

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.1193 of 2019

[Arising out of Order dated 13.09.2019 passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in Inv. P 19 of 2019 in CP (IB) 46 of 2017]

IN THE MATTER OF:

Before NCLT

Before NCLAT

State Tax Officer
Office of the Assistant
Commissioner of
State Tax,
Unit – 46,
Opp. D.S.P. Office,
Godhara,
District Panchmahal,
Gujarat

Appellant

Appellant

Versus

- | | | |
|--|------------|-----------------|
| 1. Mr. Chandra Prakash
Jain,
Resolution Professional
M/s. Mekaster Engineering
Ltd.
D-501, Ganesh Meridian,
Opp. High Court,
S.G. Road,
Ahmedabad – 380 060
Gujarat | RP | Respondent No.1 |
| 2. M/s. Mekaster Engineering
Ltd.
Chandra Prakash Jain,
D-501, Ganesh Meridian,
Opp. High Court,
S.G. Road,
Ahmedabad – 380 060
Gujarat | Respondent | Respondent No.2 |

For Appellants:

Ms. Aastha Mehta and Ms. Vishakha, Advocates

For Respondent:

**Shri Devesh Bhatia and Shri Saurabh Kumar,
Advocates (R-1)**

ORDER

23.01.2020 Heard Counsel for the Appellant and the learned Counsel for Respondent No.1.

This Appeal has been filed by the State Tax Officer from the Office of Assistant Commissioner of State Tax in Gujarat. It deals with VAT (Value Added Tax). The Appeal has been filed against the Order dated 13th September, 2019 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Ahmedabad) in Inv. P 19 of 2019 in CP (IB) 46 of 2017. The Impugned Order is short Order which may be reproduced:-

ORDER

The parties are represented through learned counsel and party in person.

On behalf of State Tax Officer/Applicant one Ms. Dipika Taviyad, State Tax Officer appeared and requested time.

On perusal of the Application, it is found that the main grievances of the State Tax Officer are that their claim has not been considered by the RP. The Ld. Lawyer appearing on behalf of the RP submitted that since the claim has not been bifurcated in respect of penalty and interest as such they are not in a position to consider the claim.

On perusal of the record, it is found that at page no. 15 of the Application bifurcation has already been given, hence, the RP is directed to consider the same. Further, the applicant has prayed for considering them i.e. State Tax Officer, as a Secured Creditor. Since, the law has already been settled in the Arcelor Mittal case, wherein, State Tax Officer are considered as Operational Creditor. in view of that, the prayer with regard to this issue is not allowed.

Accordingly, the Inv. P 19/2019 is partially allowed and disposed of with the above observation.”

2. The learned Counsel for the Appellant submits that by the Order, the Adjudicating Authority directed the Resolution Professional to consider the claim of the Appellant but did not accept the prayer of the Appellant to treat the Appellant as a Secured Creditor and the present Appeal has been filed in view of that finding of the Adjudicating Authority. It is stated that the Corporate Debtor - Mekaster Engineering Ltd. (Respondent No.2) is now in liquidation.

3. The learned Counsel referred to Section 48 of the Gujarat VAT Act, 2003 which reads as under:-

“Sec. 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 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”.

4. According to the learned Counsel, in view of this provision, the Appellant should have been treated as a Secured Operational Creditor. She submits that she is not claiming on the basis of first charge but the Security this Section creates. She states there is no inconsistency between this Section and provisions of Insolvency and Bankruptcy Code, 2016 (IBC - in short).

5. Against this, the learned Counsel for the Respondent submits that Section 238 of the IBC has overriding effect on other Acts and the same reads as under:-

“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.”

6. The learned Counsel submits that this Tribunal has already taken a view with regard to this Section in Company Appeal (AT) (Insolvency) No.354 of 2019 in the matter of **“Tourism Finance Corporation of India Ltd. Vs. Rainbow Papers Ltd. & Ors.”** dated 19.12.2019 In the Judgement in Para – 38, after referring to the above Section, this Tribunal has held as under:-

“38. In view of Statement of Objects and Reasons of the ‘I&B Code’ read with Section 53 of the ‘I&B Code’, the Government cannot claim first charge over the property of the ‘Corporate Debtor’. Section 48 cannot prevail over Section 53. Therefore, the Appellant – ‘State Tax Officer- (1)’ do not come within the meaning of ‘Secured Creditor’ as defined under Section 3(30) read with Section 3(31) of the ‘I&B Code’.

7. Considering the Judgement as above already passed by this Tribunal and which is of a larger Bench, it appears to us that the present Appeal cannot be allowed in view of the view taken by this Tribunal in the matter of “Tourism Finance Corporation” as noted (supra).

For these reasons, we dismiss the Appeal. No Orders as to costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/rs/md