



March 22, 2019

BSE Limited
P J Towers,
Dalal Street,
Mumbai - 400 001

National Stock Exchange of India Limited
Exchange Plaza,
Plot No. C/1, Block - G
Bandra Kurla Complex, Bandra - East
Mumbai - 400 051

Sub: Disclosure in terms of Regulation 30 of SEBI (SAST) Regulations, 2015

Ref.: Intimation filed by the Company on August 4, 2018 in relation to the Appeal filed by Sales Tax Department, State of Maharashtra

Dear Sir,

With reference to the captioned matter, we would like to bring to your kind attention that the Sales Tax Department, State of Maharashtra challenged the order dated 19th April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, in the 'Corporate Insolvency Resolution Process' initiated against 'Raj Oil Mills Limited' approving the 'Resolution Plan' and has filed an appeal with the National Company Law Appellate Tribunal (NCLAT), New Delhi vide company appeal (AT) (Insolvency) No. 309 of 2018 against the Company and the same was admitted by the NCLAT on July 5, 2018 for seeking clarification that whether the central or state government falls within the ambit of operational creditors.

In this regards, we wish to inform you that National Company Law Appellate Tribunal (NCLAT) New Delhi vide its order dated March 20, 2019 have disposed off the Appeal filed by Sales Tax Department, State of Maharashtra and stated under its order that the "Sales Tax" and "Value Added Tax" shall be treated as "Operational Debt" and thereby 'Sales Tax Department, State of Maharashtra' becomes the 'Operational Creditors' within the meaning of Corporate Insolvency Resolution Process.


NCLAT also stated that the Order passed by National Company Law Board, Western Region, Mumbai Bench on April 19, 2018 shall stand clear and it finds no cause to interfere with the impugned order challenged in Company Appeal (AT) (Insolvency) Nos. 309, 559, 671 & 759 of 2018.

The copy of the order is enclosed for your reference.

This information is given under Regulation 30 of SEBI (LODR) Regulations, 2015.

Thanking you.

For Raj Oil Mills Limited


Sanjay Samantaray
Chief Financial Officer (CFO)



NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 205 of 2017

(Arising out of Order dated 2nd August, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad in C.A. No. 123/2017 in CP(IB) No. 01/HDB/2017]

IN THE MATTER OF:

Pr. Director General of Income Tax (Admn. & TPS) ...Appellant

Vs.

M/s. Synergies Dooray Automotive Ltd. & Ors. ...Respondents

Present: For Appellant: - Mr. Ruchir Bhatia and Mr. D.R. Jain, Senior Standing Counsel with Mr. Shahrukh Ejaz, Mr. Sanampreet Singham, Mr. Sunil Kumar Pandey, Advocates.

For Respondents: - Mr. Jayant Mehta, Mr. Rishi Sood, Mr. Manu Krishnan, Mr. Sajal Jain, Mr. Divyanshu Aggarwal, Advocates for R2.

Ms. Shrishti Khare and Ms. Jasveen Kaur, Advocates for SBI & ICICI.

Mr. Rahul Ray, Advocate for R-8.

Company Appeal (AT) (Insolvency) No. 309 of 2018

(Arising out of Order dated 19th April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in MA 35 of 2018 in CP No. 1132/I&BC/MB/MAH/2017]

IN THE MATTER OF:

**Sales Tax Department, State of Maharashtra
Through Deputy Commissioner of State Tax,**

**(MUM-VAT-E-819), Nodal-3, Mumbai
Vs.**

...Appellant

M/s. Raj Oil Mills Limited & Ors.

...Respondents

Present: **For Appellant:** - Ms. Pinky Anand, ASG and Mr. Atmaram Madkarni, ASG with Ms. Rama Ahluwalia, Mr. Nishant, Mr. Prashant Kenjale, Ms. Sridha Mehra, Advocates.

For Respondents: - Mr. Sanjay Bhatt and Ms. Honey Satpal, Advocates for R1.

Dr. U.K. Choudhary, Senior Advocate with Mr. Rajesh Bohra, Mr. Himanshu Vij, Mr. Uzair Kazi, Ms. Sangeeta Bohra, Mr. Aditya Narayan, Mr. Sumit Melhotra, Advocates for Successful Resolution Applicant.

Mr. Ramji Srinivasan, Senior Advocate with Mr. Vikram Trivedi, Ms. Suchitra Valjee, Mr. Bharat Sangal and Ms. Babita Kushwaha, Advocates for R5.

Mr. Mukul Talwar, Senior Advocate with Mr. Vinay Deshpande, Mr. J.K. Chumbak and Ms. P. Meenakshi, Advocates.

