



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT – 1

ITEM No.302- **IA/522(AHM)2021**
ITEM No.303-**Inv.P/2(AHM)2024** in
IA/522(AHM)2021
ITEM No.304 -**IA/195(AHM)2024**
in
CP(IB) 72 of 2018

Order Under Section 60(5) of IBC, 2016

In the matter of IA/522(AHM)2021

Kailash T Shah RP of Sterling Lam Ltd

....Applicant

V/s

Gujarat State Tax Department

....Respondent

Order Under Section 60(5) of IBC, 2016

In the matter of : Inv. P/2(AHM)2024 in IA/522(AHM)2021

The Cosmos Co. Op. Bank Ltd

Financial Creditor and Sole CoC Member of Sterling Lam Ltd

....Applicant

Vs

Kailash T Shah RP Sterling Lam Ltd

...Respondent

Order Under Section 60(5) IBC r.w Rule 11 of NCLT Rules, 2016

In the matter of : IA/195(AHM)2024

The Cosmos Co. Op. Bank Ltd

Financial Creditor & Sole CoC Member of Sterling Lam Ltd

....Applicant

Vs

Kailash T Shah RP of Sterling Lam Ltd

...Respondent

Order delivered on: 22/02/2024

Coram:

Mr. Shammi Khan, Hon'ble Member (J)

Mr. Sameer Kakar, Hon'ble Member (T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in open Court, vide separate sheet.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, AHMEDABAD**

**IA/522(AHM)2021
Int. Pet/2(AHM)2024
IA/195(AHM)2024
in
CP(IB) 72(AHM)2018**

IA/522(AHM)2021 in CP(IB) 72(AHM)2018

[An application filed under Sections 25(a), 32A, 60(5) and 238 of the Insolvency and Bankruptcy Code, 2016]

KAILASH SHAH

(RP of M/s Sterling Lam Limited)

Having address at:

505, 21st Century Business Centre,
Near World Trade Centre,
Surat, Gujarat-395002.

....Applicant

Versus

GUJARAT STATE TAX DEPARTMENT

Through State Tax Officer

Having address at:

Unit-29, Prantij,
Opp. Bhankhariya Bus Stand,
At & PO- Prantij, District Sabarkantha,
Gujarat-383205.

....Respondent

AND

Int. Pet/2(AHM)2024 in CP(IB) 72(AHM)2018

[An application under Section 60(5) of IBC, 2016]



THE COSMOS CO. OP. BANK LTD.,
(Financial Creditor and Sole Member
of Sterling Lam Ltd.)
Having address at:
Cosmos Bank Bhawan,
Income Tax Circle,
Ashram Road,
Ahmedabad-380009.

... Applicant (Third Party Intervener)

Versus

1. Mr. KAILASH T. SHAH
(RP of Sterling Lam Ltd.)
Having address at:
505, 21st Century Business Center,
Near World Trade Centre,
Ring Road, Surat,
Gujarat-395002.

....Respondent (Ori. Applicant)

2. GUJARAT SATE TAX DEPARTMENT
Through State Tax Officer
Having address at:
Unit-29, Prantij,
Opp. Bhankhariya Bus Stand,
At&Post Prantij, Dist-Sabarkantha
Gujarat-383205.

... Respondent (Ori. Respondent)

AND

IA/195(AHM)2024 in CP(IB) 72(AHM)2018

*[An application under Section 60(5) of IBC, 2016 r.w. Rule 11 of
NCLT Rules, 2016]*

THE COSMOS CO. OP. BANK LTD.
(Financial Creditor and Sole Member
of Sterling Lam Ltd.)



Having address at:
Cosmos Bank Bhawan,
Income Tax Circle,
Ashram Road,
Ahmedabad-380009.

....Applicant

Versus

1. Mr. KAILASH T. SHAH

(RP of Sterling Lam Ltd.)

Having address at:

505, 21st Century Business Center,
Near World Trade Centre,
Ring Road, Surat,
Gujarat-395002.

2. NARESH TRADELINK PRIVATE LIMITED

(Resolution Applicant)

Having address at:

304, "Aditya" B/h. Sardar Patel Samaj Hall,
Nr. Mithakhali Six Road, Navrangpura,
Ahmedabad-380006.

