



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.301 & 302

IA/498(AHM)2022 & IA/1190(AHM)2023 in CP(IB) 342 of 2018

Proceedings under Section 60(5) r.w 238 IBC r.w Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

Ramchandra D Choudhary Liquidator of Vijay Timber Industries Pvt Ltd

.....Applicant

V/s

.....Respondent

The Assistant Commissioner of State Tax & Others

&

IN THE MATTER OF:

Vimalkumar mohanlal jain

Vs

Ramchandra Dallaram Choudhary Liquidator of Vijay Timber Industries Pvt. Ltd (in liquidation) & others

Order delivered on: 23/04/2026

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

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DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT-II,
AHMEDABAD**

INTERLOCUTORY APPLICATION NO. 498 OF 2022

&

INTERLOCUTORY APPLICATION NO. 1190 OF 2023

IN

COMPANY PETITION (IB) NO. 342 OF 2018

I.A. No. 498 of 2022

(Under Section 60(5) read with Section 238 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016).

In the matter of :-

Ramchandra D. Chaudhary
Liquidator of
M/s Vijay Timber Industries Private Limited
Having Office at:
9B, Vardan Complex,
Lakhudi Circle, Nr. Vimal House,
Navrangpura, Ahmedabad-380014

... Applicant

Versus

1. The Assistant Commissioner of State Tax
Ghatak-103,
1st Floor, Plot No. 123, Sector 9,
Krishna Petrol Pump, Gandhidham - 370201
2. Mamlatdar Office
Sector - 1A,
Gandhidham - 370201
3. Vimal Kumar Mohanlal Jain
Plot No. 163, Sector - 4,
Gandhidham, Kutch-370201

... Respondents

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WITH

I.A. No. 1190 of 2023

(Under Section 60(5) of The Insolvency and Bankruptcy Code, 2016)

In the matter of:

Vimal Kumar Mohanlal Jain
Plot No. 163, Sector – 4,
Gandhidham, Kutch-370201

... Applicant

Versus

1. Ramchandra D. Chaudhary
Liquidator of
M/s Vijay Timber Industries Private Limited
Having Office at:
9B, Vardan Complex,
Lakhudi Circle, Nr. Vimal House,
Navrangpura, Ahmedabad-380014
2. The Assistant Commissioner of State Tax
Ghatak-103,
1st Floor, Plot No. 123, Sector 9,
Krishna Petrol Pump, Gandhidham - 370201
Mamlatdar Office
Sector – 1A,
Gandhidham - 370201
3. Mamlatdar Office
Sector – 1A,
Gandhidham - 370201

... Respondents

Order pronounced on 23.04.2026

Coram:

**MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G. VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

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MR. VELAMUR G. VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Appearance:

For the Applicant : Mr. Atul Sharma and
Arjun Padhiyar (I.A. No. 498 of
2022) ,Adv.

For Respondent : Ms. Ritu Guru, Adv.(For R-1 in
I.A. No. 498 of 2022 and For R-2
in I.A. No. 1190 of 2023) And
Alkesh Narayanbhai Shah, Adv.
for R-1 (I.A. No. 498 of 2022) and
Arpit Singhvi Adv. for R-3.
[Applicant in I.A. No. 1190 of
2023] and Dhruvit Shah, Adv. For
R-1 (in I.A. No. 1190 of 2023)

I.A. No. 498 of 2022

1. This application is filed under Section 60(5) read with Section 238 of the Insolvency & Bankruptcy Code, 2016 (for the sake of brevity to be referred to as "Code") read with Rule 11 of NCLT Rules, 2016 by liquidator of Vijay Timber Industries Private Limited inter alia seeking following prayers:

To direct the Respondent No. 1 State Tax Officer – Unit 104, to remove the attachment from the property mentioned in Paragraph No. 4(a) of the present application.

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I.A. No. 1190 of 2023

2. This application is filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 (for the sake of brevity to be referred to as “Code”) by Respondent No. 3 inter alia seeking following prayers:

To direct the Respondent No. 2 (Assistant Commissioner of Sales Tax) to remove the attachment/ charge over the premises situated at : (i) Survey No. 515/1, Village : Mithirohar, Gandhidham (ii) Plot Nos. 1,2,3 Survey No. – 259/1, Village : Mithirohar, Gandhidham (iii) Shed No. – 17/E, GIDC, Gandhidham.