Company Appeal (AT) (Insolvency) No. 559 of 2018

(Arising out of Order dated 13th July, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, in MA 394/2018 in CP No. 1070/I&BC/NCLAT/MB/MAH/2017]

IN THE MATTER OF:

**Sales Tax Department
State of Maharashtra**

...Appellant

Vs.

Phoenix Erectors Pvt. Ltd. & Ors.

...Respondents

Present: For Appellant: - Mr. Prashant S. Kenjale and Mr. Nishant, Advocates.

For Respondents: - Mr. Sameer Abhyankar, Mr. Sangam Singh R. Bhonsle, Ms. Samridhi S. Jain, Mr. Siddharth A. Mehta and Mr. Akshay Joshi, Advocates for R-2 to 5.

Company Appeal (AT) (Insolvency) No. 671 of 2018

(Arising out of Order dated 19th April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in MA 35 of 2018 in C.P. No. 1132/I&BC/MB/MAH/2017]

IN THE MATTER OF:

Pr. Commissioner of Income Tax (Central)-3, Mumbai ...Appellant

Vs.

Raj Oils Mills Ltd. & Ors. ...Respondents

Present: For Appellant: - Mr. Sanjay Kumar and Mr. Asheesh Jain, Advocates.

For Respondents: - Mr. Rajesh Bohra, Mr. Uzair Z Kazi, Mr. Aditya Narayan, Mrs. Sangeeta & Bohia, Advocates for R-1.

Company Appeal (AT) (Insolvency) No. 759 of 2018

(Arising out of Order dated 22nd October, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in MA 454/2018 in CP (IB) 1161(MB)/ 2017]

IN THE MATTER OF:

**Sales Tax Department,
State of Maharashtra**

...Appellant

Vs.

Parte Casters Pvt. Ltd. & Ors.

...Respondents

Present: For Appellant: - Mr. Prashant S. Kenjale, Advocate.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

These appeals though heard separately but the question being common are being disposed of by this common judgment.

In Company Appeal (AT) (Insolvency) No. 205 of 2017

2. This appeal has been preferred by 'Pr. Director General of Income Tax (Admn. & TPS)' against the order dated 2nd August, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad under Section 31 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) approving the 'Resolution Plan' of 'M/s. Synergies Dooray Automotive Ltd.'.

3. The grievance of the Appellant is that the Adjudicating Authority has granted huge Income Tax benefits to the 2nd Respondent- 'Synergies Castings Ltd.' without impleading the Appellant department as a Respondent to the said proceedings.

In Company Appeal (AT) (Insolvency) No. 671 of 2018

4. This appeal has been preferred by 'Pr. Commissioner of Income Tax (Central)-3, Mumbai' against the order dated 19th April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, whereby and whereunder, the Adjudicating Authority approved the 'Resolution Plan' in the 'Corporate Insolvency Resolution Process' initiated against 'Raj Oil Mills Limited'.

5. The grievance of the Appellant is that the Income Tax liability/demand in respect of the 'Corporate Debtor' amounting to Rs. 338 Crores was settled for 1% of the 'crystallized demand' to a maximum of Rs.2.58 crores against the mandate of the Income Tax Act, 1961.

In Company Appeal (AT) (Insolvency) No. 309 of 2018

6. The 'Sales Tax Department, State of Maharashtra' has challenged the order dated 19th April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, in the 'Corporate Insolvency Resolution Process' initiated against 'Raj Oil Mills Limited' approving the 'Resolution Plan' under Section 31 of the 'I&B Code'.

7. The main plea taken by the Appellant is that the 'Resolution Professional' had not intimated during the 'Corporate Insolvency Resolution Process' to attend the meeting of the 'Committee of Creditors' and plan has been approved prejudicial to the rights of the Appellant.

8. Further, according to Appellant, the 'Sales Tax' and 'Value Added Tax' do not come within the meaning of 'Operational Debt' and thereby, 'Sales Tax Department, State of Maharashtra' cannot be treated to be an 'Operational Creditor'.

In Company Appeal (AT) (Insolvency) No. 559 of 2018

9. This appeal has also been preferred by 'Sales Tax Department, State of Maharashtra' against the order dated 13th July, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, in the 'Corporate Insolvency Resolution Process' initiated against 'Yashraaj Ethanoll Processing Pvt. Ltd.' whereby the modified 'Resolution Plan' has been approved under Section 31 of the 'I&B Code'. While similar plea has been taken that the 'State of Maharashtra' is not an 'Operational Creditor' and the 'Value Added Tax' do not come within the definition of 'Operational Debt', it was submitted that the reduction of 'Value Added Tax' to 1% is against the existing law.

