

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
(COURT NO. II)**

**IA No. 178 of 2021
IN
CP (IB) 482/9/NCLT/AHM/ of 2019**

(Under Section 60(5) read with Section 18(F) and Section 25 (2) (a) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal, 2016)

In the matter of:

**Mr. Dharit Kishorbhai Shah,
Liquidator of Maktel Power Ltd.**

...Applicant

Versus

Vadodara Municipal Corporation

...Respondent

And

In the matter of:

Elcen Machines Pvt. Ltd.

...Operational Creditor

Versus

Maktel Power Ltd.

...Corporate Debtor

Order Pronounced on: 02/02/2023

Coram:

**DR. DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

IA/178/2021

**Mr. Dharit Kishorbhai Shah,
Liquidator of Maktel Power Ltd,**

Having registered office at:

C/o. Bipin & Co., Chartered Accounts,
302, Centre Point, R.C. Dutt Road,
Alkapuri, Vadodara, Gujarat – 390007.

...Applicant

Versus

Vadodara Municipal Corporation

Represented Through,

Ward Officer

Ward No. 06 (F),

Near Sahajanand Apartment,

O.P. Road, Akota, Vadodara – 390020.

...Respondent

Present:

For the Applicant: Mr. Atul Sharma, Adv.

For the Respondent: Mr. Shrikrishna, Adv.

ORDER

1. The instant Application is filed by Mr. Dharit Kishorbhai Shah (hereinafter referred as 'applicant'), Liquidator of M/s. Maktel Power Limited (hereinafter referred as 'corporate debtor'), Under Section 60(5) read with Section 18(F) and Section 25 (2) (a) of the Insolvency & Bankruptcy Code,

2016 read with Rule 11 of the National Company Law Tribunal, 2016, seeking following reliefs against the Vadodara Municipal Corporation (hereinafter referred as ‘respondent’):

- a. That the Hon’ble Tribunal may be pleased to allow the present Application;*
- b. Direct the Respondent Statutory Authority to handover peaceful possession of property of the Corporate Debtor situated at 503, A & B, Mayfair Atrium, Kalali, Vadodara to the Applicant herein i.e. Resolution Professional of Corporate Debtor;*
- c. Direct the Respondent Statutory Authority to remove the seal from property of the Corporate Debtor situated at 503, A & B, Mayfair Atrium, Kalali, Vadodara;*
- d. Your Lordship may be pleased to grant any other relief or relief as may deem fit in the light of the facts and circumstances of the case.*

2.The brief facts of the case are as under:-

- a) An Operational Creditor i.e. M/s. Elcen Machines Private Limited had filed the application under section 9 of the Code for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) of M/s. Maktel Power Limited which was admitted vide order dated 11.09.2020, and Mr. Dharit Kishorbhai Shah was appointed as Interim Resolution Professional, and was confirmed as Resolution Professional by the sole COC member i.e. Indian Bank (erstwhile ‘Allahabad Bank’) on 28.10.2020.

- b) Resolution Professional published the Form-G on 25.11.2020 but no EOIs received. Resolution Professional did not receive any plans hence, COC in its 8th meeting held on 08.03.2021 passed resolution to liquidate the corporate debtor and to appoint Resolution Professional, i.e., the applicant herein as the liquidator of the corporate debtor and authorized him to file an application u/s 33 of the Code.
- c) The Resolution Professional filed IA 268 of 2021 before Adjudicating Authority for liquidation of the corporate debtor, which was allowed vide order dated 05.05.2021, appointing the applicant as the liquidator of the corporate debtor.
3. This IA was filed on 22.02.2021 by the Resolution Professional and on the request of Applicant, the Adjudicating Authority allowed to amend the cause title by replacing Resolution Professional by Liquidator, vide order dated 02.03.2022.
4. The applicant submitted that the IRP, vide letter dated 18.09.2020, intimated to the respondent about CIRP ('Corporate Insolvency Resolution Process') of the corporate debtor and further requested to handover the possession of the property owned by the corporate debtor situated **at 503, A & B Mayfair Atrium, Kalali, Vadodara** and also informed to respondent for filing claim in Form-B before applicant. The said letter was annexed to the present application.

