

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 2233 OF 2020

Under Section 35, 53 & 60(5) of
Insolvency & Bankruptcy Code, 2016

Mr. Jitender Kumar Jain

...Applicant/Liquidator

Vs.

The Commissioner of State Tax & others

...Respondent

In the matter of

C.P.(IB) No. 1055/MB/2017

Roofit Industries Limited

...Corporate Applicant

Order delivered on: 13.03.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)
Appearances

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

For the Liquidator : Mr. Bhalchandra Palav a/w Ms. Aniket Dighe,
Advocate

For the Respondent : Mr. Prakhar Tondon, Advocate.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application I.A. 2233/2020 is filed by the Liquidator, Mr. Jitender Kumar Jain, of Roofit Industries Limited (Corporate Debtor) on 16.11.2020 seeking following reliefs:
 - a. Declare that the Respondents do not have any priority over the properties of the Corporate Debtor including the following:
 - (1) Plot No. E-25, Chikalhana Industrial Area, MIDC, Near NRB Bearings & IT Park, Off. Jalna Road, Taluka & Dist. Aurangabad-431006;
 - (2) Land Bearing New Gut No. 379 B, Old Gut No. 379/2, Old Survey No. 65 of Village Abitghar, Adjacent to Abitghar Telephone Exchange, Wada Shahpur Road, Taluka Wada, District Palghar-421 303; and
 - (3) Plot No. B-15, Mirjole Bloack, MIDC, Village Mirjole, Taluka & District: Ratnagiri-415 639;
 - b. Direct the Respondents to take all steps necessary to ensure that no liens are marked over the immovable properties of the Corporate Debtor including those listed in prayer (i) above in any land revenue records or records of MIDC/Respondent No. 5;
 - c. Direct the Respondent No. 5 i.e. MIDC not to insist for NOC or payment of past dues of the government department /agencies (including Maharashtra State Tax Department or MIDC) arising before the liquidation commencement date for transferring the properties sold by the Liquidator under the IBC;

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- d. Direct the Respondent No. 4 i.e. Principal Secretary, Financial Reforms/ Government of Maharashtra to create awareness about the provisions of the IBC amongst its departments to avoid any hindrance in achieving the objectives of the IBC;
2. This Tribunal, pursuant to its order dated the 28th of June, 2017, commenced the corporate insolvency resolution process ("CIRP") of Roofit Industries Limited ("Corporate Debtor") under the Insolvency & Bankruptcy Code, 2016 (Code) and appointed the Applicant/Liquidator as the Interim Resolution Professional of the Corporate Debtor.
- 2.1. The Committee of Creditors ("COC") of the Corporate Debtor, pursuant to the resolution passed in its first COC meeting held on 27th July 2017, appointed the Applicant / Liquidator as the Resolution Professional of the Corporate Debtor.
- 2.2. That this Tribunal, pursuant to its order dated 22nd January 2018 in M.A. 701 of 2017 in the captioned company petition as no resolution plan was received for the Corporate Debtor within the period of 180 days and the COC refused to extend the CIRP period appointed the Applicant as the liquidator of the Corporate Debtor. During the course of the activities of the Applicant/Liquidator, it was discovered that the Respondents No. 1 to 4 have marked a lien over the following properties owned by the Corporate Debtor:
- i) Plot No. E-25, Chikalthana Industrial Area, MIDC, Near NRB Bearings & IT Park, Off. Jalna Road, Taluka & Dist. Aurangabad-431 006 ("Aurangabad Property");
 - ii) Land Bearing New Gut No. 379 B, Old Gut No. 379/2, Old Survey No. 65 of Village Abitghar, Adjacent

to Abitghar Telephone Exchange, Wada Shahpur Road,
Taluka Wada, District Palghar - 421 303; and
iii) Plot No. B-15, Mirjole Block, MIDC, Village Mirjole,
Taluka & District: Ratnagiri - 415 639.

- 2.3. The Respondent No. 1 to 3 are officers of Sales Tax Department, Maharashtra and Respondent No.4 is Principal Secretary, Financial Reforms, Maharashtra Government.
- 2.4. Pursuant to the public announcement of commencement of liquidation process, the Maharashtra State Tax Department filed a claim with respect to dues owed by the Corporate Debtor. The claim of the Maharashtra State Tax Department was admitted by the Applicant/ Liquidator. It is submitted that the Respondents are now only entitled to receive proceeds from the sale of assets in accordance with section 53 of the IBC. It is submitted that it is now settled law that the Respondents cannot claim any priority in payment nor any superiority above secured creditors.
- 2.5. On the 9th of August, 2019, the Applicant/Liquidator wrote a detailed letter to the Respondent No. 3 calling upon him to vacate the liens marked over the aforementioned properties of the Corporate Debtor. It was also informed to the Respondent No. 3 that the Applicant/ Liquidator was in the process of selling the land located at Aurangabad and therefore the removal of lien was an urgent requirement.
- 2.6. Unfortunately, the Respondent No. 3 did not respond to this letter and therefore after a series of discussions and meetings with the Respondent No. 2 & 3, the Applicant/Liquidator was constrained to write another letter on the 26th of November, 2019, addressed to the Respondent Nos. 2 and 3. The

Applicant/Liquidator pointed out that he has not received any response to his earlier letter dated 9th of August, 2019, and that the Respondents are interfering with the liquidation process as prescribed under the IBC and the applicable regulations.

