



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5661 OF 2024

Goenka Proteins Private Limited,
through its Authorized person
Shri Ashok Narayandas Rathi
R/o. Unnati, Plot no. 30, Sadashiv
Nagar, Wathoda, Nagpur-440008
Email Id: goenkaproteins.in

....PETITIONER

...VERSUS...

1. The Tahsildar,
Village-Wanjari, Taluka-Wani,
District - Yavatmal,
Maharashtra
2. Mr. Anil Goel (Liquidator)
AAA Insolvency Professional LLP
R/o. E-10A, Kailash Colony, Greater
Kailash-1, New Delhi-110048
Email Id:
asoyaproteins@aaainsolvency.co
3. Ashok Ratanlal Kathod, Reg, Firm
through Proprietor Shri-Ashok S/o.
Ratanlal Kathod, aged about 52 years,
Occupation Business.
R/o. Sai Nagari, Wani, Tq-Wani,
District-Yavatmal.
4. Dy. Commissioner of G.S.T.
Yavatmal.

5. State of Maharashtra,
Through Collector,
Yavatmal.

...**RESPONDENTS**

Shri M.Anilkumar, Advocate for petitioner.
Shri M.K.Pathan, AGP for respondent(s)/State.
Shri M.R. Dawda, Advocate for respondent no. 2.
Shri Mayuresh Deshpande, Advocate h/f. Shri G.C. Khond,
Advocate for respondent no. 3.

**CORAM : SMT. M.S. JAWALKAR AND
PRAVIN S. PATIL, JJ.**

DATE OF RESERVING THE JUDGMENT : 05/08/2025
DATE OF PRONOUNCING THE JUDGMENT: 22/08/2025

JUDGMENT (PER : SMT. M.S. JAWALKAR, J.)

Rule. Rule returnable forthwith. Heard finally
by consent of learned counsel appearing for both the parties.

2. Being aggrieved by Revenue Entries No. 2081
(12.02.2018) and No. 1986 (02.11.2016) recorded by
Respondent No. 1 at the instance of Respondent Nos. 3 and 4,
the petitioner has filed this Writ Petition.

3. The petitioner, a company registered under the
Companies Act, sought to expand its business and

participated in an auction by Rasoya Proteins Ltd., then under financial distress. Following the National Company Law Tribunal (NCLT), Mumbai Bench order dated 27.06.2017 commencing the Corporate Insolvency Resolution Process, the liquidator took control of the company's assets and on 09.11.2020 issued a sale notice to auction them on an "As Is Where Is, As Is What Is And Whatever There Is" basis.

4. The petitioner, declared the highest bidder, paid the entire sale consideration and was issued the Letter of Intent and Letter of Possession. After a public announcement inviting claims, Respondent No. 3—aware the suit could not proceed due to liquidation—submitted its claim to Respondent No. 2, who admitted it for payment under the insolvency process. Accordingly, no attachment entry should have been made in the property card.

5. Respondent No. 2 informed the petitioner that the property would be sold free from all encumbrances as per the IBC and NCLT orders. The petitioner, as auction purchaser, complied with all terms, paid the full consideration, and

executed a sale deed with Rasoya Proteins Ltd., confirming that the property was sold free of all encumbrances, cesses, and dues up to the date of registration.

6. The Certificate of Sale, issued on 23.03.2021, confirms that the sale of the assets was free from all encumbrances. However, the petitioner later learned that a charge was created on the revenue records in the 7/12 extract for immovable properties at Gat Nos. 348, 349, 350, 351/1, 351/2, and 316, noted in the property card's remarks column.

7. Despite Respondent No. 2's assurance to clear all encumbrances, the petitioner discovered a charge created by the Tahsildar on the property. The petitioner contends that this charge is invalid on auction-purchased property and that the mutation entry – made without notice and contrary to the procedure under Section 150 of the Maharashtra Land Revenue Code – is unlawful.

8. The Income Tax Department had also attached the property but subsequently directed its immediate release. Similarly, the Maharashtra State Sales Tax Department

attached the property for outstanding dues shown in the 7/12 extract. Respondent No. 2 claimed no prior notice of these dues from the Sales Tax Department before the attachment and emphasized that all claims should have been submitted to the Official Liquidator appointed by the NCLT.

