

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

IA No. 2337/2020

In
C.P (IB) No. 2294/MB/C-II/2018

**Under section 60(5) of Insolvency and Bankruptcy Code,
2016.**

Filed by
Mr. Vishal Pawankumar Bidawatjika

Liquidator of Anil Printers Limited
307, Business Classic, 3rd Floor, Chincholi Bunder Road, Near
HP Petrol Pump, Malad (West), Mumbai – 400064.

...Applicant

Vs

1. The Deputy Commissioner of State Tax

(NAS- VAT-E-010), Ambad 508, Room No. 305,
Vikrikar Bhawan GST Bhawan, Prashant Nagar,
Pathardi Phata, Nashik – 422010.

**2. Maharashtra Industrial Development Corporation,
Nashik, through**

**The Industries, Energy and Labour Department,
Mantralaya, Mumbai – 400032.**

... Respondents

In the matter of

ICICI Bank Limited

...Petitioner/Financial Creditor

Versus

Anil Printers Limited

... Respondent/Corporate Debtor

Order Pronounced on: 26.11.2021

Coram:

Hon'ble Member (Judicial) : Mr. Ashok Kumar Borah

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Applicant : Ms. Rubina Khan, Advocate.

For the Respondent No. 1 : Mr. B B Sharma, Advocate.

For the Respondent No. 2 : Mr. Rahul Sarada a/w Ms. Komal Bhoir
Advocates.

ORDER

Per: Ashok Kumar Borah, Member (Judicial)

1. The present application is moved by **Mr. Vishal Pawankumar Bidawatjika** Liquidator of Anil Printers Limited (hereinafter called as "the Applicant") against the **The Deputy Commissioner of State Tax and Anr.** (hereinafter called as the "Respondent") Under Section 60(5) of Insolvency and Bankruptcy Code, 2016.

The Applicant has prayed for grant of following reliefs.

- (a) That this Hon'ble Tribunal be pleased to pass orders directing the Respondent Nos. 1 and 2 to remove / release the lien on the said property of the Corporate Debtor;

- (b) That this Hon'ble Tribunal be pleased to pass order directing the Respondent No. 1 to remove / release the lien on the other property of the Corporate Debtor viz. Industrial Unit situated at Plot No. 30, MIDC, Ambad, Nashik, Maharashtra – 422010;
- (c) That this Hon'ble Tribunal be pleased to direct the Respondent Nos. 1 and 2 to file their respective claims, if any, before the Liquidator;
- (d) Cost of this application;
- (e) For grant of such other and further reliefs as this Hon'ble Tribunal deems fit, in the nature and circumstances of the matter.

A. Background facts and circumstances

2. The captioned Petition was filed by the abovenamed Financial Creditor, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) against the Corporate Debtor, which was admitted by this Tribunal vide order dated 6th May 2019 and the Applicant was appointed as the Interim Resolution Professional (“IRP”).

Subsequently, Committee of Creditors (“CoC”) was constituted by Applicant. Pursuant thereto, in first meeting of CoC, it was resolved to appoint Applicant herein as the Resolution Professional in terms of Section 22(2) of the Code.

3. The Applicant invited Expression of Interest (“EOI”) in Form G and since no EOI was received, therefore, the CoC in its third meeting held on 19th September 2019, unanimously resolved to liquidate the

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Corporate Debtor. Further, the appointment of the Applicant herein as the Liquidator was approved. Subsequently, the Applicant filed a Miscellaneous Application No. 3316 of 2019 u/s 33(1) of the Code before this Tribunal seeking an order of Liquidation of the Corporate Debtor. This Tribunal vide its order 15th October 2019 was pleased to pass orders liquidating the Corporate Debtor and thereby appointing the Applicant herein as the Liquidator as provided under section 34(1) on 12th March 2020, the Applicant / Liquidator published E-auction Sale Notice in two newspapers viz. Free Press Journal (English Edition) and Navshakti (Marathi Edition) for assets of the Corporate Debtor.

4. On 24th March 2020, Mr. Haresh Devraj Shah and Mrs. Ila Haresh Shah submitted their bid as well as deposited the Earnest Money Deposit of Rs.81,00,000/- (Rupees Eighty-One Lakh only) for one of the properties of the Corporate Debtor with the Applicant /Liquidator.
5. During the e-auction sale conducted on 27th March 2020, Mr. Haresh Devraj Shah and Mrs. Ila Haresh Shah submitted a bid of Rs.8,10,00,000/- (Rupees Eight Crore Ten Lakhs only) for the said property of the Corporate Debtor and subsequently, emerged as the highest and first ranked bidder thereof. Sale Certificate issued on 27th June 2020.

It has come to the knowledge of the Applicant/Liquidator that a lien has been marked by Respondent Nos. 1 and 2 on the property of the Corporate Debtor.

6. The Applicant/Liquidator addressed a letter dated 18th September 2020 to the Respondent No. 1 informing that in term of powers granted under

Section 35(1)(f) of the Code, the Applicant/Liquidator has sold one of the property to Mr. Haresh Devraj Shah and Mrs. Ila Haresh Shah in accordance with the provisions of the Code. The Applicant requested to remove lien marked against the said property of the Corporate Debtor and pave way for smooth transfer of the property without any encumbrance against the property. The Applicant further reiterated that their claim will be dealt with under the provisions of Section 53 of the Code.

