

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.304

IA/850(AHM)2022 in CP(IB) 112 of 2017

Order under Section 60(5) r.w Sec 53 of IBC,2016 r.w Rule 11 of NCLT,2016

IN THE MATTER OF:

Vishal Bidwatjika Liquidator For Today's Writing InstrumentsApplicant

Ltd

V/s

.....Respondent

Deputy Commissioner of Income Tax

Order delivered on: 25/10/2023

Coram:

Mr.Shammi Khan, Hon'ble Member(J)

Mr.Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH -I, AHMEDABAD**

IA/850/AHM/2022 in CP (IB)/112/2017

*(Filed under Section 60(5) read with Section 53 of the
Insolvency and Bankruptcy Code, 2016)*

In the matter of **Today's Writing Instruments Limited**

Mr. Vishal Bidawatjika

Liquidator of Today's Writing Instruments Ltd.

307, Business Classic, 3rd Floor,
Near HP Petrol Pump,
Malad (West),
Mumbai-400064

... Applicant

VERSUS

Deputy Commissioner of Income Tax

Office of the Income Tax Officer (TDS)
Room No. 402, 4th Floor, Palak Arcade,
Shanti Nagar, Tithal Road,
Valsad-396001

.... Respondent

Order Pronounced on 25.10.2023

CORAM:

SHAMMI KHAN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : Ms. Nitu D. Chaturvedi, Adv.

For Respondents : Ms. Kinjal Trivedi, Adv.

ORDER

1. The IA/850/AHM/2022 has been filed by the Applicant under Section 60(5) read with Section 53 of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows:-

- a. *To directing Respondent to lift/release the attachment/charge created on the assets/property of the Corporate Debtor (attached by Respondent) vide mutation entry no. 2648 from the revenue records.*
- b. *To direct the Respondent to provide NOC to the Applicant to enter the name of applicant in the Revenue Authority of Dadra (Mutation entry no. 2648).*
- c. *To pass any other order as may deem fit by the Adjudicating Authority.*

2. From the averments made by the Applicant, it is evident that the Corporate Debtor was ordered for liquidation vide order dated 30/11/2018 in IA 277 of 2018 and the Applicant herein was appointed as Liquidator. Liquidator caused public announcement

calling for the claims from the Creditors of the Corporate Debtor by virtue of publication dated 12.12.2018.

3. That during the Revenue search of Non-Agricultural land situated at Revenue Survey/Block 963 (Old Survey/Block No. 251/2), admeasuring 5410 Sq. mtrs. within the limits of Village Dadra, Taluka Dadra Patelad, Dist. Silvassa, it is found that the said property of the Corporate Debtor is attached by the Respondent i.e. Department of Income Tax. A copy of the 7/12 of Revenue Survey/Block No. 963 (Old Survey/Block No. 251/2) is attached as Exhibit D to the application.

4. That on 17/12/2019 the liquidator published 1st E – auction sale notice in two newspapers and corrigendum was published on 18/12/2019. Accordingly, the e-auction was scheduled for 24/12/2019 for sale of the assets of the Corporate Debtor on “As is where is whatever there is basis and without recourse basis” with reserve price of Rs. 4,90,00,000/-. The copy of the said e-auction notice is attached as Exhibit E.

3. In terms of the e-auction notice one bidder M/s. Saurabh Plasto Products Private Ltd. (Successful Bidder of SB) showed interest, deposited the EMD on 20/12/2019 and placed a final bid of Rs. 6,70,00,000/- and was declared as successful bidder and Letter of Intent (LOI) was issued on 26/12/2019 by the Liquidator. Subsequent to this the SB deposited the entire sale consideration and Certificate of Sale was issued on 09/01/2020 in favor of the SB which is attached at Page 34 of the application.

4. It is stated that the applicant had duly informed the Respondent about commencement of liquidation proceedings vide letter dated 14/12/2018 vide a letter which is attached as Exhibit G.

5. It is stated that Applicant informed the Respondent vide letter dated 8/1/2020 that the impugned property has been sold through e-auction on 24/12/2019 and requested to withdraw/remove Encumbrance/Lien created Income Tax Department and again requested to

submit claim form. The said letter is attached at Exhibit H.

6. It is stated that Respondent vide letter dated 26/02/2021 submitted the claim form to the Liquidator and stated that “No properties of Corporate Debtor has been attached by their Department”. That Liquidator vide letter dated 1/3/2021 admitted the full claim of the Respondent which amounted to Rs. 78,11,400/-. The claim form and letter are attached as Exhibit-I.

7. Vide letter dated 31/03/2021 Applicant requested Respondent to remove/withdraw the attachment/lien as the property has been sold, however the same was not accepted. The applicant further states that he has accepted the claim of the Respondent in totality yet they have not lifted their charge from the revenue records and hence he is constrained to file the present application.