9. The learned counsel for the petitioner relied on the following citation:-

- (i) *Pramod Moreshwar Tattu Vs. Sub-Divisional Officer, Baramati and Ors., 2018(6) Mh.L.J. 785*
- (ii) *Su-Kam Power System Ltd. & Anr. V/s. State of Himachal Pradesh & Ors. (Judgment of Himachal Pradesh High Court) in CWP No. 422/2024, dated 21/08/2024.*
- (iii) *KRBL Ltd. V/s. State of Gujarat {2023 LawSuit(Guj) 1821*
- (iv) *Bhaurao Chavan Sahakari Sakhar Karkhana Ltd. V/s. State of Maharashtra & Ors. {2017 LawSuit(Bom) 1975}*
- (v) *Indian Overseas Bank V/s. Deputy Commissioner of State Tax {2024 DGLS(Bom.) 1079}*
- (vi) *M/s. Rana Girders Ltd. V/s. Union of India & Ors. (Judgment of Hon'ble Supreme Court of India in Civil Appeal No. 6802/2013 dated 16/08/2013)*

10. On the contrary, the respondent nos. 1 and 5 contended that, on 03.03.2025, this Court was pleased to pass the following order:-

"List the matter on 10.03.2025 for the learned AGP to justify the entry made in 7/12 in respect of respondent No.3 which is based merely upon civil suit being pending in court without there being any order or the court in that regard."

11. The petitioner has challenged the revenue entry made by Respondent No. 1 through this writ petition, despite having an alternate, efficacious remedy of appeal under Section 247 of the Maharashtra Land Revenue Code before the Sub-Divisional Officer, which remains unavailed.

12. Gat Nos. 348, 349, 350, 351/1, and 316 of Mouza Wanjari belonged to Respondent No. 2 – Rasoya Proteins Ltd. Respondent No. 3 – Ashok Ratanlal Khatod filed Special Civil Suit No. 32/2015 against Respondent No. 2 before the Civil Judge, Senior Division, Kelapur, and registered a notice of lis pendens under Section 52 of the Transfer of Property Act (Document No. 2354/2016 dated 08.08.2016) with the Sub-Registrar. Pursuant to this, Mutation Entry No. 1986 was

made in the revenue record. The suit is still pending.

13. Respondent No.2 submitted that he came to be appointed as Liquidator on 30.10.2018. After his appointment the claims were called from all the claimants of Rasoya Proteins Limited (Corporate Debtor) in terms of the Public Announcement made by the Liquidator in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (for short the "Code") and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (for short the "Liquidation Regulations"). After his appointment as Liquidator of the Corporate Debtor as per Regulation 35(2) of the Liquidation Regulations appointed the Valuers on 27/12/2018 and thereafter on 31/03/2020 for valuation of the different class of assets of the Corporate Debtor. Thereafter, the Liquidation Process has conducted. The progress Reports were submitted to the NCLT. He has conducted 10 E-auction processes for the purposes of selling of the Fixed Assets of the Corporate Debtor.

14. Respondent No.2 further submitted that on the receipt of the full consideration amounts, the Liquidator issued Sale Certificates and Letters of Possession to the successful bidders of such Assets of the Corporate Debtor. In view of Sale of the Assets of the Corporate Debtor conducted by the Liquidator, the Liquidator distributed the Sale Proceeds amongst the Stakeholders or the Corporate Debtor as per Section 53 of the Code, wherein it is laid down that the proceeds from the sale of the liquidation assets shall be distributed in the order of priority and within such period and in such manner specified in Section 53 of the Code. The Respondent No.2 specifically mentioned in para 9 in his submission as under :

“9. That it is of pertinence to mention herein that during the Liquidation process of the Corporate Debtor, the Liquidator also received the Claims from the Sales Tax/GST Department to the tune of Rs.34.05 Crore and their Claim has been admitted in full by the Liquidator under Section 53 (1) (e) of the Code.”

15. It is the contention of the Respondent No.2 that he is taking all efforts to see that the amount of Liquidation

Process is to be distributed as per priority as record in Section 53 of the Code. It is also submitted that Charge on the Properties of the Corporate Debtor is meaningless as such property has been sold by the Liquidator in the E-Auction conducted during the Liquidation Process of the Corporate Debtor, free from any encumbrances as per Undertakings and the Dues of the Sales Tax shall be payable by the Liquidator as per the procedure laid down under the Code. The Respondent No.2 also placed on record Final Admission of Claim which is admitted to the tune of Rs.34,05,34,325/- (Rupees Thirty Four Crores Five Lakhs Thirty Four Thousand Three Hundred Twenty Five only).

16. Respondent No. 4 contends that Respondent No. 2, while filing an email with pursis, claimed to have obtained permission to execute the sale deed in favour of the successful bidder, subject to payment of State revenue as per law. The State Tax Department had initiated proceedings before execution of the sale deed. Respondent No. 2 allegedly failed to disclose encumbrances in violation of the Transfer of Property Act. It is further stated that the sale proceeds remain

with Respondent No. 2, from which statutory dues are payable. The email dated 15.03.2021 was a response to the Official Liquidator's request for a no-objection to registration post-sale.

17. Heard learned Counsel for both the parties at length. Perused the documents placed on record and considered the citations relied on by both the parties.

