**IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD**
**COURT - 2**

ITEM No 132
**IA/172(AHM)2021 in CP(IB) 198 of 2017**

**Order under Section 60(5) IBC,2016**

**IN THE MATTER OF:**

State Tax Officer-2 ........**Applicant**
V/s
Bhupendra Singh Rajput RP
for Anil Technoplus Ltd & Anr. ........**Respondent**

**Order delivered on ..13/09/2021**

**Coram:**

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

**PRESENT:**

For the Applicant :
For the Respondent :

**ORDER**

The matter is listed for pronouncement of order.

The order is pronounced vide separate sheet.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

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BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
COURT-2

IA No. 172 of 2021
In
C.P. No.(IB) 198 of 2017

(An application under Section 60(5) of the IBC, 2016)

In the matter of:

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

Versus

Bhupendra Singh Rajput
Resolution Professional for
Anil Technoplus Limited
Having office at : 309, Atma House, Opp
Old RBI Ashram Road , Ahmedabad-380009

Anil Technoplus Limited
Having office at :
Survey No. 195/4, At Karannagar,
Taluka: Kadi, Mehsana,
Gujarat-382727 ....Respondents

Order delivered on 13.09.2020
Order Reserved on 06.09.2021

Coram:

**Mr. Madan Bhalchandra Gosavi, Member (J)**
**Mr. Virendra Kumar Gupta, Member (T)**

Appearance:
**Adv. Mr. Soham Joshi, for the Applicant.**
**Adv. Ms. Natasha Dhruman Shah for the Respondent.**

## ORDER

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

1. In this application the applicant is seeking direction from us for considering the unpaid dues of the applicant as secured dues and consequently to consider applicant as secured creditor.

2. The applicant had filed the claim in Form B for Rs. 6,79,42,405/- dated 11.09.2019 and the affidavit for the same was sworn on 16.09.2019. A copy of the claim in Form B is annexed with the petition.

3. The applicant stated in the application that the assessment order under Gujarat Value Added Tax Act, 2003 and Central sales Tax Act, 1956 for the assessment years 2006-2007, 2013-2014, 2014-2015, 2015-2016, 2016-2017 were completed in the case of corporate debtor on various dates and revised claim to a tune of Rs. 64,03,02,634 was raised including interest and principal amount. A copy of the revised claim dated 12.012.2019 is annexed with the petition.

4. Learned Counsel for the applicant appeared and contended that dues of the Sales Tax under the provisions of Section 48 of Gujarat Value Added Tax 2003, shall be having the first charge on the property of the defaulter.

5. The Learned Counsel for the RP pleaded that, Provision of the Section 238 of the IBC, 2016 given a overriding effect on the provision of the any other law being in force.

6. It was also claimed that the Government dues fall under the definition of "Operational Debts" and are to be taken according to the provision of Section 30(2)(b) and 53 of the IBC 2016.

7. On other hand RP has claimed that there are several decisions wherein it has been held that, provision of GVAT, 2003 would override such provisions of other Acts which are contrary to the provisions of the IBC, 2016. Hence, the action of the RP needs to be affirmed.

8. On due consideration of facts and the legal submissions made on behalf of both sides, we are of the view that the dues of the State Government are to be treated as the operational debts. Further, the provisions of Section 238 make IBC 2016 prevailing over other laws having contrary provisions. Further, in terms of the provisions of IBC 2016, security interest or secured creditor is to be determined only as per the provisions of the IBC 2016.

9. We are further of the view, in this kind of situation conflicting provisions of different Acts, provisions of subsequent law statute having overriding effect are to be applied. Accordingly, this application is rejected and disposed of.

10. Certified copy of this order, if applied, be issued to all the concerned parties upon compliance with all requisite formalities.

**(VIRENDRA KUMAR GUPTA)**
**MEMBER (TECHNICAL)**

**(MADAN B GOSAVI)**
**MEMBER (JUDICIAL)**

Kailash Pillai