5. The applicant submitted that neither claim was filed nor seal was removed from the property by the respondent, therefore, the applicant sent another letter to the respondent on 21.10.2020.
6. It is submitted by the applicant that the respondent filed their claim in Form-B before the applicant on 29.10.2020 with the claim of Rs. 1,62,138/- towards the property tax levied on property owned by the corporate debtor. After due verification of claims, the applicant admitted the claim of the respondent and also intimated the same to the respondent. A copy of the Form-B dated 29.10.2020 is annexed with the application.
7. The applicant submitted that the applicant vide letters dated 12.11.2020, 09.12.2020, and 17.12.2020 and after making several personal visits to the office of Respondent Authority, apprised officials of VMC about the provisions of the Code and requested them to hand over the property and remove the seal as their entire claim was admitted by Resolution Professional and the same now will be discharged subject to provisions of the Code for distribution to creditors. The applicant further submits that applicant vide letter dated 17.12.2020 also informed to the Respondent that the members of CoC are ready and willing to pay the dues of FY 2020-21 amounting to Rs. 32,661/- which is included in the total claimed amount of Rs. 1,62,138/- and further requested the respondent to submit a claim for the rest amount of Rs. 1,29,477/- as per the provisions of the Code. The

applicant submits that the respondent vide letter dated 28.12.2020 refused to remove the seal till the amount claimed is recovered. Copy of the letters dated 12.11.2020, 09.12.2020, 17.12.2020, and 28.12.2020 were annexed with the application.

8. The applicant submits that it is the duty of the applicant to take control and custody of all such assets over which the corporate debtor has an ownership right including assets which may or may not be in the possession of the corporate debtor as per section 18(f) and section 25(2)(a) of the IB Code. The applicant further submitted that said property is illegally occupied by the respondent, which it is required to vacate in the interest of the corporate debtor.
9. The applicant also filed orders/judgments passed by the various co-ordinate benches and Hon'ble NCLAT in support of his contention raised in the application, which is as follows:

- (i) In Asset Reconstruction Company (India) Pvt. Ltd. versus Shivam Water Treaters Pvt Ltd (C.P. No. (IB)1882(MB)/2018), Order dated 18.2.2019, the NCLT Mumbai bench held that:

“This is the case, where despite moratorium order, Municipal Authorities have sealed the Corporate Office/Registered Office of the Corporate Debtor. Section 238 of the IBC, 2016 provides the overriding effect. Moratorium order has been passed under Section 14 of the IBC on 15.10.2018. After that Municipal Corporation had no authority to seal the property of the Corporate

Debtor.

The Municipal Corporation of Ahmedabad is directed to immediately open the seal and hand over the possession of the entire property of the Corporate Debtor to the Resolution Professional. As far as the conduct of Mr Gaurav Dave, Ex-Director of the Corporate Debtor and his son/Business Head Mr Vishal Dave are concerned, they are directed to file affidavit relating to non co-operation with the RP. It is to be clarified that RP is discharging her duties as Court Officer and any noncompliance of the Court Officer will be deemed as Contempt of Court.”

- (ii) In *Encore Asset Reconstruction Company Pvt. Ltd. versus Ms. Charu Sandeep Desai & Ors. (Company Appeal (AT) (Insolvency) No. 719 of 2018)*, judgment dated 14/05/2019, the Hon’ble NCLAT held that:

“13. It is not the case of the Appellant that the title of the assets has already been transferred or they have sold the assets in terms of Section 13(4) of the ‘SARFAESI Act, 2002’. It is also not the case of the Appellant that the assets owned by a third party is in possession of the ‘Corporate Debtor’ in terms of Section 18, as it is the duty of the ‘Interim Resolution Professional’ to take control and custody of any asset over which the ‘Corporate Debtor’ has “ownership rights” as recorded in the balance sheet of the ‘Corporate Debtor’. Even if it is not in possession of the ‘Corporate Debtor’, a person who is in possession of the same, including the ‘Dena Bank’ or ‘Encore Asset Reconstruction Company Pvt. Ltd.’ is bound to hand over the same to the ‘Resolution Professional’, when title still vests with ‘Corporate Debtor’.

Decision in “M/s. Transcore v. Union of India & Anr.” was rendered in the year 2008 when the ‘I&B Code’ was

not in existence. The 'I&B Code' came into force w.e.f. 1st December, 2016 and Section 238 reads as follows:

"238. Provisions of this Code to override other laws.— The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

15. 'SARFAESI Act, 2002' being an existing law, Section 238 of the 'I&B Code' will prevail over any of the provisions of the 'SARFAESI Act, 2002' if it is inconsistent with any of the provisions of the 'I&B Code'.