18. The learned Counsel for Petitioner submitted that Respondent No. 2 was obliged to deposit the sale proceeds into the State Tax Account but failed to do so. It is, therefore, respectfully prayed that this Court direct Respondent No. 2 to deposit the sale proceeds towards the State Tax Account.

19. The petitioner submits that Respondent No. 2 initiated insolvency proceedings under the Insolvency and Bankruptcy Code (IBC) in 2017, long after statutory charges on the property were recorded. These statutory dues, owed to the State by Rasoya Proteins Ltd., predate the insolvency. Since the IBC does not explicitly nullify pre-existing charges retrospectively, such statutory charges remain valid.

Respondent No. 2, as Resolution Professional under Section 35(1)(b) of the IBC, had custody and control of the corporate debtor's assets and was aware of these charges. Moreover, Section 169 of the Maharashtra Land Revenue Code—still in force—has neither been nullified nor superseded by subsequent enactments like SARFAESI or the IBC.

20. Respondent No. 2 asserted reliance on the “As Is Where Is, As Is What Is, and Whatever There Is” clause in the sale notice, placing upon the petitioner the duty to verify title before contracting. The encumbrances preexisted the NCLT proceedings. While the petitioner invoked Sections 35(5) and 52 of the IBC to bar actions against the corporate debtor, these provisions apply only to proceedings initiated after insolvency commencement and do not affect prior charges or proceedings.

21. Outstanding State dues of ₹51.78 crore significantly exceed the bid amount of ₹16.15 crore. The entire sale proceeds are liable to be remitted to the responding authority. Encumbrances recorded on the Yavatmal property,

based on an RRC issued under the MVAT Act and the Maharashtra Land Revenue Code, have prevented the registration of the Sale Certificate dated 23.03.2021 despite its issuance.

22. Respondent No. 2, having accepted all liabilities under Section 35 of the IBC, was bound to discharge the State's legitimate dues before effecting the sale. In this case, sufficient sale proceeds remain with Respondent No. 2 to enable such payment and early settlement of the issue. It is submitted that the obligation to file the present petition rested with Respondent No. 2, not the purchaser.

23. Appointed as Liquidator under Section 34(2) of the IBC, Respondent No. 2 assumed the powers of the Board of Directors, with managerial functions ceasing under Section 33(5). These powers carried corresponding statutory duties. However, while exercising those powers, Respondent No. 2 appears to have neglected his duty to ensure compliance with obligations relating to statutory dues.

24. The answering respondent submits that the tax liability is not upon the petitioner but on the property of Respondent No. 2, who was required to clear such dues before sale. Though no comment is made on the pending civil suit, statutory dues not stayed remain enforceable, rendering the property liable to attachment. The encumbrance recorded in 2018 should have prompted Respondent No. 2, as Resolution Professional, to verify title and obtain clarification from the authorities. Nevertheless, in his undertaking dated 14.12.2020, he claimed ignorance while assuring the petitioner of clear title at his own expense.

25. The Petitioner knew the corporate debtor's case was pending before the High Court in Company Petition No. 769 of 2017 and admitted that the defaults predated 2015. Though the company was ordered to be wound up on 27.06.2017, statutory procedures under the Companies Act with the Registrar of Companies had to be completed. Recovery proceedings by the State Tax Department commenced shortly after winding up, during the transitional

phase when the matter shifted from the High Court to the NCLT. Since recovery and NCLT proceedings ran concurrently and the property is located in a remote district, the petitioner cannot seek its direct release.

26. It is argued that authorities under the MVAT Act are not obligated to notify the public at large, as it is practically unfeasible. Alternatively, even if Section 100 of the Transfer of Property Act, which limits application of 'charge,' applies, compliance has been fulfilled as shown. The MVAT Act creates a 'first charge' on the property of the dealer in case of default. Additionally, the Maharashtra State Government amended Section 37 of the MVAT Act on 18.12.2024, with retrospective effect from 01.04.2005.

27. Section 55 of the Transfer of Property Act imposes a duty on every seller to disclose any material defect in the property or title known to him but not discoverable by the buyer with ordinary care, and to pay all public charges and discharge existing encumbrances on the property.

28. The issue was addressed before the State Tax authority. However, as per Internal Circular No. 17A of 2020 dated 06.10.2020 (DC-1(A&R)/VAT/MISC/2019/33A/ADM-8/B-177), liquidators appointed by NCLT have no jurisdiction to direct sales tax authorities to withdraw liens on already attached property. This circular remains in effect, thus the encumbrance on the property cannot be withdrawn.

