

**IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD**  
**COURT - 2**



ITEM No.301

**IA/735(AHM)2023**

**in**

**IA/435(AHM)2023**

**in**

**IA/501(AHM)2020 in CP(IB) 66 of 2017**

**Order under Section 60 r.w 60(5) IBC**

**IN THE MATTER OF:**

The Commissioner Of State Tax Gujarat

.....**Applicant**

Vs.

Ramchandra Dallaram Chaudhary Liquidator Of M/s Anil  
Ltd & Anr.

.....**Respondent**

**Order delivered on 31/10/2023**

**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.

-Sd-

-Sd-

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

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD (COURT - II)**

**IA No. 735 / NCLT / AHM / 2023  
IN  
IA No.435/NCLT/AHM/ 2023  
In  
CP(IB) No. 66 / NCLT / AHM / 2017**

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

**IN THE MATTER BETWEEN**

**The Commissioner of State Tax Department .... Applicant**

**Versus**

**Ramchandra Dallaram Chaudhary & another .... Respondent**

**AND IN THE MATTER OF**

**Reliance Commercial Finance Ltd. ... Financial Creditor**

**Versus**

**Anil Limited ... Corporate Debtor**

**Order pronounced on 31.10.2023**

**Coram:**

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

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



## **MEMO OF PARTIES**

### **The Commissioner of State Tax Department**

Office of Assistant Commissioner of State Tax  
Unit-15, 2<sup>nd</sup> Floor, Seva Sadan Building,  
Lal Darwaja,  
Ahmedabad

**... Applicant**

### **Versus**

#### **1. Mr. Ramchandra Dallaram Chaudhary**

Liquidator of M/s. Anil Ltd.  
Having its address at:  
9B, Vardan Tower, Lakhudi Circle,  
Naranpura,  
Ahmedabad-380014

**... Respondent No.1**

#### **2. Office of Sub-Registrar**

Bahumali Bhavan,  
8<sup>th</sup> Floor, B-Block,  
Lal Darwaja,  
Ahmedabad-38001

**... Respondent No.2**

### **Present:**

For the Applicant : Ms. Manisha Lavkumar, Sr. Adv.a.w Ms. Maithili Mehta, Adv.  
For the Liquidator : Mr. Rasesh Sanjanwala, Sr. Adv. a.w Mr. Dhruvit Shah, Adv.,

### **ORDER**

1. The present application has been preferred under Section 60 read with sub-Section (5) of the Insolvency and Bankruptcy Code, praying for directions to the liquidator to treat the applicant as “Secured Creditor”, for assessment year 2013-14 to 2016-17 by the applicant who is the State Tax Officer having jurisdiction over the company ordered to be under liquidation by this Tribunal under CP (IB) 66 of 2017.
2. The applicant states that IA No.435 of 2023 is filed with respect to the claim of the Applicant quantified at Rs.1001,72,32,359 for assessment



years 1994-95 to 2016-17. The said application was accepted and notices issued to the respondents namely Liquidator as well as the successful bidder. It is stated by the applicant that while considering the IA 435 of 2023 and vide order dated 15.6.2023 the Tribunal issued certain directions to the liquidator. i.e. the liquidator to convey to the State Tax Department regarding the treatment as Secured Creditor and and within 10 days of such intimation the applicant to lift the attachment. Further directions to the successful bidder was also given.

3. The liquidator has considered of demand value to the extent of Rs.42,99,15,943 (towards assessment years 2007-08 to 2012-13) as secured portion under Section 53 of the IBC 2016, and the balance amount of Rs.953,73,16,448 shall continue to remain as unsecured portion under the category of Operational Creditor under Section 53 of the Code, 2016. The applicant took up with the liquidator in response to the decline of the stated claim in full vide its letter dated 23.06.2023 wherein, the liquidator while declining the claim during the assessment years 1994-95 to 1997-98, considered the stated provisions under Section 67 of the Gujarat Sales Tax Act 1969 and as the said enactment does not contain para materia stipulation akin to Section 48 of the Gujarat Value Added Tax Act, 2003 creating first and secured charge on the dues payable.
4. It is also averred by the applicant that lifting of the attachment dated 16.10.2018 (moratorium) would not vitiate the statutory first charge which gets created by operation of law being Section 48 of the Gujarat VAT Act, 2003 which has been considered in the case of State Tax Officer V Rainbow Papers Limited in Civil Appeal No.1661 of 2020.
5. Applicant is aggrieved of the communications dated 22.06.2023 and 26.06.2023 of the liquidator in not considering the applicant as



