

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.304

IA/670(AHM)2021 in CP(IB) 582 of 2018

Order under Section 60(5) IBC

IN THE MATTER OF:

State Tax Officer (3) Unit Officer of The Assistant
Commissioner

.....Applicant

V/s

.....Respondent

Bhupendra Singh Narayansingh rajput Liquidator of Terrene
Pharma Private Limited and Anr.

Order delivered on: 12/07/2024

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 order.

The order is pronounced in open Court vide separate sheet.

SD/-

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

SD/-

CHITRA HANKARE
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT No.2**

**IA 670/NCLT/AHM/2021
IN
CP (IB) 582/9/NCLT/AHM/2018**

[An Application filed under Section 60(5) of the Insolvency and Bankruptcy Code]

In the matter of:

State Tax Officer(3)
Unit-45Office of the Assistant Commissioner,
4th Floor, Kuber Bhavan,
Kothi Compund, Vadodara ...Applicant

Versus

1. Bhupendrasingh Narayansingh Rajput
Resolution Professional for
M/s. Terren Pharam Pvt. Ltd.
Having office at:
309, Atma House,
Opp. Old RBI Ashram Road,
Ahmedabad-380009
2. Terren Pharma Pvt. Ltd.
Having office at:
Plot No. E-19-21 EPIP Zone,
Manjusar GIDC Tal: Savli
Vadodara-391770 ..Respondents

Order pronounced on 12/07/2024

Coram:

**MRS. CHITRA HANKARE,
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

Appearance:

For the Applicant : Mr. Soham M joshi, Advocate
For the Income Tax: Ms. Bhumi Gandhi, Advocate for
Ms. Maithali Mehta, Advocate
For the Liquidator: Ms. Natasha Shah, Advocate

Per: Bench

J U D G E M E N T

1. An Interlocutory Application is filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 to consider the unpaid dues of the Appellant as Secured dues towards Government outstanding and the Appellant as “Secured Creditor”.
2. The Respondent No. 2 Terren Pharma Private Limited was registered with Commercial Tax Department, Gujarat at Unit 45, Vadodara w.e.f. 10.01.2008.
3. The Applicant is State Tax Officer over the Company in liquidation viz. M/s. Terren Pharma Private Limited., which is admitted in CIRP vide order dtd. 14.08.2019 in CP(IB) No. 582 of 2018 viz. M/s. Raymon Patel Gelatine Private Limited vs. Terrene Pharma Private Limited .
4. In the 3rd meeting of CoC held on 12.12.2019, it was decided to liquidate the Corporate Debtor. The Liquidation order was

passed on 10.02.2020 and IRP was appointed to make a public announcement for inviting claims.

5. The Public announcement under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 under Form A was published on 20.08.2019. The last date of submission was 03.09.2019.
6. The Applicant has filed the claim in Form B dated 21.08.2018 claiming of Rs. 1,98,41,060/-. The Form B under Schedule –II was published on 18.02.2020, wherein the last date of submission was 18.03.2020.
7. The Applicant has filed the claim in Form –C for Rs. 2,70,58,945/- including tax, interest and penalty dated 29.02.2020 under the provisions of Gujarat Sales Tax Act, 1969 and Gujarat Value Added Tax Act, 2003 (hereinafter referred to as “GVAT”) for the years 2011-12 to 2015-16 of the Company in liquidation on 29th February 2020. It is also stated in the form that the claim is submitted with secured creditor status.
8. The Applicant submits that as per Section 48 of the Gujarat Value Added Tax Act, 2003 the doctrine of first charge on the

property of a Corporate Debtor, which is reproduced herein below:

“Section 48- 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 on 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”.

It's covered that outstanding dues are protected by provisions of Section 48 of the Gujarat Value Added Tax Act, 2003 and the Respondent No. 1 has accepted the claim of the Applicant as Operational Creditor.