16. In the aforesaid background, we hold that Section 18 of the 'I&B Code' will prevail over Section 13(4) of the 'SARFAESI Act, 2002' and the 'Dena Bank' cannot retain the possession of the property in question of which the 'Corporate Debtor' is the owner.

17. We find no merit in this appeal. It is accordingly dismissed. No costs."

10. The respondent filed his reply on 04.08.2021 and stated as follows:

- i. That the property is situated within the territory of ward 6(F) and bearing census No. 06-03-006-002-216-021.
- ii. That the corporate debtor is a defaulter in payment of municipal taxes and a total amount of Rs. 1,74,499/- is due and payable along with interest and penalties as of 15/06/2021 by the corporate debtor. Copies of the tax invoices and calculation of principal, interest, and penalty amount are annexed with the reply.
- iii. That due to non-payment of arrears of property tax by the corporate debtor to the Vadodara Municipal Corporation, the respondent had sealed and attached premises in accordance with Schedule A,

Chapter VIII Rule 42 of the Gujarat Provincial Municipal Corporations Act 1949. A copy of the said provisions of the Gujarat Provincial Municipal Corporations Act 1949 is annexed with the reply. Rule 42 of the said Act is reproduced hereunder-

“Rule 42- Distress or attachment- (1) If the person on whom a notice of demand has been served under rule 41 does not within fifteen days from such service pay the sum demanded or show sufficient cause for non-payment of the same to the satisfaction of the Commissioner, and if no appeal 1 [is preferred or entertained] against the said tax, as hereinafter provided, such sum, with all costs of the recovery, may be levied under a warrant in Form H or to the like effect, to be issued by the Commissioner, by distress and sale of the movable property of the defaulter or, the attachment and sale of the immovable property of the defaulter or if the defaulter be the occupier of any premises in respect of which a property-tax is due, by distress and sale of any movable property found on the said premises or, if the tax be due in respect of any vehicle, boat or animal by distress and sale of such vehicle, boat or animal in whomsoever’s ownership, possession or control the same may be.

(2) If after the service of the notice of demand the amount of the said tax is paid but the fee for the notice is not paid the sum due on account of the said fee may be levied under a warrant in the Form H (mutatis mutandis) to be issued by the Commissioner in the same manner as if such sum were due on account of the tax.”

- iv. That the premises were for the first time sealed and attached by the Vadodara Municipal Corporation on 08/01/2018 and thereafter since the arrears and taxes were not paid by the said company sealing and

attachment were done again in the year 2018-19 on 27/12/2018 and in the year 2019-20 on 09/01/2020 the said facts are noted in the sealing register maintained by our department. A Copy of the extract of the notings in the sealing register and a typed copy of the said extracts are annexed with the reply.

- v. That an amount of Rs. 1,74,499/- is due and payable by the corporate debtor. The said dues are statutory dues and till date the corporate debtor has not paid the said amount. The said property of the corporate debtor has since been attached on 08/01/2018, 27/12/2018, and 09/01/2020 under the provision of the Gujarat Provincial Municipal Corporations Act, 1949 which is much prior to the admission of the present application, and hence Vadodara municipal Corporation is entitled to auction the said property for recovery of its statutory dues.
- vi. Tribunal may be pleased to declare that the Vadodara Municipal Corporation has First Charge amounting to Rs. 1,74,499/- over the Property of the Corporate Debtor and further be pleased to declare that the Vadodara Municipal Corporation has First priority for receiving payment of the full amount of Rs. 1,74,499/- from the amount realized from the corporate debtor.

11. The applicant filed its written submission and reiterated the same

averments and contentions which are made in the application. The Respondent has not filed written submission.

12. Heard submissions and perused the documents placed on records. It is noted that the corporate debtor was admitted under CIRP vide order dated 11.09.2020, and thereafter went into liquidation vide order dated 05.05.2021. During the period of CIRP, the IRP/Resolution Professional took control and management of the corporate debtor as per the provisions of the IB Code and regulations made thereunder. The IRP/Resolution Professional also intimated the respondent about the initiation of CIRP of corporate debtor vide letter dated 18.09.2020 and 21.10.2020.
13. We referred to the judgment passed by the Hon'ble High Court of Gujarat, in East India Enterprise through Proprietor Rajeshbhai Bholabhai Ramani vs. Ministry of Finance Department of Revenue the Director (special criminal application No. 8222 of 2019) dated 24.06.2021, wherein the following observation is made by the Hon'ble High Court of Gujarat-