“Secured Creditor” on the ground that assessment orders and notice for demand of amount so assessed are within the period of moratorium under Section 14 and 33(5) of the IBC 2016. The applicant has stated that the respondent (liquidator) has ignored the judgment delivered in the case of Sundaresh Bhatt Vs Central Board of Indirect Taxes and Customs rendered in Civil Appeal No.7667 of 2021, wherein the Hon’ble Apex Court has categorically observed that once moratorium is imposed in terms of Section 14 of the Code, 2016, the authorities have a limited jurisdiction to assess/determine the quantum of liability. In view of the same, the applicant states that is empowered to frame assessment orders for the period 2013-14 to 2016-17.

6. Details of claims amount examined and verified by Liquidator is given in table below:

**Details of claim amount examined and verified by Liquidator**

Sr. No	Financial Year	Amount of Tax (Rs.)	Interest (Rs.)	Total (Rs.)	Date of Assessment Order as per claim	Remarks	Amount Secured/ Unsecured
1	1994-95	682532	1099643	1782175	13.10.2009	Assessment order under Section 67 of Gujarat Sales Tax Act, 1969	Not under GVAT Act, 2003 Section 48 so unsecured
2	1995-96	55922754	90098452	146021206	13.10.2009	Assessment order under Section 67 of Gujarat Sales Tax Act, 1969	Not under GVAT Act, 2003 Section 48 so unsecured
3	1996-97	1153328	1858154	3011482	13.10.2009	Assessment order under Section 67 of Gujarat Sales Tax Act, 1969	Not under GVAT Act, 2003 Section 48 so unsecured
4	1997-98	443117	713916	1157033	13.10.2009	Assessment order under Section 67 of Gujarat Sales Tax Act, 1969	Not under GVAT Act, 2003 Section 48 so unsecured
5	2007-08	1588158	1866368	3454526	17.03.2012	Notice for demand of amount assessed on 17.03.2012	Secured
6	2008-09	137843958	149619230	287463188	20.09.2012	Notice for demand of amount assessed on 20.09.2012	Secured



7	2009-10	529700	503897	1033597	15.06.2013	20.07.2014 Notice for demand of amount assessed on 25.06.2013	Secured
8	2010-11	67871601	42775844	110647445	31.03.2015		Secured
9	2012-13	21522132	5795035	27317187	31.03.2017		Secured
10	2013-14	983469452	87299754	1070769206	30.03.2018	Notice for demand of amount assessed on 30.03.2018	During Moratorium u/s. 14 since ICD is 23.08.2017 so unsecured
11	2014-15	3697599822	109408433	3807008255	31.07.2018	Notice for demand of amount assessed on 31.07.2018	During Moratorium u/s. 14 since ICD is 23.08.2017 so unsecured
12	2015-16	2779765196	242616981	3022382177	29.11.2019	Notice for demand of amount assessed on 29.11.2019	During Moratorium u/s. 33(5) since LCD is 25.10.2018 so unsecured
13	2016-17	1490377851	44807030	1535184881	23.03.2020	Notice for demand of amount assessed on 23.03.2020	During Moratorium u/s. 33(5) since LCD is 25.10.2018 so unsecured
	Total	9238769601	778462757	10017232358			

7. Respondent No. 1 to the application (liquidator) made common submissions in the matter along with in IA Nos.735 of 2023/ IA No. 435 of 2023/IA No. 501 of 2020 which are out of the Company Petition (IB) NO.66 of 2017 which has been disposed off on admission of CIRP under IBC 2016. It is observed that in the Main Petition 66 of 2017, the financial creditors of the Corporate Debtor filed an application under Sec 7 of the IBC 2016. The orders of the Tribunal dated 23.08.2017 moratorium was declared under Sec 14 of the IBC 2016 after appointing the IRP as per procedure of the Act. The IRP proceeded to inviting claims from respective creditors declaring the last date of submission of claims to be 6.9.2017. He also stated in the public announcement that the estimated date of closure of the CIRP will be 19.2.2018. After the appointment of IRP as RP on 11.11.2017, subsequently, the RP preferred an appeal in IA 291 of 2018 in CP IB 66 of 2017 praying for liquidating the properties of the Corporate Debtor. The applicant (State Tax Authority) meanwhile attached the properties vide order dated 16.10.2018 over the immovable properties of the CD in Plot No.137/P,138, 139, 140 and 141 of City Survey No.4833 to 4856 situated at Bapunagar Ahmedabad. It is also observed from the affidavit that vide order dated 25.10.2018 this



Tribunal in IA 291 of 2018 directed the liquidator to proceed with liquidation process under Sec 34(1) of the IBC 2016.