9. The Applicant relied upon the judgment of Hon'ble Apex Court, *Central Bank of India vs. State of Kerala reported in (2009) 4 SCC*, wherein it was held that statutory first charge created in favour of the State has primacy over the right of the bank to recover its dues and further settled the controversy about the priority of the claim on assets of debtor by the state and other secured creditor like banks and others.
10. The Applicant is also placed reliance by Respondent No. 1 on Section 238 of the IBC, 2016, which provides the overriding effect, it still will be misplaced as the Section does not override Section 48 of the Gujarat Value Added Tax Act, 2003. It is observed from the email submitted that the Liquidator

had accepted the claim as operational creditor on 14th September, 2021. It is also observed that the applicant had filed his claim by Form B as operational creditor under regulation 7 of IBC Reg. 2016 dated 22nd August 2019 during the CIRP process to the then RP. Also, the applicant vide his letter dated 29th February 2020 had filed a fresh claim to the liquidator with reasons for having filed as operational creditor and that they have first charge under Section 48 of Gujarat VAT Act, 2003 and demanded that they be included as secured creditor and as member of COC. This application is filed on 20th September, 2021 (with delay) to the liquidator before this Tribunal.

11. The respondent filed its reply contending that the Tax Department cannot claim to be secured creditor when Form-B is filed.
12. The applicant has filed its claim in Form-C instead of Form – D under Regulation 17 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 . It is also submitted that the priority in payment of dues will be given to secured creditors over the rights of tax department while recovering the dues since dues under GVAT Act, 2003 are ‘operational debt’ and not ‘financial debt’. The

Respondent pleaded that the provisions of Section 238 of IBC, 2016 given an overriding effect on the provision of the any other law being in force.

13. The Respondent has relied upon:

- i. *Hon'ble NCLAT Principal Commissioner of Income Tax Central-2, Chennai v. Ramasubramaniam, RP for Surana Corporation Ltd.*
- ii. *CP(IB) 198 of 2017 in State Tax Officer vs. Bhupendra Singh Rajput RP for Anil Techno plus Limited., NCLT Ahmedabad Bench* in support of the abovementioned contention that the liquidation is a time bound process.

14. We have perused the material on record and heard the submissions made by the Ld. Counsels of both the parties. It may be seen that there is delay of 588 days in filing application of claim by the Applicant. The Liquidation order has been passed on 10.02.2020 and the instant application has been filed on 20.09.2021.

15. It is observed that the distribution of the sale proceeds from the e-auction of the asset of the Corporate Debtor and liquidation process has already been completed in all aspects by the time this application has been filed and it is also pointed out that a dissolution application u/s 54 of IBC, 2016 has been filed for dissolution of the Corporate Debtor in IA

No. 704/2021 on 01.10.2021 with no pending litigation concerning the Corporate Debtor except for the present application.

16. However, the liquidator has failed to acknowledge the demand of the applicant to be considered as secured creditor and include as member of COC. Without proper adjudication of the matter and this IA which was filed before the decision was taken to sell and distribute the assets, it is observed that the liquidator has taken certain decisions for dissolution of the Corporate Debtor. There apparently seems to be no attachment on the property but the applicant claims a secured creditor status as per the provisions of the GVAT for which he has also provided the Judgment of *State Tax Officer vs. Rainbow Papers Limited*. The liquidator has not provided any documents as to whether there was any claim before the Corporate Debtor supplemented with the balance sheet proof that the Sales Tax had sought recovery in terms of GVAT Act under which this claim is subsequently lodged claiming secured creditor status nor has the applicant given any such proof that the claim admitted was adjudicated by the Sales Tax Department in terms of provision before the CIRP and

was a recoverable amount to be paid out of the assets of the Corporate Debtor. In view of the same, the provisions of Section 238 of IBC 2016, prevails over the GVAT in right to recovering the claims from the liquidator.

17. In view of the above submissions and observations, we pass following order.

ORDER

IA 670 of 2021 in CP(IB) 582 of 2018 is rejected and stands disposed of.

SD/-

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

SD/-

**CHITRA HANKARE
MEMBER (JUDICIAL)**

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