3. Briefly, the facts of the case are such that Vijay Timber Industries Private Limited filed an application under Section 7 of the Code, being C.P. (I.B.) 342 of 2018, which was admitted vide order dated 13.02.2020. Mr. Ramchandra D. Choudhary was appointed as the Interim Insolvency Resolution Professional. It is further stated that Applicant had received one claim from State Tax Department in prescribed 'Form B' dated 20.05.2020. The applicant further submits that the Resolution Professional vide letter dated 22.07.2020 sought information from Respondent No.1 for verification of claim submitted in prescribed Form B. However, the State Tax failed

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to submit the same and the claim amount so claimed being Rs. 31,76,92,960.00/- (Rupees Thirty-One Crores Seventy-Six Lakhs Ninety-Two Thousands and Nine Hundred Sixty) couldn't be admitted. It is further stated that Liquidation Process was initiated on 31.12.2020. The Liquidator had published Public Announcement on 06.01.2021. However, Respondent No.1 did not submit its claim to the liquidator.

4. It is further submitted that thereafter liquidator in accordance with the provisions of the Code published Sale notice dated 04.02.2022 for the sale of following properties of the corporate debtor through online auction: -

a. Lot No.1: Land & Building, Plant & Machinery and other assets in ownership of Vijay Timber Industries Private Limited located at Survey No - 515/1, Village - Mithirohar, Gandhidham;

b. Lot No.2: Land & Building, Plant & Machinery and other assets in ownership of Vijay Timber Industries Private Limited located at Plot No - 1,2,3 Survey No - 259/1, Village - Mithirohar, Gandhidham;

c. Lot No.3: Land & Building, Plant & Machinery and other assets in ownership of Vijay Timber Industries Private Limited located at Shed No - 17/E, GIDC, Gandhidham.

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5. It is further submitted that E-Auction came to be held on 14.02.2022. Mr. Vimal Kumar Mohanlal Jain deposited Earnest Money Deposit ('EMD') of Rs. 56,61,000/- (Rupees Fifty-Six Lakhs Sixty-One Thousand Only).
6. It is further submitted that Mr. Vimal Kumar Mohanlal Jain came to be declared as the successful bidder in the said online public auction process for bidding an amount of Rs. 5,67,27,000/- vide letter dated 14.02.2022. It is further stated that State Tax towards their past outstanding statutory dues of the corporate debtor has attached the aforesaid property of the corporate debtor. The Liquidator submits that he came to know about attachment from the Village Form No. 6 and 7 as obtained from the Revenue Records.
7. The Liquidator submits that once the provisions of the Code are invoked and the CIRP/Liquidation of the corporate debtor is initiated, the State Tax being Statutory Authority falls under the definition of the Operational Creditor as defined under Section 5(20) of the Code and is further entitled to recover their dues in accordance with Section 53 of the Code. It is further submitted that as per Section 238 of the Code, the provisions of the Code will have an overriding effect over

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anything inconsistent contained in any other law for the time being in force.

8. The Liquidator further submits that it had issued the E-Auction Sale notice as well as tender document dated 04.02.2022 wherein it has been specifically mentioned and reiterated that the assets in question were proposed to be sold on “As is where is” basis, “As what is basis”, “Whatever there is” basis and “No recourse basis”. In view of this stipulation of the tender document, the Successful Bidder/ Applicant in the I.A. No. 1190 of 2023 is not entitled to file application against the Liquidator and the same is not maintainable. The fact of the filing of I.A. No. 498 of 2022 is also well within the knowledge of the Successful Bidder as it has been arrayed as a party being the Respondent No. 3.
9. The State Tax Department submits that an amount of Rs.33,19,28,952/- including interest till date 31.12.2020 is still due from the Corporate Debtor to the Sales Tax authorities towards CST and VAT. It is further submitted that on or about 30.05.2011 recovery proceedings were initiated against the Corporate Debtor, in respect of its dues for the year 2006/2007 and 01.04.2010 to 22.11.2010 and that on 20.12.2018 State Tax addressed a letter to the Mamlatdar,

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Gandhidham, stating the fact that the dues are to be recovered from the corporate debtor, therefore, attachment may be made on the properties of the Corporate Debtor. Pursuant to which, the Mamlatdar had mutated the said attachment vide entry no. 6546 dated 31.12.2018 in the Village Form no.6.

10. It is further submitted that it had rightfully created the charge on the Corporate Debtor's Properties as Corporate Debtor had liability to clear the debts of the State Tax Department. That the Assessing Officer had passed the assessment order on 31.12.2020 for the dues under GVAT Act, 2003 and under the Central Sales Tax Act, 1956 to the tune of Rs.33,19,28,952/- for the period of 2006-07, 01.04.2010 to 22.11.2010, 2012-13. The recovery proceedings were initiated against the corporate debtor, much prior to the initiation of the C.I.R.P. proceedings. That the dues are therefore prior to the CIRP i.e. for the year 2006/2007 and 1.4.2010 to 22.11.2010.
11. It is further submitted that claim made by it falls under the definition of term debt as defined under Section 3(11) of the IBC. The Liquidator had failed to consider the term charge as defined in IBC. The term charge has been defined in Section 3(4) of the Code and the term charge is expressly included in