8. The liquidator further issued a public announcement dated 27.10.2018 inviting claims from respective creditors, wherein the closure of CIRP is declared to be 20.5.2018. It is stated that the applicant in this IA had filed their claims for an amount of Rs.9435344519 for assessment years 2013-14 to 2016-17. It is also avered that an additional claim was filed subsequently (after the date of closure of the CIRP for receipt of claims – (20.5.2018)) on 25.06.2020 by the applicant for an amount of Rs.455,75,69,058 **when the CD was under liquidation.** The liquidator had preferred an IA 501 of 2020 challenging the attachment order dated 16.10.2018 which is still pending adjudication. As per the contention of the applicant any amount payable by a dealer on account of Tax, Interest or Penalty for which he is liable to pay to the government shall be the first charge on the property of such dealer.
  
9. The liquidator respondent no.1 has submitted that the present application is filed under the guise of Sec 60 read with Sec 60(5) of the code, however, being the creditor/stakeholder of the CD shall be required to prefer an appeal before the AA against decision of the liquidator as envisaged in the provisions of Sec 42 of the IBC, 2016. Respondent No 1 also submitted that as per Sec 33(5) of the code, no other suit or other legal proceeding shall be instituted by or against CD once the order of liquidation is passed by the Tribunal, due to which it is not sustainable. Respondent No. 1 has also submitted that he has duly communicated the treatment of applicant as secured creditor for certain assessment in terms of Hon'ble Supreme Court order in the STO vs Rainbow papers Ltd in Civil Appeal No.1661 of 2020 vide letter dated 22.6.2023.



10. Respondent No. 1 has also submitted that during the subsistence of the moratorium, the applicant issued an order dated 16.10.2018 relating to the attachment of the assets of the CD which is illegal and void ab initio. It is pointed out that while the applicant had filed the claim both during the CIRP and during liquidation, he had not informed him on the attachment on the assets of the CD. It is further submitted that the applicant clearly violated the Section 14 of the IBC by serving the assessment orders relating to the Assessment years 2013-14 and 2014-15 dated 31.03.2018 and 31.07.2018 respectively, after order of commencement of Corporate Insolvency Resolution Process. Respondent No. 1 (liquidator) has also submitted that the assessment orders relating to the Assessment Years 2015-16 and 2016-17 dated 29.11.2019 and 23.03.2020 after the initiation of the Liquidation Process is violative of the provisions of Sec 33 of the IBC 2016.
11. Respondent No.1 after sending a detailed reply on 27.06.2023 and 5.7.2023 to the applicant in terms of orders of the AA dated 15.6.2023, had sought for the lifting of attachment. He had also sought for compliance due to communication from the successful bidder. Respondent No. 1 has also brought to the attention that the applicant has accepted the stance of the liquidator in not accepting the claim for the assessment years 1994-95 to 1997-98 due to provisions under Gujarat Sales Tax Act 1969, and not Gujarat Value Added Tax Act, which is therefore the liquidator has duty bound to verify the claims submitted on merits of the case in the interest of all stake holders of the CD.
12. Respondent No.1 also stated that the applicant has filed the application contrary to the submissions in the communication dated 23.06.23 differs with the submissions in the present application regarding the claims for assessment years of 2015-16 and 2016-17



carried out during moratorium period. Creating charge on the assets of the corporate debtor is in violation of the provisions of sections 14 and 33(5) of the IBC, 2016 and the judgment by Hon'ble Supreme Court in the matter of ABG Shipyard vs Central Board of Income Taxes and Customs does not allow such charge to be created but restricts to assess the quantum of liability.