10. Reliance has been placed on Section 37 of the 'Maharashtra Value Added Tax, 2002' to show that the '*liability under the Act to be the first charge*', which reads as follows:

“37. Liability under this Act to be the first charge— (1) *Notwithstanding anything contained in any contract to the contrary but subject to any provision regarding creation of first charge in any Central Act for the time being in force, any amount of tax, penalty, interest, sum forfeited, fine or any other sum, payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer or, as the case may be, person.*

(2) *The first charge mentioned in sub-section (1) shall be deemed to have been created on the expiry of the period specified in sub-section (4) of Section 32, for the payment of tax, penalty, interest, sum forfeited, fine or any other amount.”*

11. Reliance has also been placed on the decision of the Hon'ble Supreme Court in ***“Central Bank of India vs. State of Kerala & Ors.— (2009) 4 SCC 94”***, wherein the Hon'ble Supreme Court held:

“179. In this case the Bank had taken possession of the mortgaged assets on 15-2-2005 and sold the same. On 11-7-2005, the officers of the Commercial Tax Department informed the Bank about outstanding dues of sales tax amounting to Rs. 3,62,82,768. The Assistant Commissioner issued notice under Section 39 of the Bombay Act for recovery of Rs.48,48,614. The High Court negative the Bank’s claim of priority and held that Section 35 of the Securitisation Act does not have overriding effect over Section 33-C (sic Section 38-C) of the Bombay Act.

180. The view taken by the High Court is unexceptional and calls for no interference.

185. In our opinion, the Bank cannot claim priority over the dues of sales tax because statutory first charge had been created in favour of the State by Section 26-B which was inserted in the Kerala Act with effect from 1-4-1999 and the courts below did not commit any error from 1-4-1999 and the courts below did not commit any

error by refusing to decree the suit for injunction filed by the Bank.”

In Company Appeal (AT) (Insolvency) No. 759 of 2018

12. This appeal has also been preferred by ‘Sales Tax Department, State of Maharashtra’ against the order dated 22nd October, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, whereby the ‘Resolution Plan’ submitted in the ‘Corporate Insolvency Resolution Process’ initiated against ‘Parte Casters Pvt. Ltd.’- (‘Corporate Debtor’) has been approved with 100% voting shares.

13. Apart from the plea taken by the Appellant in the aforesaid two appeals that ‘State of Maharashtra’ is not an ‘Operational Creditor’ and ‘Value Added Tax’ is not an ‘Operational Debt’, it was also submitted that the ‘Resolution Plan’ reduced the Appellant’s claim to 20%.

Legal Issue:

14. The question arises for consideration in these appeals are:

- (i) Whether the ‘Income Tax’, ‘Value Added Tax’ or other statutory dues, such as ‘Municipal Tax’, ‘Excise Duty’, etc. come within the meaning of ‘Operational Debt’ or not? and;

(ii) Whether the Central Government, the State Government or the legal authority having statutory claim, come within the meaning of 'Operational Creditors'?

15. Learned counsel appearing on behalf of the 'Pr. Commissioner of Income Tax (Central)-3, Mumbai' in Company Appeal (AT) (Insolvency) No. 671 of 2018 submits that a bare perusal of the definition of 'Operational Debt' would reveal that Income Tax cannot be in the nature of 'Operational Debt' as 'Operational Debt' refers to the claim in respect of 'goods' or 'services' including employment or a debt in respect of repayment of dues of the Central Government, State Government or the Local Authorities.

16. According to him, 'Income Tax' is the statutory liability of every person under Section 4 of the Income Tax Act, who are bound to pay Income Tax on its 'Total Income' (as defined under Section 5 of the Act). This is required to be discharged by every person including a 'Resolution Applicant'. Placing reliance on Chapter XVII (Collection and recovery tax), particularly Sections 190 to Sections 234F of the Income Tax Act, 1961 it was submitted that the said provisions if contravened will become redundant. Further, according to learned counsel for the Appellant, the 'Resolution Plan' approved by the Adjudicating Authority is in contravention of provisions of Section 220 read with Section 156 of the Income Tax Act, which read as under:

“156. When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable”

xxx

xxx

xxx

“220(1) Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under section 156 shall be paid within thirty days of the service of the notice at the place and to the person mentioned in the notice :

Provided that, where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty days aforesaid is allowed, he may, with the previous approval of the Joint Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty days aforesaid, as may be specified by him in the notice of demand.

(1A) Where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or