....Respondents

Order Pronounced On: 22.02.2024

CORAM:

SH. SHAMMI KHAN, MEMBER (JUDICIAL)

SH. SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance:

For the Applicant : Mr. Nipun Singhvi, Advocate

For the Respondent : Mr. Sandeep Bhatt, Advocate



ORDER
[Per: Bench]

1. **IA/522(AHM)2021** is an application filed by the Applicant–Resolution Professional (“**RP**”) on 29.07.2021 under Sections 25(a), 32A, 60(5) and 238 of the Insolvency and Bankruptcy Code, 2016 (“**IBC, 2016**”) with the following prayers:-

- a) *Your Lordship may be pleased to allow the present application;*
- b) *Your Lordship may be pleased to direct Respondent for removing encumbrances/charges from the factory land, as specified in para 8 above, of the corporate debtor in terms of Section 32A of the Code;*
- c) *Your Lordship may be pleased to hold that the claim of respondent shall be paid in accordance with Section 53 of the Code;*
- d) *Your Lordship may be pleased to grant any other relief or reliefs as may be deemed fit in the interest of justice;*

2. It is stated that CP(IB) 72 of 2018 was filed under Section 9 of the IBC, 2016 which came to be ordered on 10.11.2020. Pursuant to the invitation of claim, the Gujarat State Tax Department submitted a claim for a sum of Rs.38,58,19,833/- under Form-B which was accepted for a sum of Rs.3,37,65,975/-. Thereafter, the



RP found while going through the land revenue records of the factory premises that a burden note/encumbrance has been entered by the Respondent herein upon the factory land being survey no. 388, 405 of Village - Mahiyal, Taluka - Talod. The encumbrance was for a sum of Rs.47,52,564/- for the year 2014-15 including interest a sum of Rs.2,31,84,958/- for the year 2017-18 and sum of Rs.1,05,81,017/- for the year 2018-19.

3. Thereafter, the RP sent an email on 27.04.2021 to the Respondent requesting the Respondent to remove the encumbrance since the claim filed was accepted by the RP.
4. As the Respondent has not removed the encumbrance another email was sent on 03.07.2021, however, the encumbrance continued.
5. The same was discussed in the 4th Committee of Creditors (“**CoC**”) meeting held on 28.04.2021.
6. It is the contention of the RP that because of the said encumbrance, he was unable to perform duties under



the Code and that Sections 32A to Section 238 of the Code stand violated.

7. During the Corporate Insolvency Resolution Process (“**CIRP**”), the RP invited Resolution Plans for the Corporate Debtor. One M/s. Naresh Tradelink Private Limited gave a plan which was approved by the CoC pursuant to which this Tribunal vide order dated 29.06.2022 approved the Resolution Plan submitted by the said M/s. Naresh Tradelink Private Limited for the reasons stated in the said order. The following payments were envisaged in the Resolution Plan:-

Resolution Applicant Proposed Amount	Amount (in Rs.)	Timelines	Para of Resolution Plan
Payment of CIRP Cost <i>The estimated CIRP Cost is Rs. 45 Lakhs. The Resolution Applicant Propose to pay a sum of Rs. 45 Lakhs for payment in CIRP Cost. Any change in the CIRP cost (increase or decrease) would be adjusted against the</i>	<i>45 Lakhs</i>	<i>Within 30 days from effective date</i>	<i>Addendum to Resolution Plan dated 13.10.2021</i>



payments to be made to Secured Financial Creditors so that overall financial obligation of the Resolution Applicant remains unchanged.			
Payment to the Financial Creditors (excluding the Related Party Creditor) Resolution Applicant Propose to pay a sum of Rs. 7,85,00,000/- against admitted amount of Rs. <u>17,00,42,520/-</u>	7,85,00,000/- (46.10%)	EMD-Rs. 10 lakhs. PBG (deposit)- Rs. 40 lakhs Rs. 235 Lakhs Upfront payment	Addendum to Resolution Plan dated 13.10.2021 within 30 Days from Approval of plan by Adjudicating Authority. Balance Rs. 500 lakhs within 60 days from the approval of plan by the Adjudicating Authority with interest of Rs. 4.17 lakhs.
Payment towards the Operational Creditors, Other Creditors and related party (Excluding Employees and workmen and Govt. Dues)	50,211(0.082%)	To be paid within 30 days of approval of Resolution Plan by the Adjudicating Authority	Para 4.5 of the Resolution Plan
Payment toward Employee and workmen)	NIL	_____	Para 4.2 of the Resolution Plan
Payment to Statutory Dues of CD	52,069/- (0.013%)	To be paid within 30 days of approval of Resolution	Para 4.7 of the Resolution Plan