13. The Hon'ble Supreme Court also emphasised upon the inclusion of 'Government dues' in the lower priority u/s Section 53 of the Code, highlighting the intention of the Parliament to treat debt owed to the government as distinct from debt owed to a secured creditors and observed that in Rainbow Papers, 'waterfall mechanism' under Section 53 was not noticed, consequently treating the State Government as a 'secured creditor'. The relevant para of the judgement is as follows: 'Rainbow Papers (supra) did not notice the 'waterfall mechanism' under Section 53 – the provision had not been adverted to or extracted in the judgment. Furthermore, Rainbow Papers (supra) was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53 locates amounts payable to secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured and operational creditors. This design was either not brought to the notice of the court in Rainbow Papers (supra) or was missed altogether.' Thus, it was clarified by the Hon'ble SC that the judgement in Rainbow Papers (supra) has to be confined to the facts of that case alone, and cannot be taken as precedent in matters relating to treatment of government dues.



14. Section 53 of the IBC, which contains the ‘waterfall mechanism’, provides for the order of distribution of assets. It states as follows:
- “(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely:--
- (a) the insolvency resolution process costs and the liquidation costs paid in full;
  - (b) the following debts which shall rank equally between and among the following:--
    - (i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
    - (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;
  - (c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
  - (d) financial debts owed to unsecured creditors;
  - (e) the following dues shall rank equally between and among the following:-
    - (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
    - (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
  - (f) any remaining debts and dues;
  - (g) preference shareholders, if any; and
  - (h) equity shareholders or partners, as the case may be.



(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and

the proceeds to the relevant recipient shall be distributed after such deduction.

Explanation - For the purpose of this section--

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and

(ii) the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

Further it is to be noted that the orders of the Hon'ble Apex court is reviewed and is under " Reserve".

15. While an attachment under tax laws may create a statutory charge in favour of the tax authority (under respective laws); however, that does not impart the status of a "secured creditor" to the tax authority. **In the Innoventive Industries Vs ICICI Bank judgment**, the court has ruled the non-obstante clause of a Parliamentary enactment would prevail over the non-obstante clause of the State enactment. Even otherwise, pursuant to the doctrine of repugnancy, the Central legislation i.e, IBC shall prevail over the state legislation, i.e. GVAT.

16. **In the decision reported as Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs**<sup>38</sup>: Authorities had submitted that dues payable to it were to be treated as 'first charge' on the property of the assessee concerned. In the resolution process, it was argued that the Customs Act, 1962 acquired



primacy and had to be given effect to. The Hon'ble Supreme Court, after noticing the overriding effect of Section 238 of the IBC, held as follows:

The IBC would prevail over the Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act. It was further held that the respondent could not claim title over the goods and issue notice to sell the goods in terms of the Customs Act when the liquidation process has been initiated.

It is also held that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act. After such assessment, the respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority. In any case, the IRP/RP/liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC.”

**Reasons:**

17. The Corporate Debtor was on acceptance of the application under Sec 7 of IBC 2016 by this tribunal put under moratorium on 23.08.2017 in the matter of CP (IB) No.66/7/NCLT/AHM/2017. The Tribunal on approval by 80.89% of the Committee of Creditors passed the order for liquidation on 25.10.2018 and appointed Respondent No.1 as



liquidator of the CD. The applicant had meanwhile, during the CIRP when there was a moratorium and before the liquidation order had attached the assets of the Corporate Debtor for the unpaid VAT dues by an order dated 16.10.2018. This was stated to have been done after an assessment completed during the period of moratorium in violation of provisions of Sec 14 of the IBC 2016. The liquidator was stated to have not been intimated/made aware of the attachment when the claim was submitted.

18. As per the table submitted by the liquidator, there were 13 different claims submitted by the applicant for the period beginning from 1994-95 to 2016. The total amount of the tax with claim of interest amounts to Rs.1001,72,32,358. The liquidator rejected the secured status in respect of assessment orders issued for the period 1994-95 to 1997-98 due to non-applicability of the Rainbow Papers judgment as these assessments are under Gujarat Sales Tax Act, 1969 and not Gujarat VAT Act, 2003, when the in built provision of the Sec 45 was enacted whereby the Sales Tax Authority was empowered with the first charge on the assets when the tax was not paid. The liquidator has stated that this was accepted by applicant. The liquidator had provided a detailed modified list of stake holders in IA 291 of 2018 which included the STA (Applicant) as dues to Government Authorities.
19. The liquidator approved four claims for the assessment periods from 2007-08 to 2012-13 of the STA as secured creditor stating that the eligibility based on GVAT Act 2003 and assessment orders passed before the moratorium. The liquidator did not consider the STA as secured creditor for the assessments made for the years from 2013-14 to 2016-17 as the assessments were stated to have been made during the period of moratorium under section 14 of the IBC 2016.
20. It is also observed that the Sales Tax Department has issued assessment orders as well as demand notices for the period 2015-16