7. The description of property is given below:

- i. Land and Building situated at Gut No. 411 and 412, Gonde Dhumala, Taluka Igatpuri, District Nashik – 422 403 (Reserve Price: Rs. 8.10 Crores, Earnest Money Deposit: Rs.81 Lakhs); (“**the said Property**”). (It is pertinent to mention here that the said property falls under the jurisdiction of the Respondent No. 2 i.e. MIDC area).
- ii. Plant and Machinery and all articles lying inside the above land and building premises. (Reserve Price: Rs.8.30 Crores, Earnest Money Deposit: 83 Lakhs).

Findings:

8. We have duly considered the submission of the Applicant and gone through the pleadings. We have placed reliance upon the judgment of the Hon’ble Supreme Court in the case of “*Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and Ors. (2019 SCC OnLine1478)*” held that:

88. *A successful resolution Applicant cannot suddenly be faced with*

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"undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count.

9. Also placed reliance on Hon'ble Supreme Court Judgement in *"Ghanshyam Mishra and Sons Private Limited V/s Edelweiss Asset Reconstruction Company Limited in Civil Appeal No. 8129 of 2019"* case is being reproduced herein below.

87. We have no hesitation to say, that the word "other Stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omissions, certain tax authorities were not abiding by the mandate of IB Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief. We therefore, hold that the 2019 amendment is declaratory and clarificatory in nature and therefore retrospective in operation.

88. There is another reason, which persuades us to take the said view. Sub-section (10) of Section 3 of the IB Code defined "Creditor" thus:

"(10) "Creditor" means any person to whom a debt is owed and

includes a Financial Creditor, an Operational Creditor, and Secured Creditor, an Unsecured Creditor and a Decree holder.

89. *Sub Sections (20) and (21) of Section 5 of the IB Code define “Operational Creditor” and “operational debt” respectively as such:*

(20) “Operational Creditor” means a person to whom an Operational Debt is owed and includes any person to whom such debt has been legally assigned or transferred:

(21) “Operational Debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority:

90. *“Creditor” therefore, has been defined to mean any person to whom a debt is owed and includes a Financial Creditor, an Operational Creditor, a Secured Creditor, an Unsecured Creditor and a Decree Holder.*

“Operational Creditor” has been defined to mean a person to whom an Operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

“Operational Debt” has been defined to mean a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.

91. *It is a cardinal principle of law, that a statute has to be read as a whole. Harmonious construction of Sub-Section (10) of Section 3 of the IB Code*

read with Sub-Section (20) and (21) of Section 5 thereof would reveal, that even a claim in respect of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any Local authority would come within the ambit of “Operational Creditor”. The Central Government, any State Government or any local authority to whom an Operational Debt is owed would come within the ambit of “Operational Creditor” as defined under Sub-Section (20) of Section 5 of the IB Code. Consequently, a person to whom a debt is owed would be covered by the definition of creditor as defined under sub-section (10) of Section 3 of the IB code. As such, even without the 2019 amendment, the Central Government, any State Government and any local authority to whom a debt is owed, including the statutory dues, would be covered by the term ‘creditor’ and in any case, by the term ‘other stakeholders’ as provided in sub-section (1) of Section 31 of the IB Code.

*92. The Division Bench of the Rajasthan High Court in D.B Civil Writ Petition No. 9480 of 2019 in the case of **Ultra Tech Nathdwara Cement Ltd. vs. Union of India and others.**, by judgment and order dated 07.04.2020 has taken a view, that the demand notices, issued by the Central Goods and Services Tax Department, for a period prior to the date on which NCLT has granted its approval to the Resolution Plan, are not permissible in law. While doing so, the Rajasthan High Court has relied on the judgment of this Court in the case of **Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra)**.*

*93. The Calcutta High Court in the case of **Akshay Jhunjhunwala and Anr. Vs. Union of India through the Ministry of Corporate Affairs and ors.**, has also taken a view, that the claim of Operational Creditor will also*

include a claim of a statutory authority on account of money receivable pursuant to an imposition by a statute. We are in agreement with the views taken by these Courts.

94. Therefore, in our considered view, the aforesaid provisions leave no manner of doubt to hold, that the 2019 amendment is declaratory and clarificatory in nature. We also hold that even if 2019 amendment was not effected, still in the light of the view taken by us, the Central Government, any State Government or any local authority would be bound by the resolution plan, once it is approved by the Adjudicating Authority (i.e. NCLT).

Conclusion

95. In the result, we answer the questions framed by us as under:

- i. That once a Resolution Plan is duly approved by the Adjudicating Authority under Sub-Section (1) of Section 31, the claims as provided in the Resolution Plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to claim, which is not part of the Resolution Plan.*
- ii. Consequently all the dues including the statutory dues owed to*

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the Central Government, any State Government or any local authority, if not part of the Resolution Plan, shall stand extinguished and no proceedings in respect of such dues of the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.

10. We duly considered that merits of the present IA on the basis of facts and circumstances of the case in hand and in light of the latest decision of the Hon'ble Supreme Court in the matter of Ghanshyam Mishra and Sons Private Limited V/s Edelweiss Asset Reconstruction Company Limited in Civil Appeal No. 8129 of 2019. Further in the matter of CoC of Essar Steel v/s Satish Kumar Gupta. The legal position/issues which are subject matter of present IAs have already been dealt with and now settled by the Hon'ble Supreme Court in the above referred decisions. Therefore, in the lights of above we direct the Respondents to forthwith lift lien on property and file claim before Liquidator as Operational Creditor. Liquidator is directed to examine the claims in terms of Section 53 of the Code and passed reasoned Order.
11. With the aforesaid observation the present **IA No. 2337 of 2020 In C.P (IB) No. 2294/MB/C-II/2018** stands disposed of.

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-

ASHOK KUMAR BORAH
MEMBER (JUDICIAL)

26.11.2021
SAM