

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No 129

Mis.A/2(AHM)2021 In CP(IB) 473 of 2018

Order under Section Rule 11 of NCLT rules r.w 35,60(5),238 of IBC,2016

IN THE MATTER OF:

Keyur J Shah Liquidator of Gangotri Glazed Tiles Pvt. Ltd
V/s
State Tax officer(3) Office of Asst. Commissioner of State
Tax

.....Applicant

.....Respondent

Order delivered on ..20/09/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Virendra Kumar Gupta, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

This matter is listed for pronouncement of order.

The order is pronounced in the open court, vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B GOSAVI)
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

MA No. 02 of 2021 in
CP (IB) No.473/NCLT/AHM/2018

In the matter of :

Keyur J. Shah

The Liquidator of
Gangotri Glazed Tiles Private Limited
Corporate Debtor

....Applicant
(Liquidator)

State Tax Officer (3)

Office of Asst. Commissioner of State
Tax (Central Sales Tax)
Unit-93, Rajkot
Gujarat

....Respondent

Order Reserved on : 14.09.2021
Order Pronounced on : 20.09.2021

**Coram: Madan Bhalchandra Gosavi, Member (Judicial)
Virendra Kumar Gupta, Member (Technical)**

Appearance: Ms. Noopur K. Dalal, Advocate, for the Applicant.

ORDER

[Per se: Virendra Kumar Gupta, Member (T)]

- 1) Through this application, the liquidator is seeking direction against the Respondent State Tax Officer (3), to release the charge created by the respondent on the Land which belongs to the

Corporate Debtor and secured in favour of the Financial Creditor, viz., Rajkot Nagrik Sahkari Bank Limited.

- 2) The facts, in brief, are that the Corporate Debtor was admitted into CIRP vide order of this Adjudicating Authority dated 27.01.2020. The Form A was published by the IRP on 03.02.2020. The Committee of Creditors (CoC) was constituted. The Corporate Debtor had obtained financial facility from Rajkot Nagrik Sahakari Bank Limited, being the Secured Financial Creditor. The Corporate Debtor was taken into Liquidation by the order of this Adjudicating Authority dated 02.11.2020 as recommended by the CoC of the Corporate Debtor. The Secured Financial Creditor submitted its claim as regard to its loan and also expressed its view to realise the secured interest in regard to its loan under Section 52(1) (b) read with Regulation 37 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The possession of the secured asset, being immovable property situated in Morbi District, was handed over by the Liquidator. The Financial Creditor when initiated the proceedings take over the custody and secured possession of the said land came to know that the Asst. Commissioner of State Tax had created a second charge on the said Land on 20.08.2019.

- 3) On coming to know of this situation, the Financial Creditor approached the Liquidator who requested the State Tax Officer to release the charge created by them in the said land. However, the respondent did not heed to such request of the Liquidator and also informed that in case if decision come from the higher authority, the Liquidator shall be informed.
- 4) The Liquidator is praying that such action of the State Tax Authorities is not sustainable in view of the provisions of Section 35 read with Section 238 of the IB Code, 2016. It is also claimed that the applicant had also approached the Appellate Authority under the respective statute. However, the lien in favour of the Bank has not been released.
- 5) The Liquidator has also relied on the decision of National Company Law Tribunal, Ahmedabad Bench, in the case of **Ritesh Prakash Adatiya vs. Deputy Commissioner of State Tax (Enforcement) Division-8 Surat [LA No.690 of 2019 in CP (IB) No.188 of 2018]**. For the proposition that the respondent may be directed to release the charge.
- 6) When the matter was called out, no one had appeared on behalf of the Department, however, the reply of the respondent is on record. Hence, we proceeded to dispose the matter after

considering the submissions made on behalf of the applicant and the said reply of the respondent.

- 7) In the reply, one ground which has been taken by the respondent is that the liability of State Tax pertain to assessment year 2010-11, 2011-12 and 2012-13.
- 8) Hence, provisions of Section 238 will not be applicable as the same are not retrospective in nature. It is also claimed that the decision of the **Ritesh Prakash Aditya vs. Deputy Commissioner of State Tax** is not applicable to the facts of the case as this applies only to the proceedings undertaken by the Liquidator during liquidation process. Reliance has also been placed on the decisions of Section 47 of the Gujarat Value Added Tax which states that there would be priority of Taxes and they will be secured by the charge of the assets of the dealer.
- 9) We have considered the submissions made by both the sides and material on record.
- 10) As per Section 53 of the IB Code, 2016, the assets are to be distributed in the order of priority as prescribed therein. Section 53(1) (b) of the Code provides that the debts owed to the secured creditor in the event such secured creditor has relinquished the security interest in the manner set out in Section 52 of IBC, 2016

will be covered in the order of priority under Section 53 of IBC, 2016. However, in the present case, the Secured Financial Creditor has realised its security interest. This aspect takes up to the provisions of Section 52 of IBC, 2016. It is evident that once the security interest is realised by the Secured Creditor, the obligation for realisation of such security rests on the shoulders of said Secured Creditor and the role of the Liquidator ends at the stage when the security interest is realised.

- 11) As per Section 52(4), it is the Secured Creditor who has to realise the security interest, is required to recover the debts due to it. As per Section 52(5), the Secured Creditor is responsible to approach the Adjudicating Authority and not the Liquidator in case some huddles come in the way of such secured creditor. In the present case, this application has been filed by the Liquidator.
- 12) For the sake of ready reference, the provisions of Section 52(5) and 52(6) are reproduced hereunder:

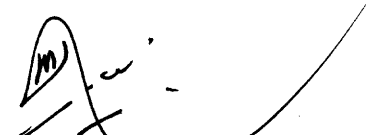
Section 52(5) *If in the course of realising a secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security, the secured creditor may take an application to the Adjudicating Authority to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.*

Section 52(6) *The Adjudicating Authority, on the receipt of an application from a secured creditor under sub-section (5) may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.*

5

- 13) Hence, in view of this position of law, this application filed by the Liquidator is not maintainable.
- 14) In view of this, we do not consider it is necessary to deal with other contentions raised by both sides.
- 15) In the result, this application is dismissed as not maintainable and disposed of accordingly.
- 16) Before parting, we expressed our view that this application should not have been filed by the Liquidator as Liquidator who is an Insolvency Professional supposed to know the basic provisions of law under which he is functioning. We further direct the Liquidator to recover the cost relating to this litigation from such Secured Financial Creditor whose application, if any, filed in future in this regard shall be entertained only when the proof of payment of cost relating to such application is being paid to the Liquidator. We also direct the Liquidator not to communicate / correspond with other statutory authorities on behalf of the Secured Financial Creditor.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Sudha