

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1290 of 2019**

**IN THE MATTER OF:**

**Principal Commissioner of Income Tax Central – 2, Chennai** **...Appellant**

**Vs**

**C. Ramasubramaniam, Resolution Professional for Surana Corporation Ltd.** **...Respondent**

**Present:**

**For Appellant: Ms. Lakshmi Gurung, Sr. Standng Counsel with Ms. Easha Kadian, Jr. Standing Counsel for IT Department.**

**For Respondent: Mr. Ashwini Kumar Singh, Liquidator (R-1).**

**ORDER**

**13.12.2019:** ‘Principal Commissioner of Income Tax Central – 2, Chennai’ moved application to set aside the order dated 19<sup>th</sup> September, 2019 whereby order of Income Tax Department dated 4<sup>th</sup> October, 2018 for attachment of the refund, which was valid for six months in terms of sub-section (2) of Section 281B of the Income Tax Act, 1961, as amended from time to time, the Adjudicating Authority observed that the time period of six months has expired on 3<sup>rd</sup> April, 2019 and the Corporate Debtor is under liquidation, therefore, declined to extend the attachment order. The Adjudicating Authority directed the Income Tax Department to release the refund amount of Rs.4,20,76,684/- in the accounts of the Assessee/ Corporate Debtor – M/s Surana Corporation Limited within six weeks.

2. Learned counsel for the Appellant submitted that in terms of the provisions of the Income Tax Act, the Appellant is a Secured Creditor. However, it is also accepted that the debt being payable in terms of law, the Appellant is an Operational Creditor. We have brought it to the notice of learned counsel for the Appellant that in Form B of Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulation there is no provision made for Operational Creditors to claim that Corporate Debtor has created security interest. On the other hand, in Form C, which is meant for Financial Creditors, there is specific provision for Financial Creditor to state as to whether the security interest is created by Corporate Debtor or not.

3. In view of the aforesaid lacuna, even the Income Tax Department if Secured Creditor, cannot claim to be a Secured Creditor when Form B is filed. How the matter is sorted out is upto the Liquidator to decide in terms of the I&B Code.

4. In the circumstances, while we are not inclined to interfere with the impugned order, we allow the Appellant to make claim before the Liquidator as a Secured Creditor. If the Form is incomplete, it will file separate Form with evidence in support of the claim.

5. The appeal stands disposed of with aforesaid observations.

6. Let a copy of this order be communicated to the Chairman, IBBI, New Delhi and the Secretary, Ministry of Corporate Affairs to notice the aforesaid fact and for necessary correction, if so required.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

[Justice Venugopal M.]  
Member (Judicial)

*am/gc*