and 2016-17 during the period of moratorium and also initiated legal proceedings (attachment order). There has been considerable delay in passing assessment orders and if there has been no recovery the department did not invoke the provisions. Also the order for mutification in the books of the revenue authority has been done during the period of moratorium, which may not give a first charge if a charge already exists in the name of any other creditor. The liquidator has sold the assets under Auction to respondent No.2 and received an advance for the sale but is not able to get the conveyance to the title of property bearing Final Plot No.137/P, 138, 139, 140 and 141 of TP scheme No.12 total admeasuring 1,44,856,sq.meters located at Bapunagar, Ahmedabad of the Corporate Debtor due to the attachment by Sales Tax Authority. In view of the attachment brought in by the STA on the stated property, the liquidation process has come to a stand still and the sale of assets initiated by the liquidator is not being realised.

21. Based on the assurance on 15.6.2023, the attachment on the subject property was not lifted and the liquidator has verified and admitted the claim in full but accorded the status of secured creditor partially and brought to the attention of the Tribunal the facts of the case. As per his communication dated 22.6.2023, the admitted claim amount as Secured is of Rs.42,99,15,943 while the Unsecured claim amounts to Rs958,73,16,448. The applicant had not filed any affidavit as directed by Tribunal when the attachment was brought to its notice nor had lifted the attachment as directed for compliance by Tribunal after the liquidator accepts the status, relied on the judgment to get the entire assessment value treated as Secured Creditor and filed an IA under Sec 60.
22. From the prayer of applicant, it appears that the applicant is seeking relief to treat them as secured creditor for the Assessment Years 2013-14 to 2016-17 amounting to Rs.9435344519/-. On perusing the reply



sent by the applicant to respondent no.1 Liquidator dated 23.06.2023, it appears that they have accepted that claim of department for the year 1994-95 to 1997-98 undisputedly falls under the Gujarat Sales Tax Act, 1969 and not under Gujarat Value Added Tax, 2003, and hence for the said period, Sales Tax Department would not fall within the purview of secured creditor. In the said letter, they have also accepted the fact that the Assessment for Year 2015-16 and 2016-17 have been carried out during moratorium period which commence from the date of passing of liquidator order on 25.10.2018. From this letter, it is clear that there is no dispute regarding assessment in the year 1994-95 to 2012-13 and 2016-17. Thus, the dispute only remain with respect to the assessment for the year 2013-14 and 2014-15. When the applicant itself admitted that assessment for the year 2015-16 & 2016-17 is under the moratorium period and therefore, cannot be considered as secured creditor. These actions are also violative of provisions of Section 33(5) of the Code in view of the observations made by their lordships in the Civil Appeal No.7667 of 2021 in Sundresh Bhatt's case (cited supra).

23. The assessment relating to Year 2013-14 and 2014-15 are dated 30.03.2018 & 31.07.2018 respectively i.e after the order of commencement of CIRP. The CIRP was initiated on 23.08.2017 and liquidation process was initiated on 25.10.2018 by the order of this Tribunal. Thus it clearly shows that assessment order relating to 2013-14 to 2014-15 are violative of the provisions of section 14 of IBC, 2016.
24. From the order of respondent no.1, it appears that he has not completely denied to treat Sales Tax Department as secured creditor but treated them as secured creditor to the extent, it is eligible as per the applicable law and remaining portion of dues which are not eligible to be considered as secured dues are categorized as unsecured dues which would also be governed under the provisions of Section 53



of IBC, 2016. Thus, there appears no violation of dictum enunciated by the Hon'ble Supreme Court in the matter of State Tax Officer (1) Vs. Rainbow Papers Ltd. and Sundresh Bhatt as alleged by the applicant. Thus, communication of liquidator dated 22.06.2023 & 26.06.2023 is proper.

25. We are therefore, hold that the decision taken by the liquidator is correct and proper and needs no interference. Hence, we pass following order:

**ORDER**

IA 735 is rejected.

**-Sd-**

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

**-Sd-**

**CHITRA HANKARE  
MEMBER (JUDICIAL)**