation of procedure prescribed under Rule 86A of CGST Rules 2017. As per Rule 86A requires two conditions to be satisfied,

namely, recording of reasons in writing by the officer ordering blocking of Input Tax Credit and secondly communication of such reasons to the affected person. The respondent has failed to appreciate that on account of Section 238 of the Code, it has an overriding effect over other laws. It is submitted that the respondent has to approach this Tribunal for seeking appropriate orders, to avoid taking any adverse action against the Corporate Debtor.

11. It is submitted by the applicant that the timelines for lodging the claims by the respondent has already ended more than two years back and any further exercise, is not recognized by the Code.

12. We have heard the learned counsel for the applicant and perused the records available with the application as per Section 33(5) of IBC, 2016 which states that subject to Section 52 when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor. Also, stakeholders have to submit their claims/updation of names within 30 days of the liquidation commencement date as per Section 38 of the Code read with Regulation 12 of Liquidation Process Regulations. In the present matter, the liquidation was ordered vide order dated 08.08.2018. The respondent has not submitted any claim before the Liquidator within the prescribed period.

13. As per Clarificatory Circular No.134/04/2020-GST, dated 23.03.2020 issued by Central Board of Indirect Taxes and Custom that the dues of the period prior to the commencement of CIRP will be treated as an operational debt and claims may be filed by proper officer i.e. before the Liquidator or NCLT in accordance with the provisions of IBC. Also, the IRP/RP

is under no obligation to file returns of the pre-CIRP period. In the instant matter, the respondent i.e. Excise and Taxation Commissioner, Ludhiana had sent notices of assessment for the years 2014-15, 2015-16 and 2016-17 which are contrary to the provisions for above-mentioned Clarificatory Circular and there is non-compliance by the respondent of the aforementioned Clarificatory Circular. If there is any claim raised by the respondent, it could have approached the appropriate forum i.e. this Tribunal. Also, Section 238 of the IBC has an overriding effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force for any instrument having effect by virtue of any such law.

14. Therefore, considering the facts and circumstances of the present case, the application filed deserved to be allowed. Consequently, the respondent is hereby ordered to unblock the Input Tax Credit under GST available to the Corporate Debtor. Accordingly, IA No.580/2021 stands disposed of.

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

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

February 07, 2022

AV/ASH