

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.306
IA/1028(AHM)2023
in
CP(IB) 198 of 2017

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

IN THE MATTER OF:

The Commissioner Of State Tax Department
Vs

.....Applicant

Bhupendrasingh Rajput Liquidator Of Anil Technoplus
Limited

.....Respondent

Order delivered on: 22/03/2024

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

-Sd-

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

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT - II)

IA No.1028 of 2023

IN

CP(IB) No. 198 of 2017

(Filed under Section 60(5) read with Section 18(f) and Section 25
of the Insolvency & Bankruptcy Code, 2016)

IN THE MATTER OF:

The Commissioner of State Tax Department ...Applicant

Vs.

Mr. Bhupendra Singh Rajput ...Respondent

Order pronounced on .04.2024

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

Through State Tax Officer(2) Unit 8
Office of the Assistant Commissioner
D/3, Multi Story Building,
Laldarwaja,
Ahmedabad - 380001

...Applicant

Versus

Bhupendra Singh Rajpur

RP of Anil Technoplus Ltd.

.... Respondent

Present:

For the Applicant : Mr. Archit Jani, Adv.
For the Respondent : Ms. Natasha Shah, Adv.

JUDGEMENT

1. The present application has been filed under sub-section 5 of Section 60 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 before this Hon'ble Tribunal praying inter alia for directions to the Respondent/Liquidator to treat the Applicant as 'Secured Creditor', for the assessment order under Gujarat Value Added Tax Act, 2003 and Central Sales Tax Act, 1.956 for

the assessment years 2006-2007 and 2013-2014 to 2016-2017.

2. The applicant state and submits that the main Company Petition being CP (IB) No. 198 of 2017 came to be allowed by this Hon'ble Tribunal and thereby the applicant declares that this Hon'ble Tribunal has jurisdiction to entertain the present applicant. The applicant states that the present application is not barred by limitation. The applicant is a state Tax officer having jurisdiction over the company in liquidation. The Corporate Debtor is a company registered under the Companies Act,1956. The applicant submits that during the course of Corporate Insolvency Resolution process of the Corporate Debtor, applicant has preferred one application being IA No. 172/2021 filed before this Hon'ble Tribunal seeking consideration of claims of the applicant as secured creditor. That this Hon'ble Tribunal vide its final order dated 06.09.2021 was pleased to reject and dispose of the application in view that Section 238 of the Code make the Code prevailing over other laws having contrary provisions.

3. The Applicant states and submits that thereafter, the Hon'ble Supreme Court of India vide its judgement dated 06.09.2022 in the case of Rainbow Paper Limited in Civil Appeal No. 1661 of 2020 had classified the state tax due as Secured creditor under the GVAT Act and would rank equally under Section 53(1)(b)(ii) of the Code for the purpose of distribution of proceeds from the sale of liquidation assets of the Corporate Debtor. It is further mentioned that the Hon'ble Supreme Court of India has observed that provisions of the Gujarat Value Added Tax Act, 2003 is not contrary to or inconsistent with Section 53 or any other provisions of the IBC. In view of the above development in the IBC regime, the applicant submits that the liquidator has failed to consider and treat the claim of the applicant as secured creditor without properly considering the provisions of law. Hence, prayed for directing the liquidator to consider his claim as secured creditor.
4. Summary of the reply of the respondent is as below:
 - (i) That IA No.172 of 2021 in CP(IB) 198 of 2017 filed by the applicant before this Hon'ble Tribunal seeking consideration of dues as secured dues and to consider

the applicant as secured creditor was dismissed.

Mentioning the dues of the state government are to be treated as the operational debt. Further the provisions of Section 238 of IBC, 2016 make IBC, 2016 prevailing over other laws having contrary provisions. That IA 620 in CP(IB) 198 of 2017 filed by the Shivpriya Infrastructure Pvt. Ltd. successful bidder against the applicant and the respondent seeking directions from this Hon'ble Tribunal to direct the applicant to remove the attachment from the property. This Hon'ble Tribunal allowed the said application vide order dated 18.04.2022 stating that as per the order dated 13.09.2021 passed in IA 172 f 2021, the applicant herein is not even a secured creditor and so cannot have any right of charge and direct the applicant herein to release and remove the charges created on the property. That being aggrieved by the said order dated 18.04.2022 in IA 620, the applicant preferred a appeal bearing Company Appeal (AT)(INS) No. 834 of 2023 before the Hon'ble NCLAT on 14.03.2023, but order dated 14.07.2023, it was dismissed.

(ii) It is submitted that the said appeal was filed subsequent to the judgement dated 06.09.2022 passed by Hon'ble Supreme Court in the matter of State Bank of India V. Rainbow Papers Ltd. and despite the decision of Hon'ble Supreme Court, the Hon'ble Appellate Authority has rejected the appeal. It is further stated that against the said order of rejection, the applicant has not approached the Hon'ble Supreme Court. It is thus submitted that the said issue has attained finality and is no longer respondent integra between the present parties.

5. Heard Learned Counsels for both sides and perused the written submissions filed by the respondent.

6. Application for treating applicant as secured creditor being IA No.172 of 2021 was dismissed. It is submitted by the respondent that the applicant filed an appeal against the said order bearing No. Company Appeal (AT)(INS) 834 of 2023 before Hon'ble NCLAT which was dismissed on 14.07.2023. The applicant has not denied this fact, thus it appears that the judgement passed by the Tribunal in IA

172 of 2021 attains finality as the applicant has not filed any appeal before the higher Court against the order of Hon'ble NCLAT. It is pertinent to note that the said appeal was dismissed by Hon'ble NCLAT after the passing order by the Hon'ble Supreme Court in State Tax Officer (1) Vs. Rainbow Papers Ltd. in Civil Appeal No.1661 of 2020. The order of Hon'ble NCLAT in Company Appeal (AT)(INS) 834 of 2023 is not produced by either parties for perusal. However, when the appeal was dismissed by Hon'ble NCLAT, the same issue cannot be further decided by this Tribunal, hence, application is devoid of any merits and liable to be rejected. Hence, we pass the following order:

ORDER

Accordingly, IA 1028 of 2023 is rejected.

-Sd-

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

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)