NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT NO. II)

IA No. 620 of 2021
IN
CP (IB) 198 of 2017

(Under Section 60(5) read with Section 238 of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of:

Shivpriya Infrastructure Private Limited

...Applicant

Versus

State Tax Officer (2) & Anr.

...Respondents

Order Pronounced on: 18/04/2022

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

MEMO OF PARTIES

IA/620/2021

Shivpriya Infrastructure Private Limited,
Having registered office at:
A/202, Rajshree Avenue,
Near Dinesh Hall,
Ashram Road, Ahmedabad,
Gujarat-380009.

...Applicant

Versus

1. **State Tax Officer (2),**
   Unit 8,
   Office of the Assistant Commissioner,
   D/3, Multi Story Building,
   Lal Darwaja, Ahmedabad,
   Gujarat- 380001.
2. **Bhupendra Singh Rajput,**
   Liquidator of
   Anil Technoplus Limited,
   Having Office at:
   309, ATMA House,
   Opp. Old RBI Ashram Road, Ahmedabad,
   Gujarat- 380009.

...Respondents

Present:

For the Applicant: Learned Senior Counsel Mr. Navin Pahwa & Learned Counsel Mr. Arjun Padhiyar.

For the Respondent: Learned Counsel Mr. Soahan Joshi for State Tax Officer (2), Learned Counsel Ms. Natasha Shah for Liquidator.

ORDER

1. The instant Application is filed by Shivpriya Infrastructure Private Limited ('Applicant') through Mr. Harendra Singh Neer Singh Rathore, authorized through board resolution dated 25.08.2021, under Section 60(5) read with Section 238 of the Insolvency and Bankruptcy Code, 2016 ('Code') and read with Rule 11 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016) who is successful auction purchaser of property of corporate debtor in liquidation process, seeking following directions against the State Tax Officer-(2), and Resolution Professional of Anil Technoplus Limited:

    i. *That the Hon'ble Tribunal may be pleased to allow the present Application;*
    ii. *That the Hon'ble Tribunal may be pleased to direct the Respondent No. 1 State Tax Officer-(2) Unit-8, to remove the attachment from the Property mentioned in paragraph No. 4(a) of the present application;*
    iii. *Such other and further relief as this Hon'ble Tribunal may deem fit in the interest of justice.*

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

    a) An Operational Creditor 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 Anil Technoplus Limited which was admitted vide order dated 14.02.2018, and Mr. Shah Dhavalkumar Kamleshkumar was appointed as Interim Resolution Professional.

b) CoC in its 5th and final meeting held on 16.10.2018 resolved for initiation of liquidation of corporate debtor, as there is no response received after publication of EoI and the corporate debtor company had no running business.

c) IA 493 of 2018 filed by the resolution professional for the liquidation of the corporate debtor was allowed by this Tribunal vide its order dated 22.08.2019 and Mr. B. S. Rajput was appointed as the liquidator.

d) IA 172 of 2021 was filed by the State Tax Officer (2) seeking direction against the liquidator for considering the unpaid dues of the State Tax Officer (2) as secured dues and consequently to consider department as secured creditor. The said application was disposed of on 13.09.2021, with observation that

> *"8……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."*

3. The applicant submitted that during the liquidation process the property of corporate debtor was put to an auction and applicant participated in the online public auction process on 24.08.2021 who came to be declared as the highest bidder for bidding an

amount of Rs. 5,06,00,000/-. The copy of system generated e-mail dated 24.08.2021 sent by the e-auction service provider and copy of letter dated 24.08.2021 sent by the liquidator are also annexed with the application. The said auction was conducted on 'as is where is' basis.

4. The applicant submitted that State Tax Department attached the property of the corporate debtor vide order dated 13.12.2018 towards their past outstanding statutory dues for the period of 2006-07, 2013-14 and for the period of March 2016 onwards. The property is situated at New Survey No. 2993, Old Survey No. 195 Paiki 4(Amalgamated Revenue Survey No. 195 Paiki Private Hissa No. 2) having a land area admeasuring about 19625 sq. mtrs., with construction thereon at Mouje Village Karannagar, Taluka Kadi, District- Mehsana, Sub-District Kadi, state of Gujarat. The attachment came to the knowledge of the applicant from the village form No. 6 and 7 which was obtained on 14.05.2019 from the Revenue Records maintained by the Revenue Department, State of Gujarat. The copy of the village form No. 6 and 7 show the outstanding liability for period from 2006-07, 2013-14, and March 2016 onwards of corporate debtor for an amount of Rs. 5,92,79,576/- with compound interest and penalty. The copy of the village form No. 6 and 7 along with their translated copies are also attached.

5. It is submitted by the applicant that once the provisions of the IB Code, 2016 is invoked and the CIRP/Liquidation of the corporate debtor is initiated, the State Tax Department being statutory authority falls under the definition of the operational creditor as defined under section 5(20) of the Code and is entitled to recover the dues in accordance with section 53 of the IB Code. The State Tax Department has till date not removed the attachment on the property of corporate debtor.

6. The applicant has relied upon following judgements:

   i. In the case of *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 Hight 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, nothwithstanding 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."

ii. Hon'ble NCLAT in *Pinakin Shah – Liquidator of M/s. Brew Berry Hospitalities Pvt. Ltd. vs. The Assistant Commissioner of State Tax and Anr.(Company Appeal(AT)(Insolvency) No. 32 of 2021) dated* 25.02.2021 relying on the judgment of Hon'ble Supreme Court held as under :-

"7. The learned counsel for the appellant has relied on the judgement of the Hon'ble Supreme Court in the matter of Pr. Commissioner of Income Tax versus Monnet Ispat and Energy Ltd. in SLP Civil No. 6483 of 2018 ((2018) 18 SCC 786) (Annexure- I page 53) where Hon'ble Supreme Court in order dated 10th August, 2018 observed as under:

"Heard.