8. Affidavit in reply was filed under diary no. D651 dated 16/02/2023 and is affirmed by one Mr. Shailesh

Kumar, Assistant Commissioner. In reply the Respondent has raised the following issues :-

- i. The outstanding demand of the Income Tax Department against the Corporate Debtor aggregates to Rs. 18,33,25,656/- for various Assessment Years (AY) ranging from the years AY 2005-06 to AY 2017-18.
- ii. Attachment was made vide letter dated 10.12.2004 (Annexure-R-I) on the land and building and factory premises including machineries so installed u/s 222 of the Income Tax Act, 1961.
- iii. Thus, there exists a charge in terms of Section 3 (4) of IBC, 2016 and Respondent is secured Creditor.
- iv. In Para 6 it is stated that authorities have acted well within the powers of the provisions of Income Tax Act read with IBC, 2016 and created a charge over the property of the Corporate Debtor with respect to the due amounting to Rs. 79,17,673 which accrued on 10.12.2004 which has increased to the tune of Rs. 18,33,25,656/- inclusive of interest.

- v. Applicant and Corporate Debtor were informed from time to time.
- vi. The entire process of sale of assets adopted by the Liquidator is vitiated since wider publicity was not given to the e-auction notice and applicant has approached this Tribunal with unclean hands.
- vii. Charge was created way back in 2004 and was never challenged by the Corporate Debtor over all these years.
- viii. Acceptance of Departments claim in totality and quoting section 53 of IBC 2016 showing priority for distribution of proceeds does not provide sufficient ground for revocation of lien on the assets.

In light of the above, Respondents seeks dismissal of the present application.

9. Rejoinder was filed through affidavit dated 10/04/2023. In rejoinder the brief submissions of the applicant are as under :-

- i. Respondent have made contradictory and arbitrary statements, they have stated the total claims of Rs. 18,33,25,656/- in Para 2 of reply however they have

filed Form C (Claim) for Ra. 78,11,400/-. Though Applicant received another communication on 26.2.2022 from the Respondent which looks like an online service of demand notice for a different amount Rs. 14,13,86,644/-, however no Form C was ever filed for the stated amounts.

- ii. Debt of the Respondent should be treated as Operational Debt.
- iii. Applicant is not privy with any correspondence between the CD and Respondent since none was placed before him.
- iv. Applicant has duly followed the correct procedure for sale of assets as per IBC, 2016 and Regulations.

10. We have heard the Counsels and perused the records as are placed before us. It is not in dispute that the Respondent has filed one claim before the Applicant which was for a sum of Rs. 78,11,400/- and that the same has been admitted in full by the Applicant. A perusal of the claim for filed by the Respondent reveals that under Form C point No. 8 the Respondent has

clearly written that “Nil” security is held. In the covering letter dated 26/2/2021, the Respondent has clearly written “Further, as per records no properties of the above defaulter has been attached by this office.” Both sides admit that a charge was created wide mutation entry 2648 which is reflected on the 7/12 abstract attached at Exhibit-D and was noted pursuant to letter from the Respondent dated 10/12/2004 attached at page 12 of the reply.

11. The point of controversy relate to 1) whether the Respondent in cloak of the charge can claim any higher amount than that stated in the charge; and 2) what to be done to the charge already created in light of the claim.

12. Having gone through the documents and after hearing the parties, we are of the view that since IBC is a claim driven process and only one claim was filed by the Respondent which is for a sum of Rs. 78,11,400/- and which has since been admitted in full by the Applicant, the same can only be treated during the liquidation

process of the Corporate Debtor as per provisions contained in Section 53 of the Code.

13. As regards the other amounts which have been claimed in the Reply, since no claim was filed by Respondent before liquidator and as IBC is a claim driven process, the amounts claimed for the present proceedings can be ignored in view of judgment of the Hon'ble Supreme Court in the matter of ***Ghanashyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. & Ors. (2021) ibclaw.in 54 SC*** as well as judgment of the Hon'ble High Court of Gujarat in the matter of ***KRBL Ltd. Vs. State of Gujarat & Ors. (2023) ibclaw.in 770 HC*** and the Successful purchaser is entitled to a clean slate.

14. As regards the allegations that sale was not conducted in proper manner, Applicant has placed the records before us. The respondent has so far not filed any IA before us alleging irregularity in the e-auction sale process by the Applicant, no relief can be granted to the

Respondent in the matter in the present application which is filed by the Liquidator.

15. In terms of the above discussions, prayer (A) is hereby allowed. Respondent is directed to lift/release the attachment/charge created on the assets/property of the Corporate Debtor vide mutation entry no. 2648 from the revenue records within 2 weeks from the date of this order. Claim of the Respondent for 78,11,400/- to be dealt with by the Applicant in terms of Section 53 of IBC, 2016. **Prayer (B) in our view is not allowed.**

Accordingly, with above directions **IA/850/CHE/2022** is allowed and disposed off.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)