- 2.7. During the discussions/meeting with the Respondent No. 2 & 3, the Applicant/Liquidator also produced a letter of the State of Tamil Nadu wherein the Government of Tamil Nadu removed lien from the property of the Corporate Debtor that was situated in the State of Tamil Nadu under similar situation.
- 2.8. By way of a letter dated the 27th of January, 2020 (after almost five months), the Applicant/Liquidator was informed that the Respondent No. 2 is not the concerned authority to take action in this matter. This letter dated the 27th of January, 2020, was sent by the Jt. Commissioner of Sales Tax (HQ)¹ to the Respondent No. 1. Through this letter the Respondent No. 1 was directed to take necessary action and to intimate compliance to the Applicant/Liquidator.
- 2.9. However, despite the multiple rounds of personal meetings/clarifications to the Respondents No. 2 & 3, the Respondents have not yet acted in accordance with the mandate of law and have not removed the lien marked by them over the properties of the Corporate Debtor described above. It is submitted that this inaction on the part of the Respondents is contrary to the provisions of the IBC and ought not to be countenanced by this Tribunal. It is humbly submitted that any lien being asserted by the Respondents came to an end upon the initiation of liquidation process of the Corporate Debtor, and at any rate could exist during its liquidation.

2.10. The Applicant/Liquidator has relied on decision of Hon'ble High Court at Hyderabad has, in the matter of Leo Edibles & Fats Limited v. Tax Recovery Officer 2018 SCC OnLine Hyd 193, to contend that the *respondent cannot claim any priority merely because of the fact that the order of attachment dated 27.10.2016 issued by him was long prior to the initiation of liquidation proceedings under the Code against VNR Infrastructures Limited, Hyderabad.*

2.11. In this regard, the following contents of the page 14 of Banking Law Reforms Committee Report - November 2015 (which is basis of enactment of the IBC) showing the intent of the lawmakers are relevant:

"The Committee has recommended to keep the right of the Central and State Government in the distribution waterfall in liquidation at a priority below the unsecured financial creditors in addition to all kinds of secured creditors for promoting the availability of credit and developing a market for unsecured financing (including the development of bond markets). In the long run, this would increase the availability of finance, reduce the cost of capital, promote entrepreneurship and lead to faster economic growth. The government also will be the beneficiary of this process as economic growth will increase revenues. Further, efficiency enhancement and consequent greater value capture through the proposed insolvency regime will bring in additional gains to both the economy and the exchequer.

2.12. That the Respondent No. 5, despite change in law and new waterfall mechanism under section 53 of the IBC, insists on no-objection from the State Tax Department for recognising the buyer

and this has been the case with other government departments of the State of Maharashtra like Sub-Registrar, Gram Panchayat, Municipalities, etc. who instead of filing the claim for their dues before liquidation date as per the provisions of the IBC continues to insist for the payment of the past dues of Maharashtra State Tax Department and other State Government agencies that creates hurdle in the sale process under the IBC. This is mainly because of lack of awareness amongst the officers of the various departments of the State of Maharashtra. That in any case such action due to lack of awareness amongst the Respondents results in defeating the objectives of the IBC as it creates hurdle in the sale of properties under the IBC that is one of the duties of the Applicant/Liquidator under the IBC who is also a public servant/court appointed officer. Attention of this Tribunal may also be drawn to a circular issued by the Insolvency and Bankruptcy Board of India dated the 12th of September, 2020, wherein it is reiterated that statutory authorities are bound to abide by the provisions of the IBC.

3. Heard learned Counsel and perused the material on record.
 - 3.1. It is trite law that upon commencement of Liquidation Process, no recovery action can be proceeded against the assets of the Corporate Debtor and the Property is to be released in favour of the Liquidator unless the Security Interest Holder exercise its Security Interest in terms of procedure laid down under Regulation 37 of IBBI (Liquidation Process) Regulations, 2016. It is not in dispute that the Liquidator had informed the Respondents about initiation of the Liquidation process and had requested for the vacation of lien marked on the Immovable Properties owned by the Corporate Debtor. Further, it is settled law that Maharashtra VAT act does not

contain the provisions in pari materia to provisions contained in Gujarat VAT act making VAT dues under Gujarat VAT act as secured VAT by operation of law. Accordingly, we direct the Respondent Nos. 2 to 4 to vacate the lien over the land and issue necessary instructions to the Concerned Revenue Officer of the Maharashtra State Government to delete the endorsement of lien in the Revenue Records within Thirty (30) days from the communication of this Order.

3.2. The dues of the Creditors are to be settled in accordance with Section 53 of the IBC, 2016 and settlement in terms thereof discharges the Corporate Debtor from any debt claim over its assets. In other words, the liability qua Creditors extinguishes on such settlement of the dues under the Code.

3.3. Respondent No. 5 shall not insist for NOC or payment of past dues of the government department /agencies (including Maharashtra State Tax Department or MIDC) arising before the liquidation commencement date for transferring the properties sold by the Liquidator under the IBC.

4. In view of above, IA 2233 of 2020 is allowed and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)