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the definition of term security interest which is defined under Section 3(31) of the Code. The State Tax Department has a security interest and thus is secured creditor for the purpose of IBC and is consequently entitled to all the benefits available to a secured creditor under IBC. It is further stated that creation of charge over the property for non-payment of statutory dues by the Department is since 2018. It is further submitted that charge held by the department on the property of the Corporate Debtor would qualify as a secured creditor of the Corporate Debtor and thereby would rank higher in the order of the payment specified in Section 53 of the IBC. It is further stated that Section 238 of IBC clearly nullifies the effect of any provision contained in any other law, provided the same is inconsistent with the provision contained in IBC and not otherwise. There is no inconsistency or repugnancy in so far as Section 46 of the VAT Act is concerned.

12. It is further submitted that Liquidator has grossly erred in not considering State Tax as a secured creditor of the Corporate Debtor as per the provisions of Section 9 (2) of CST Act, 1956 to be read with Section 48 of the GVAT Act, 2003 and to be read along with Section 3(30) of the Code. It is further submitted that assets of the corporate debtor which the State

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Tax Department has attached are prior to the initiation of the CIRP proceedings and shall not form part of the liquidation estate and that the liquidator here in shall consider the State Tax department as the secured creditor under Section 53 of the code.

13. The Successful Bidder submits that although the entire amounts have been paid and certificate of sale dated 19.03.2022 and 28.04.2022 has also been issued for the assets in question, the possession for the said assets in question has not been handed over the Applicant. It is stated and submitted that it is the duty of the Liquidator to hand-over possession of the assets in question to the Successful Bidder. It is further submitted that the Sales Tax Department is not the owner of the assets and the assets are owned by the Successful Bidder and Sales Tax Department is merely an unsecured creditor. The State Tax can recover its dues in terms of Section 53 of IBC. Provisions of IBC shall have overriding effect over all other laws.
14. Heard Ld. Counsel for both the advocates and pursued the written submissions & judgements filed by them.
15. The liquidator filed application IA 498 of 2022 for directing the respondent No. 1, State Tax Officer to remove the attachment

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from the property mentioned in application, while IA no 1190 of 2023 was filed by successful resolution applicant against the State Tax Officer for the same relief. It is pertinent to note that when the liquidator has filed an application for lifting the charge against the State Tax officer, there was no need for the SRA to file another IA for the same relief.

16. Admittedly, the CIRP was commenced vide order dated 13.02.2020 and liquidation of CD was ordered on 31.12.2020. Accordingly, the applicant issued e-auction notice on 04.02.2022 and the sale certificates were issued on 19.03.2022 and 28.04.2022 in favour of SRA.

17. According to the State Tax Officer, on or about 30.05.2011, the recovery proceedings were initiated against the CD in respect of the dues for the year 2006-07 and 01.04.2010 to 22.11.2010. The State Tax officer wrote letter to Mamlatdar, Gandhidham on 20.12.2018 to place the charge on three properties of the trader. Accordingly, the Mamlatdar has mutated the entry No. 6546 on 31.12.2018 in the village form No. 6 and recorded charge. It is clearly seen that the charge was created much prior to the initiation of the CIRP against the CD. The State Tax Officer also submitted that they have sent a request letter to the RP stating that as per section 48 of

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the Gujarat Value Added Tax Act, they have the first charge on the property of the CD and enjoys the status of the secured creditor.

18. According to the liquidator, once the CIRP/liquidation of the CD is initiated, the State Tax officer being the statutory authority falls under the definition of the Operational Creditor. The State Tax Officer is not a secured creditor and cannot have any right of charge, which is ceased. The liquidator also submitted that he was not aware about the attachment and only came to know about it in April 2022 when he received the revenue record.

19. The liquidator has relied upon the following judgements:

- a) *IA 620/2021 in CPIB 198 of 2017 between Shivpriya Infrastructure Pvt. Ltd. Vs. State Tax Officer.*
- b) *Special Criminal Application No. 8222 of 2019 between East India Enterprise through Proprietor Rajeshbhai Ramani Vs. Ministry of Finance Dept of Revenue.*
- c) *Company Appeal 80 (insolvency) No. 32 of 2021 between Pinakin Shah/Liquidator of Ms. Brew Berry Hospitalities Pvt Ltd. Vs. Asst. Commissioner of State Tax & Anr.*

