

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1501 of 2024

IN THE MATTER OF:

The Commissioner of State Tax of Gujarat
Versus

...Appellant

Ramchandra D. Chaudhary,
Liquidator of Anil Ltd. & Anr.

...Respondents

Present:

For Appellant : Ms. Aastha Mehta and Ms. Prerna Mohopatra,
Advocates.

For Respondents : Mr. Atul Sharma, Ms. Aditi Sharma and Mr.
Vikram Choudhary, Advocates.

O R D E R
(Hybrid Mode)

23.08.2024: Heard Counsel for the Appellant as well as Learned Counsel appearing for the Respondent.

2. This Appeal has been filed against an Order dated 21.06.2024, by which Order, Adjudicating Authority on the Application filed by the Appellant being I.A. No. 501 of 2020 has allowed the Application and directed the Attachment Order dated 16.10.2018 issued by Appellant to be set aside.

3. Learned Counsel for the Appellant submits that in the present case, Corporate Insolvency Resolution Process ('CIRP') commenced on 23.08.2017 and more than 180 days were over and the Attachment Order was passed on 16.10.2018. It is submitted that there is a statutory power of the Department under Section 45 of the Gujarat Value Added Tax Act, 2003, which cannot be taken away by Section 14 of the Insolvency and Bankruptcy Code, 2016, (for short 'The Code').

4. Learned Counsel for the Respondent submits that Liquidation Order in the present case was passed on 25.10.2018 hence CIRP will be treated to have

continued till 25.10.2018 and the Attachment Order having been passed prior to the said date cannot be sustained and the Adjudicating Authority has rightly directed for setting aside the Attachment Order.

5. We have considered the submissions of Counsel for the Parties and perused the record.

6. There is no dispute in the present case that the Order of CIRP was passed on 23.08.2017 and Order of Liquidation was passed on 25.10.2018 whereas the date of Attachment is 16.10.2018.

7. Counsel for the Respondent referred to Section 14(4) of the IBC which provides as follows:

“14. Moratorium. –(4) *The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

8. In the present case, Liquidation Order having been passed on 25.10.2018, submission of the Appellant cannot be accepted that CIRP came to an end before said date, even if the Committee of Creditors (‘CoC’) has decided to liquidate the Corporate Debtor but till the Order is passed by the Adjudicating Authority, Liquidation shall not commence. Liquidation commencement being on 25.10.2018 i.e., subsequent to the Order of Attachment.

9. Adjudicating Authority did not commit any error in directing for setting aside the Attachment Order.

We do not find any merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

himanshu/nn