As per IM total admitted dues are 5,20,69,239/-		Plan by the Adjudicating Authority	
Payment to Contingent Liabilities of CD Contingent Liabilities are in the form of pending litigations and are subject to final outcome of such litigations	0.1% of the crystalized amount with upper cap of Rs. 50,000	_____	Para 4.7.1.1 of the Resolution Plan
Payment to Shareholders of CD	a.The Liquidation Value of the Equity Shareholder is estimated to be NIL b.The equity shares held by the shareholders of the corporate debtor shall stand cancelled.	_____	
TOTAL BID AMOUNT	Rs. 8,31,52,280/-		

8. IA/522(AHM)2021 was not disposed off at the time of approval of the Resolution Plan and was heard from time to time. The order dated 13.12.2022 records as under:-

*“Ld. Counsel appearing for the State Tax Department submitted that in view of the Hon’ble Supreme Court’s judgment in **State Tax Officer vs Rainbow Paper Ltd.** in Civil Appeal No. 1661/2020 they have written a letter to the RP to treat the State Tax Officer Department as a Secured Creditor. Ld. Counsel for the RP submitted that he will take*



a call on this and he has kept that amount separately. We recorded this fact. Since the Ld. Counsel for the RP seeks some time, the matter stands adjourned.”.

9. Reply was filed by the State Tax Officer under Inward Diary No. D2719 dated 31.12.2021. Under para 4 of the reply, it is stated that the encumbrances/charge over the factory land belonging to the Corporate Debtor for survey no. 388 and 405 situated at Village: Mahiyal, Taluka: Talod, District: Sabarkantha was created vide entry no. 4538 and 4638 respectively for the recovery of outstanding tax dues and these mutation entries and tax amount due are way prior to the initiation of the proceedings under the I&B Code.
10. Further, under para 7 of the reply, it is stated that amount outstanding is an amount due under the Gujarat Value Added Tax Act. Therefore, State has a first charge on the property as per Section 48 which provides that notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer or any other person on account of tax, interest or penalty for which he is liable to pay the



Government shall be a first charge on the property of such dealer, or as the case may be, such person.

11. It is stated that the State charge which is created prior to initiation of the proceeding in the I&B Code then a harmonious reading of these two acts will make it clear that the State tax is a first charge on the property of the Corporate Debtor.

12. Thereafter, the Respondent relied upon the similar matter covered under Special Civil Application No.23256 of 2019 wherein the Hon'ble Gujarat High Court has delved upon the matter and has stayed the implementation of the order dated 18.11.2019 passed by NCLT Mumbai Bench in Misc. Application No.2357 of 2019 through which the Tribunal had directed the concerned authorities to lift the attachment of the property in question so that it can be put to sell by the liquidator and, thereupon, the sale proceeds be distributed under Section 53 of the I&B Code in order of priority described therein.



13. Meanwhile, the Hon'ble Supreme Court has passed an order in the matter of State Tax Officer (1) Vs Rainbow Papers Limited in Civil Appeal No.1661 of 2020.
14. Order dated 22.09.2023 records that Counsels in the matter requested that this Tribunal may await the decision of Hon'ble Supreme Court in the review matter of Rainbow Papers Limited.
15. **Int. Pet/2(AHM)2024** was filed on 30.01.2024 by the sole Financial Creditor (Cosmos Co. Op. Bank Ltd.) to the Corporate Debtor seeking the following reliefs:-
 - (A) *This Hon'ble Tribunal be pleased to allow the present application in the interest of justice,*
 - (B) *This Hon'ble Tribunal be pleased to direct the Applicant – RP to join Third Party Intervener – The Cosmos Co. Op. Bank Ltd., as Party respondent no. 2 in the present IA 522/2021. Subsequently, be pleased to permit the Third Party Intervener bank to defend the IA 522/2021 by filing necessary reply.*
 - (C) *To order the cost of this Application.*
 - (D) *To grant such other and further reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*



16. It is the contention of the Applicant that the order dated 29.06.2022 (order of approval of the Resolution Plan) records as under:-

“11. Heard the counsel of the applicant and perused the material on record. It is noted that the resolution plan submitted by M/s Naresh Tradelink Private Limited has been approved by the CoC in the 7th meeting dated 13.10.2021 with 100% votes (Sole member of CoC). The resolution applicant has proposed an amount of Rs.45,00,000/- as a CIRP Cost. The amount proposed by the resolution applicant for the financial creditor is Rs. 7,85,00,000/- and for the operational creditors, the resolution applicant proposed to pay an amount of Rs. 1,02,280/-. The resolution professional has also made a provision for the contingent liability of 0.1% of the admitted debt but that shall not be more than Rs. 50,000/-”.

