

THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-I

Rule 11 of NCLT Rules, 2016

IA 2296 OF 2021

State Tax Officer-3

...Applicant

Vs.

CA Nirav Tarkas & Anr.

...Respondents

AND

IA 2339 OF 2021

State Tax Officer-3

...Applicant

Vs.

CA Nirav Tarkas & Anr.

...Respondents

In the matter of

Company Petition No. 66 of 2018, Under
Section 7 of Insolvency and Bankruptcy Code,
2016

Anchor Leasing Private Limited

...Financial Creditor

Vs.

Euro Ceramics Limited

... Corporate Debtor

Order delivered on: 12.07.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon'ble Member (Judicial)

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IA 2296 OF 2021 AND
IA 2339 OF 2021
IN
C.P. No. 66 OF 2018

Appearances:

For the Applicant : -----

For the Respondent/Liquidator : Adv. Agam H. Maloo

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The present Application(s) IA 2296 of 2021 and 2339 of 2021 in Petition CP No. 66 of 2018 is filed by the State Tax Officer-3, office of Assistant Commissioner of State Tax, Gandhidham under Section 7 of the Insolvency and Bankruptcy Code, 2016 the matter of M/s Euro Ceramics Limited on 16.09.2021 seeking following relief :

IA 2296 OF 2021;

- a) *That this Hon'ble Tribunal be pleased to admit the present Appeal;*
- b) *That this Hon'ble Tribunal may be pleased to condone the delay and direct Respondent No. 1 admit the entire claim of the applicant;*
- c) *Such other orders or order be passed in favour of the applicant as the Hon'ble Tribunal may deem fit and proper.*

IA 2339 OF 2021-

- a) *That this Hon'ble Tribunal be pleased to allow the present Application;*
- b) *That this Hon'ble Tribunal be pleased to declare the applicant as a secured creditor;*
- c) *That this Hon'ble Tribunal be pleased to direct the Respondent No. 1 Liquidator to treat the department as a secured creditor*

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and consider the claim of the department in parity with other secure creditors;

d) That this Hon'ble Tribunal be pleased to grant ex-parte ad-interim relief directing Respondent No. 1(Liquidator), to not proceed with the liquidation process and disbursement of proceeds by ignoring the charge of State Tax Department over the property of Corporate Debtor;

e) Such other orders by passed in favour of the Applicant as the Hon'ble Tribunal may deem fit and proper.

2. IA 2296 of 2021 is filed to challenge the decision of the Liquidator in refusing to accept the claim of the State Tax Department, State of Gujarat (formerly known as Commercial Tax Department) arising from non-payment of tax for A.Y. 2012-13 to 2017-18, on the ground that the claim has been formally submitted beyond the prescribed period for filing claims and that the claim has been submitted in wrong form.
3. IA 2339 of 2021 is filed to seek recognition as a secured creditor in relation to claim of Rs. 68,05,961/- in relation to tax liability under Gujarat VAT Act, 2003 for A.Y. 2012-13 to 2013-14, which has been admitted by the Liquidator as unsecured creditor and to seek necessary orders and direction to the liquidator to not proceed further with the liquidation process and disbursement of proceeds, ignoring the charge of the State Tax Department over the property of Corporate Debtor.
4. This Tribunal admitted the Corporate Debtor into Corporate Insolvency Resolution Process vide order dated 25.2.2019 passed in an application u/s 7 of the I B Code. Thereafter, the Corporate Debtor was ordered to be liquidated vide Order dated 1.12.2020 and the public notice inviting claims from creditors as on liquidation commencement date in the liquidation proceedings was issued for submission of such claims by

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30.12.2020. The Applicant submitted its claim on 18.6.2021 for an amount of Rs. 12,53,88,282/-.

5. Heard learned Counsel and perused the material on record.
6. The Hon'ble Supreme Court dealt with the issue in the case of ***State Tax Officer (1) v. Rainbow Papers Limited*** "*whether the provisions of the IBC and, in particular, Section 53 thereof, overrides Section 48 of the GVAT Act*" and held that "*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 created. Such security interest could be created by operation of law. The definition of secured creditor in the IBC does not exclude any Government or Governmental Authority*".
7. Following this decision, we have no hesitation to say that the Liquidator ought to have admitted the Applicant as secured creditor, and is accordingly directed to do so in terms of prayer (b) in IA 2339 of 2021.
8. As regards admission of claim as prayed in IA 2296 of 2021, we note that the claim pertains to additional demands created on account of assessment for A.Y. 2012-13 to A.Y. 2017-18 and was filed beyond the last date for submission of claims in the liquidation. The Applicant has relied upon the Hon'ble Supreme Court decision in case of *Suo Moto Writ Petition (Civil) No. 3 of 2020* whereby the limitation period was extended in view of COVID-19 pandemic. However, we note that the Hon'ble Supreme Court had extended the period of limitation under the general law of limitation or under Special Laws in relation to petitions/applications/suits/appeals/all other proceedings. The Liquidation proceedings contemplate claims based settlement of dues of creditors and such claims are to be submitted in time bound manner.
9. We find from the annexures to the application, that the Applicant had filed the claim form in relation to CIRP proceedings, which indicate that

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the applicant was not aware of the liquidation proceedings having been commenced in the case of Corporate Debtor. However, the applicant has neither enclosed any order giving rise to outstanding demands nor the details of relevant order are stated in the claim form. It is the case of applicant itself that these demands came into existence upon assessment of the tax liability subsequently in relation to stated years. The pleadings in the application are silent as to how and when these demands came into existence. The Applicant was asked to file additional affidavit providing these details, which it did by placing on record affidavit dated 10.05.2024. However, the additional affidavit dated 10.05.2024 also does not carry these details. In view of this, we are not in a position to decide whether the demands relating to enhanced amount of claim were raised prior to commencement of liquidation or not. Nonetheless, we find that the Respondent Liquidator has expressed his opinion that the said claim, if admitted, shall be in nature of claim of a secured operational creditor.

10. In view of the foregoing, we are of considered view that the COVID-19 pandemic had caused undue hardship to public at large and the delay in filing of present case deserves to be condoned. Accordingly, the liquidator is directed to consider the claim of the applicant and admit the same in accordance with his reply, if the demands pertaining to enhanced claim amounts were raised by the orders passed prior to liquidation commencement date.
11. In view of the foregoing, IA 2339 of 2021 is allowed in terms of prayer (b) and IA 2296 of 2021 is allowed in terms of directions contained in para 10 above.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)