Delay, if any, is condoned.

Given Section 238 of the Insolvency and Bankruptcy Code, 2016, it is obvious that the Code will override anything inconsistent contained in any other enactment, including the Income Tax Act.

We may also refer in this connection to Dena Bank Vs. Bhikhabhai Prabhudas Parekh and C. & Ors. (2000) 5 SCC 694 and its progeny, making it clear that income-tax dues, being in the nature of crown debts, do not take precedence even over secured creditors, who are private persons.

We are of the view that High Court of Delhi is, therefore, correct in law.

8. *The Learned Counsel has referred to this Order of Hon'ble Supreme Court as well as the Judgement referred by the Hon'ble Supreme Court in the Order and submitted that the freezing of account by the Respondent No. 1 is*

not maintainable and the Liquidator cannot be made to run to the parties and authorities under the Sales Tax Act to get the Account defreezed. Learned Counsel submits, and rightly says that Liquidation Proceedings are time-bound to maximize the value and all the Creditors are entitled to get their dues only in terms of Section 53 of the I & B Code 2016 and different Creditors cannot be allowed to resort to different proceedings and enactments only because they are Authorities under earlier enactments considering the Provisions of Section 238 of I & B Code, 2016.

9. ….

10. We find that Adjudicating Authority has failed to exercise jurisdiction vested in it to give relief to the Appellant in the context of the position of law under Section 238 of IBC."

8. The State Tax Department filed reply and raised following contentions-

a) It is submitted that none of the fundamental or legal right of the applicant has been violated because of any action or inaction on part of the present respondent and therefore the present application is not maintainable in law and the same deserves to be dismissed in limine.

b) It is submitted that the order dated 13.12.2018 passed by the State Tax Officer (2), Unit 8, District: Ahmedabad is under section 45(1) of the Gujarat Value Added Tax Act, 2003, for the

assessment year 2006-07, Assessment year 2013-14, totalling to tune of Rs. Five Crores Ninety Two Lakhs Seventy Nine Thousand Five Hundred and Seventy Six.

c) It is also submitted that as per section 48 of the Gujarat Value Added Tax Act, 2003 the government has first charge over the property. Further submitted that it is clear that the State Government, State Tax Department does not enjoy the status of a secured creditor, on par with other secured creditors covered by a mortgage or other security interest, who can avail the provisions of section 52 of the Code. The State Tax Department can only claim a charge under the attachment order, in terms of section 45 of the Gujarat Value Added Tax Act, 2003 read with section 48 of Gujarat Value Added Tax Act, 2003. The section 45 and 48 of the Gujarat Value Added Tax Act, 2003 are reproduced for reference:

Section 45 Provisional Attachment

(1) Where during the pendency of any proceedings of assessment or reassessment of turnover escaping assessment, the Commissioner is of the opinion that for the purpose of protecting the interest of the government revenue, it is necessary so to do, he may by order in writing attach provisionally any property belonging to the dealer in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to

have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

Section 48 Tax to be first charge on property-

Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer or any other person or account of tax, interest or penalty for which he is liable to pay to the Government shall be a first charge on the property of such dealer, or as the case may be, such person.

d) The State Tax Department has filed reply, reiterating the stand taken in pleading and relied upon the judgment of Hon'ble Gujarat High Court in Ananta Mills vs. City Deputy Collector reported in 1972 GLR 633 which has held that

12 "The purpose of the attachment thus appears to be to prevent private alienation of the property but the attaching creditor does not acquire, by merely levying attachment, any interest in the property."

9. The liquidator respondent no. 2 filed affidavit in reply and submitted that it has no objection if the said prayers sought by the applicant are granted by adjudicating authority in the interest of justice.

10. Heard submissions and perused the documents and judgements relied upon. It is noted that the State Tax Officer (2) filed the IA No. 172 of 2021 seeking directions to considering the unpaid dues of

the State Tax Department and recognize State Tax Department as secured creditor. This prayer was rejected by the Adjudicating Authority vide order dated 13.09.2021 with following observation:

> *"The dues of the State Government are to be treated as the operational debts. Further, the provisions of the 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."*

As per the order passed in IA No. 172 of 2021 State Tax Department is not even a secured creditor and so cannot have any right of charge, which ceased as per order dated 13.09.2021.

There is no submission of stay against the said order neither said order is set aside. Hence, we fail to understand as to why order of this Bench dated 13.09.2021 is not complied by the State Tax Department till date. We direct the State Tax Department to release and remove the charges forthwith, created on the property of corporate debtor which is situated at New Survey No. 2993, Old Survey No. 195 Paiki 4 (Amalgamated Revenue Survey No. 195 Paiki Private Hissa No. 2) having a land area admeasuring about 19625 sq. mtrs., with construction thereon at Mouje Village Karannagar, Taluka Kadi, District- Mehsana, Sub-District Kadi, State of Gujarat.

11. As a sequel to above discussion application is allowed and State Tax Department is directed to comply with this order forthwith on receiving the copy of order.

12. Registry is directed to communicate a copy of this order to the parties.

13. The application is allowed and disposed of.

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Ajai Das Mehrotra
Member (Technical)

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Dr. Deepti Mukesh
Member (Judicial)

Abhishek Singh