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20. The State Tax Officer stated that Rs. 33,19,28,952/- is due towards the GVAT and CST from the CD till the period of 2006-07, 01.04.2010 and 22.11.2010 and 20.12.2013. He further submitted that as the charge was created before the initiation of CIRP, the CD has liability to clear debts of the State Tax Department. The order passed by the Assessing officer is quasi-judicial and is enforceable. There is also mutation of the entries in the record of rights regarding the creation of the charge in 2018. The RP has over looked the charge created. He should have included the claim of the department in the debt of the CD. The State Tax Officer further stated in the written submissions that by the virtue of the charge on the property they would qualify as a secured creditor and would rank higher in the order of payment specified in section 53 of the Code. Therefore, in the case of liquidation of CD, the amount received by them would not be NIL. He further submitted that under section 238 of the code does not obliterate or wipe out the statutory provisions contained in section 48 of the VAT Act. He further submitted that there is nothing in the code to suggest that the charge created by another statute must lost its character on the commencement of liquidation, but the

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code envisages recognises creation of charge on the property. He further pointed out that the assessment order was passed before the declaration of the moratorium and therefore it has attained finality in the absence of any challenge against it. The RP, if aggrieved, should have filed the appeal u/s 107 of the CGST/SGST Act. The RP had received the admitted claim to the respondent. The RP was not having any adjudicatory power given by the GST Act.

21. He relied upon the following judgements:

- a) *Judgement of NCLT, Principal Bench in Appeal No. (IB)-531 (PB)/2019 in the matter of State Bank of India Vs. ARGL Limited.*
- b) *Judgement of Hon'ble High Court of Gujarat in SCA No. 5413 of 2022, Shree Radhekrushna Ginning and pressing Pvt. Ltd. Vs. State of Gujarat.*
- c) *Judgement of Hon'ble NCLT, Chennai Bench in CA(CH)(Insolvency) No. 42 of 2021, Bijoy Prabhakaran Pulipra Vs. State Tax Officer.*
- d) *Judgement of Hon'ble NCLT, Mumbai Bench, in I.A. No. 2734 of 2022 in C.P. No. 1667/IB/C-III/2018, Asst Commissioner of State Taxes & Excise Circle-2 Vs. CA Amir Gupta, Liquidator of Provogue (India)Ltd.*

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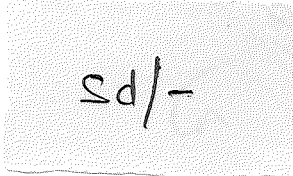
e) Order dated 13.09.2022 of NCLT, Ahmedabad Bench-Court-I in IA 571 of 2021, Umiya Trading Vs. Stratus Foods Pvt. Ltd.

22. The SRA submitted that the State Tax Department is not the owner of the assets which are owned by them. The department is merely the unsecured creditors and can only recover the dues in terms of Section 53 of the Code. He relied upon the following judgements:

- a) *Tapadia Polyesters Pvt. Ltd Vs Sales Tax Officer (Company Appeal No. 366 of 2023).*
- b) *Paschimanchal Vidyut Nigam Ltd Vs. Raman Ispat Pvt. Ltd. (Civil Appeal No. 7976 of 2019)*
- c) *Pimpri Chinchwad Municipal Corporation Vs Jayanti Lal Jain (IRP) of Windals Auto Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 654 of 2024.*
- d) *Haryana State Industrial and Infrastructure Development Corporation Ltd. V. AAR AAR Technoplast Pvt. Ltd., and Anr. Company Appeal (AT) (Insolvency) No. 606 of 2021.*
- e) *KRBL Limited Vs. State of Gujarat Special Civil Application No. 19804 of 2022.*



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23. As per the judgement of Hon'ble Supreme Court in the matter of Rainbow Papers Ltd. This State Tax Officer is the secured creditor. In this case, it appears that assessment order passed in the year 2011 for the earlier dues and the charge was created in the 2018 itself. While the CD was admitted into the CIRP in the year 2020. No order of assessment or attachment was made during the moratorium period. It was the duty of the RP or the liquidator to find out the assets of the CD and include it in the Asset Memorandum. The liquidator simply stated that he was not knowing about the charge until he received the revenue record. However, when the assets came into his knowledge he should have obtained the revenue record immediately and placed it before sale of the property. It is also the duty of the purchaser of the property to verify the revenue record of the immovable property he is proposed to purchase in advance. The sale was conducted 'as is where is' basis.

24. Hence the attachment or charge created over the premises mentioned in the application cannot be directed to remove. The applicants have failed to substantiate that the charge and attachment is absolutely illegal and contrary to the provisions of IBC.

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25. Hence we pass the following order:

ORDER

I.A. No. 498 of 2022 and I.A. No. 1190 of 2023 in CP (IB) No. 342 of 2018 are rejected and disposed of.

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**DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)**

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**CHITRA HANKARE
MEMBER (JUDICIAL)**

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