17. It is the contention of the Applicant that the Resolution Applicant cannot be saddled with the previous claim against the Corporate Debtor prior to initiation of CIRP.
18. It is the contention of the Applicant that the entire amount of Rs.7.85 crores be paid to the Applicant.
19. Meanwhile, on 08.11.2023 the State Tax Department issued a letter dated 08.11.2023 to the RP requesting to consider a fresh Resolution Plan of M/s. Sterling Lam Limited (Corporate Debtor).



20. It is the contention of the Applicant that since the Resolution Plan has already been approved vide order dated 29.06.2022, the question of consideration of a fresh Resolution Plan does not arise.
21. It is stated that the present Applicant is the only affected party to the proceeding under IA No. 522 of 2021 and, hence, may be permitted.
22. **IA/195(AHM)2024** is an application filed by the sole Financial Creditor with the following prayers:-
- (A) *This Hon'ble Tribunal be pleased to allow the present interlocutory application in the interest of justice,*
 - (B) *This Hon'ble Tribunal be pleased to direct the respondent no. 1 to release the amount of Rs.1,31,19,769.08 in favour of the applicant herein being Financial Creditor and Sole CoC member.*
 - (C) *To order the cost of this Application.*
 - (D) *To grant such other and further reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*
23. The Applicant has narrated the facts which are briefly as per the prayer in the Inv. Pet/2(AHM)2024 and for the sake of brevity, the same is not discussed herein.
24. We have heard Ld. Counsel for the Parties in above all three IAs and perused the record.



25. The Resolution Applicant has brought in the entire amount. It is stated by the counsels appearing for the RP that possession of the Corporate Debtor has been given to the Resolution Applicant M/s. Naresh Tradelink Pvt. Ltd., long back post the approval of the Resolution Plan vide order dated 29.06.2022. The only controversy in the matter relates to the distribution of a sum of Rs.1,31,19,769.08.
26. Civil Appeal No. 1661 of 2020 was decided by Hon'ble Supreme Court on 06.09.2022 whereas it is seen that the Resolution Plan with respect to the Corporate Debtor (herein) was approved on 29.06.2022. The order dated 13.12.2022 records that the RP has kept that amount separately and till today the same has not been distributed. On the other hand, the State Tax Department is claiming to be a Secured Creditor. At this stage, we refer to the judgment of the Hon'ble Supreme Court in Civil Appeal No. 1661 of 2020, more particularly, in para 54 to 58 which are reproduced below:-



“54. In our considered view, the Committee of Creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owed to any Government or Governmental Authority or for that matter, any other dues.

55. In our considered view, the NCLAT clearly erred in its observation that Section 53 of the IBC over-rides Section 48 of the GVAT Act. Section 53 of the IBC begins with a non-obstante clause which reads :-

“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.....”

56. Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of the IBC. Under Section 53(1)(b)(ii), the debts owed to a secured creditor, which would include the State under the GVAT Act, are to rank equally with other specified debts including debts on account of workman’s dues for a period of 24 months preceding the liquidation commencement date.

57. As observed above, 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 credited. 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.

58. We are constrained to hold that the Appellate Authority (NCLAT) and the Adjudicating Authority erred in law in rejecting the application/appeal of the appellant. As observed above, delay in filing a claim cannot be the sole ground for rejecting the claim..”.

The said judgment was upheld in Review Petition (Civil) No. 1620 of 2023 on 31.10.2023 by the Hon’ble Supreme Court.



27. Since, the amount of **Rs.1,31,19,769.08** has not been distributed, we hold that the same may be distributed to the various claimants treating the State Tax Department as the Secured Creditors in terms of provisions as contained in Section 53 of IBC, 2016 within seven days and compliance may be reported by way of additional affidavit by the RP.
28. The other two IAs, namely, Int. Pet/2(AHM)2024 and IA/195(AHM)2024 deal with the same issues. As we have already decided in the main issue in IA/522(AHM)2021, these two applications are hereby dismissed.
29. Accordingly, IA/522(AHM)2021 is ordered and listed for compliance report on 05.03.2024.
30. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

Rajeev Kr. Sen/P.S.