"12. At this stage, reference to Section 238 of IBC would be relevant, which pertain to - "Provisions of this Code to override other laws". It provides that the provisions of IB Code shall have effect, notwithstanding anything inconsistent therewith contained in any law for the time being in force or any instrument having effect by virtue of any such law. In other words, the IB Code has a overriding effect over any other law for the time being in force, which includes the Motors Vehicles Act and the Rules framed thereunder. Upon the Corporate Debtor being sent to liquidation, it is the procedure prescribed

under the IB Code that comes into play and becomes all encompassing for the purpose of realization of all dues and debts by creditors or any other stakeholders from the corporate debtor.

13. ...In other words, the dues relatable to vehicles belonging to the corporate debtor can only be recovered under the provisions of the IB Code, i.e. the waterfall mechanism under section 53 of the IB Code and not from the petitioners, being the auction-purchasers. The petitioner could be held liable to pay statutory dues in respect of the subject vehicles, which have been claimed by the respondent - Regional Transport Offices after their purchase by the petitioner in April 2019, only from the date when they had purchased the subject vehicles after having exercised their right to raise objections to such claim."

We also rely upon the judgment dated 14.05.2019 of Hon'ble NCLAT in the case of Encore Asset Reconstruction Company Pvt. Ltd. versus Ms. Charu Sandeep Desai & Ors. (Company Appeal (AT) (Insolvency) No. 719 of 2018), wherein Hon'ble NCLAT has held as under:

"13. It is not the case of the Appellant that the title of the assets has already been transferred or they have sold the assets in terms of Section 13(4) of the 'SARFAESI Act, 2002'. It is also not the case of the Appellant that the assets owned by a third party is in possession of the 'Corporate Debtor' in terms of Section 18, as it is the duty of the 'Interim Resolution Professional' to take control and custody of any asset over which the 'Corporate Debtor' has "ownership rights" as recorded in the balance sheet of the 'Corporate Debtor'. Even if it is not in possession of the 'Corporate Debtor', a person who is in possession of the same, including the 'Dena Bank' or 'Encore Asset Reconstruction Company Pvt.

Ltd.’ is bound to hand over the same to the ‘Resolution Professional’, when title still vests with ‘Corporate Debtor’.

Decision in “M/s. Transcore v. Union of India & Anr.” was rendered in the year 2008 when the ‘I&B Code’ was not in existence. The ‘I&B Code’ came into force w.e.f. 1st December, 2016 and Section 238 reads as follows:

“238. Provisions of this Code to override other laws.— The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

15. ‘SARFAESI Act, 2002’ being an existing law, Section 238 of the ‘I&B Code’ will prevail over any of the provisions of the ‘SARFAESI Act, 2002’ if it is inconsistent with any of the provisions of the ‘I&B Code’.

16. In the aforesaid background, we hold that Section 18 of the ‘I&B Code’ will prevail over Section 13(4) of the ‘SARFAESI Act, 2002’ and the ‘Dena Bank’ cannot retain the possession of the property in question of which the ‘Corporate Debtor’ is the owner.

17. We find no merit in this appeal. It is accordingly dismissed. No costs.”

The IRP/RP/Liquidator is duty-bound to take custody of the assets belonging to the corporate debtor as per the IB Code and do all the necessary acts to complete the liquidation process required under the provisions of the IB Code.

Therefore, in view of the overriding powers under section 238 of the IB Code and Rule 11 of NCLT Rules 2016, we are of considered view that Liquidator should be allowed to take possession of the property situated at

503, A & B, Mayfair Atrium, Kalali, Vadodara from the respondent.

In view of above, we direct the respondent to remove the seal and hand over peaceful possession of the said property to the Liquidator within 15 days of this order. The Liquidator while dealing with the claim of Vadodara Municipal Corporation shall be guided by the ratio and guideline given by the Hon'ble Supreme Court in the case of State Tax Officer vs. Rainbow Papers Ltd. on treatment of claims of government and statutory authorities.

14.As a sequel to the above discussion, the application is allowed and disposed of.

15.The registry is directed to communicate a copy of this order to the parties.

**-Sd-
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

**-Sd-
DR. DEEPTI MUKESH
MEMBER (JUDICIAL)**

Abhishek Singh
LRA