

(2023) 01 NCLT CK 0058

In the National Company Law Tribunal

Case No : IA No. 486 Of 2021 In CP (IB) No.339/Chd/Hry/2019

Excise and Taxation Commissioner VS Sh. Amarnath, Liquidator Karan Processors Pvt Ltd ?

Date of Decision : 24-01-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 15, 38(1), 53(1)(b)(ii), 54
Haryana Value Added Tax Act, 2003 — Section 26
Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016 —
Regulation 10, 12(1), 14(2), 33, 43

Citation : (2023) 01 NCLT CK 0058

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Piyush Bansal

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

IA No. 486/2021

1. This application has been filed by the Department of Revenue i.e., Excise and Taxation Department of State of Haryana, with a prayer to issue directions to the liquidator to accept the claim filed by the department in Form C under Regulations IBBI (Liquidation Process), Regulation 2016.

2. In this application, the applicant-Excise and Taxation Department of State of Haryana, has stated that the assessment was framed against the corporate debtor for the assessment year 2015-16, 2016-17, which is as under :

Sr. No.

Assessment Year

Date of Assessment

Amount of Tax Due (Rs.)

1

2014-15

15.03.2018

3,39,157/-

2

2016-17

05.02.2020

14,82,357/-

Total amounting to Rs.

18,21,513/-

3. Subsequently, on 01.03.2021, the applicant came to know about the liquidation proceedings against the corporate debtor and filed the claim through email in Form C under Regulations IBBI (Liquidation Process), Regulation 2016, before the liquidator. The liquidator further, in its email dated 03.03.2021, informed the office of the applicant department that the last date for submission of the claim was 26.12.2020 and the applicant's claim being received much beyond the period prescribed under the statutory rules, and the same cannot be admitted.

4. In its reply, the corporate debtor has submitted that the claim was submitted much beyond the stipulated time period under Section 38(1) of the IBC 2016 and Regulation 33 of the IBBI Regulation (Liquidation Process) Regulation 2016. It is further stated that the liquidator did not have any power to admit the claim at such a belated stage, despite the fact that the liquidator had sent an email to all stakeholders including the applicant on 02.12.2020 and a final reminder on 02.12.2020 to submit their claim within the stipulated period. The respondent has also informed that the corporate debtor has been liquidated and the bank account has been closed. There are no assets in corporate debtors to realise. The dissolution application is filed vide IA No. 393/2021 before this Adjudicating Authority.

5. In this case, we refer to the decision of this Bench in the case of CA No.368/2019, CA No.778/2019 and CA No.1123/2019 in CP (IB) No.07/Chd/Hry/2017; Recorders & Medicare Systems Private Limited, wherein we have made reference to the provisions of Section 26 of Haryana Value Added Tax Act, 2003, which reads as under :

"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”.

(Emphasis Supplied)

6. In our order, we have also made a reference 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, wherein it is held that :

“(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)”

7. In the said order, we have held as under:

“29. Thus, respectfully following the decision of the Hon’ble Apex Court in the case of State Tax Officer Vs. Rainbow Papers Limited (Supra) we hold that the Excise and Taxation Department is under no obligation to lodge the claim in respect of the statutory dues and the department should have been called upon to produce the materials in connection with their claims. Further, the filing of dues within the prescribed period does not apply to the present case. Section 26 of Haryana Value Added Tax, 2003 creates the first charge for the dues under the said Act on the properties of the defaulter. The Resolution Professional, thus, is

directed to consider the claims of the applicant after verifying the said claims with respect to the materials produced before him. He is directed to treat this claim under section 53(1)(b)(ii), at par with the debts owed to a secured creditor, ranking equally with other specified debts”.

(Emphasis supplied)

8. In view of the discussion above, the applicant is treated as secured creditor. Thus, the liquidator is directed to treat the claim of the applicant-Excise and Taxation Department, State of Haryana under section 53(1)(b)(ii), at par with the debts owed to a secured creditor, ranking equally with other specified debts.

9. We are aware that a dissolution application under Section 54 of the Code, in the present case is filed as IA No.393/2021 and is pending before us. The liquidator is directed to ensure that the Stakeholders, who have received any monies beyond their entitlement at the time of distribution, forthwith return the same as per Regulation 43 of IBBI (Liquidation Process) Regulations, 2016, so that the applicant's dues are paid as directed.

10. In the result, IA No.486/2021, is allowed and disposed of, accordingly.