

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT NO. II**

**IA No. 157/AHM/2022
IN
CP (IB) 164/AHM/2017**

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

IN THE MATTER OF

**Parag Sheth
Liquidator of Sai Infosystem (India) Limited**

... Applicant

Versus

The Collector (Ahmedabad) & Ors.

...Respondent

AND IN THE MATTER OF

Allahabad Bank

...Financial Creditor

Versus

Sai Infosystem (India) Ltd.

...Corporate Debtor

Order Pronounced On: 09/11/2022

Coram:

**DR. DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)
MR. AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

IA No. 157/AHM/2022

Parag Sheth

Liquidator of Sai InfoSystem (India) Limited

404, Sachet 2, Opp. GLS University,

Maradia Plaza, C.G. Road,

Ahmedabad, Gujarat — 380006

... Applicant

Versus

1. The Collector,

Office of the Collector

Near RTO, Subhash Bridge,

Ahmedabad, Gujarat

2. State Tax Officer-4

Office of the Assistant Commissioner of State Tax,

B-1 I, Multi Storeyed Building,

Lal Darwaja, Ahmedabad

3. Mamlatdar (Ghatlodia)

Office of the Mamlatdar,

Vasantnagar, Ognaj, Ahmedabad

...Respondents

Present:

For the Applicant : Mr. Nipun Singhvi, Advocate

For the Respondents : None-Appeared

ORDER

1. The instant Application is filed by Mr. Parag Sheth Liquidator of Corporate Debtor Sai InfoSystem (India) Limited ('Applicant'), against the Collector ('Respondents') under Section 35 (1) (b), 35 (1) (d), 32A, 60(5) and 238 of the Insolvency and Bankruptcy Code, 2016 ('Code') seeking following reliefs:
 - a) Your Lordship may be pleased to allow the present application;*
 - b) Your Lordship may be pleased to direct Respondents for removing encumbrances/ charges from the properties 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 no.2 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. The brief backdrop of the case is that an insolvency application was filed by financial creditor Allahabad Bank under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') against Corporate Debtor which was admitted on 30.11.2017 and Mr. Mr. Parag Sheth was appointed as Interim Resolution Professional (IRP) who was later confirmed as Resolution Professional. Thereafter an order for liquidation of the Corporate Debtor was passed on 22.08.2019 and the Applicant herein Mr. Parag Sheth was appointed as liquidator.

3. It is the case of the Applicant that after initiation of liquidation of the Corporate Debtor the Respondent No. 2 State Tax Department had filed its claim in Form - C on 18.10.2019 of Rs. 1610,16,04,480/- and the same was verified and admitted by the Applicant. Thereafter while

going through the revenue records, it came to the knowledge of the Applicant that when the Corporate Debtor was undergoing CIRP, the Department of Commercial Tax through Mutation Entry No. 7817 registered on 18.02.2019 during the moratorium declared under Section 14 of the Code created a lien on the property of the Corporate Debtor situated on the land bearing Revenue Survey No. 411/1 (T.p. Scheme No. 30, Final Plot No. 73) palki sub plot no. I, admeasuring 3058.69 sq. mtrs, situate at village Got, taluka Dascroi, district-Ahmedabad, taluka Kalol, Registration district Gandhinagar (earlier district Mehsana) and sub district Kalol. The Applicant through letter dated 22.02.2021 asked the Respondent No. 1 Collector (Ahmedabad) to remove the charges from the property of the Corporate Debtor. The Applicant had also sent reminder letters dated 09.07.2021 and 16.11.2021 but the Respondent No. 1 neither replied nor removed encumbrance from the Corporate Debtor's property. It is submitted that by not removing the encumbrance from the property the Respondents are obstructing Applicant from performing its duty as prescribed under the Code. Thus, this present Application is filed.

4. The Applicant has filed its written submission and referred to Section 45(2) of the GVAT Act, 2003 which is reproduced below and submits that CIRP was initiated against Corporate Debtor on 30.11.2017 and charge was registered on 18.02.2019, it clearly exceeds one-year time period stated under Section 45(2) of the GVAT Act, 2003 and hence the charge on property of Corporate Debtor shall cease to exist.

“Section 45 of the GVAT Act, 2003:

(1) Where during the pendency of any proceedings of assessment or reassessment of turnover escaping assessment,

the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may by order in writing attach provisionally any property belonging to the dealer in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).”

It is further submitted that the Commercial State Tax Department has already put claim in Form C, Respondent 2 State Tax Officer is a member of Stakeholder’s Consultation Committee of the Corporate Debtor. Since Corporate Debtor is in liquidation, the Commercial State Tax Department is entitled to receive amount as per Section 53 of Code and does not have right of encumbrance over assets of Corporate Debtor.

5. The record of the proceedings shows that despite service of notice upon the Respondents, there is non-appearance by the Respondents No. 1 to 3. This Adjudicating Authority was constrained to proceed ex-parte against all 3 respondents and the submissions of the Applicant were heard.
6. The Corporate Debtor was admitted into CIRP vide Order dated 30.11.2017. It is prima facie evident from documents annexed by the Applicant that a charge has been registered against the property of the Corporate Debtor on the land having Survey No. 411/1/Paiki-1 situated at Village Gota, Taluka Ghatlodiya by entry No. 7817 on 18.02.2019 and the said charge was effective from 11.05.2019. It is noted that the charge was created against the amount due to State Tax

Officer (4) being Respondent No. 2 during the moratorium. Creation of encumbrance on the property of the Corporate Debtor during the Corporate Insolvency Resolution Process is in violation of the provisions of Section 14 of the Code.

7. The State Tax Officer has also filed its claim before the liquidator on 18.10.2019 without lifting the encumbrance. One cannot approbate and reprobate, on filing a claim before the liquidator without removing the charge created on the property of the Corporate Debtor. Filing of claim before the liquidator reflects the status of Respondent No. 2 as the claimant of the Respondents in terms of Section 53 of the Code. Due to existence of charge / encumbrance on the property of the Corporate Debtor, the liquidator's efforts are not bearing result, frustrating the disposal of assets of the Corporate Debtor during the liquidation thereby obstructing the distribution thereof in terms of Section 53 of the Code.
8. The Respondents are directed to remove the encumbrances/ charges registered with Respondent No. 3 on the properties of the Corporate Debtor as described above forthwith within three weeks to enable the Liquidator to proceed with auction / sale of assets of Corporate Debtor for the benefits of stakeholders. The Liquidator is directed to consider the State Tax Department as secured financial creditor while distributing proceeds in accordance with the judgment of Hon'ble Supreme Court of India in the case of *State Tax Officer (1) versus Rainbow Papers Ltd. (Civil Appeal No. 1661 of 2020)*. The Liquidator & Respondents are directed to file the compliance report within seven days from the removal of charge from the said abovementioned property.

9. Application is allowed and disposed of in terms of above order.
10. Copy of Order be served to the parties by registry.

-Sd-

**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

Mansi J./LRA

-Sd-

**DR. DEEPTI MUKESH
MEMBER (JUDICIAL)**