29. The learned Counsel for the Petitioner placed on record a Circular No.187/19/2022-GST, dated 27/12/2022, issued by the Principal Commissioner (GST) to the Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/Commissioners of Central Tax (All). It is in the nature of clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalized under Insolvency and Bankruptcy Code, 2016, wherein it is clarified that Circular No.134/04/2020-GST, dated 23/03/2020, wherein it was clarified that no coercive action can be taken against the corporate debtor with respect to the dues of the period prior

to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues will be treated as “operational debt” and the claims may be filed by the proper officer before the NCLT in accordance with the provision of the IBC.

30. The learned Counsel for the Petitioner relied on *Pramod Moreshwar Tattu Vs. Sub-Divisional Officer, Baramati and Ors.*, reported in 2018(6) Mh.L.J. 785. wherein para 19 this Court held that,

“19.The State amendment to section 52 further protects the interest of the land holders in the State and whenever the notices of pending suits or proceedings referred to in section 52 of the Transfer of Property Act, 1882 is given under section 18 of the Registration Act, the Land Revenue Code makes it imperative for the Officer recording such a registration to forward an intimation to the talathi of the village. The avowed purpose of such an intimation is to keep the Talathi of a village or tahsildar of a taluka updated about the dealings in respect of a piece of land, in respect of which he is duty bound to maintain the revenue record. In such circumstances, the decision of the State Government not to effect entries of lis pendence in the record of rights is perfectly in tune and spirit with the Maharashtra Land Revenue Code and we do not find that the said decision calls for an interference by exercising our writ

jurisdiction. The petitioners are merely apprehensive that if such entries are not recorded in the 7/12 extract, the people in the rural area would be deprived of being in know-how of the pending litigation about the property in which they are dealing."

31. The learned Counsel for the Petitioner also placed reliance on ***Su-Kam Power System Ltd.*** (supra), wherein the High Court of Himachal Pradesh held as under :

"60. As per the amended Section 31 of the Code, the said principle of taking over Corporate Debtor under a Resolution Plan, will also apply to taking over by way of acquisition plan. This is referred to as the "Clean Slate" principle of IBC.

61. The plea of the respondents that the tax dues claimed by them will have priority as a "Crown Debt", therefore, cannot be accepted, and their action in continuing the said red entry/charge on account of dues recoverable from erstwhile management of the 1st petitioner-Company under the H.P. Vat Act, 2005, HPGST Act, 2017 and the CST Act, 1956, would be clearly illegal & arbitrary.

62. Therefore, the Writ Petition is allowed and a Writ of Mandamus is issued directing the 4th respondent to remove its charge/red entries/claim for the tax dues of the erstwhile management of the 1st petitioner-Company on the properties of the said petitioner forthwith, from the revenue record.

32. Admittedly, the Corporate Debtor who was unable to pay his dues to final share creditors was made subject to Corporate Insolvency Resolution Process by one of its creditors. In view of Section 33(5) of the Code, after the first company was directed to be liquidated by the NCLT under Section 33(5) of the Code, no legal proceeding could be instituted by or against the Corporate Debtor. This also renders the red entry/charge created on the property of the Company is void in law. There is a specific provision that once the NCLT passed an order of liquidation and appoint a liquidator, all the assets of the company vest in the Liquidator as a custodian and who, by taking an appropriate step required to liquidate those assets and to pay the amount as per provisions of law, as priority mentioned therein. After the order of NCLT for liquidation, a Liquidator is appointed. It is more convincing for the Respondents to act, as if they still have a right over the properties of the Petitioner company.

33. The learned Counsel for the Petitioner also placed reliance on *KRBL Limited* (supra), wherein the Gujrat High

Court held that,

“Once a resolution plan is duly approved by the Adjudicating Authority under Sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any Local Authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan”.

In the said Judgment it is further held as under :

“The purchaser will not responsible to pay any due amount to the government / Bank / Financial Institute / Semi Government Office / GST Department / VAT Department / Labour Department / Central Excise Department / Income Tax Department or any other Government Department or to the Gram Panchayat or any other public body or authority in respect thereof since the same will fall under the waterfall mechanism and will be dealt with in the manner specified in Section 53(1) of the IBC, 2016”.

34. In the present matter, official Liquidator already admitted the claim of the Respondent No.4 and property is

sold free of all encumbrances, in view thereof, the entry of charge in 7/12 extract is having no effect.

35. The learned Counsel for the Petitioner also placed reliance on *M/s. Rana Girders Ltd.* (supra), in the Judgment of the Hon'ble Apex Court para 23 is relevant and important in connection to the fact involved in the present matter. Para 23 reads as under :

"23. We may notice that in the first instance it was mentioned not only in the public notice but there is a specific clause inserted in the Sale Deed/Agreement as well, to the effect that the properties in question are being sold free from all encumbrances. At the same time, there is also a stipulation that "all these statutory liabilities arising out of the land shall be borne by purchaser in the sale deed" and "all these statutory liabilities arising out of the said properties shall be borne by the vendee and vendor shall not be held responsible in the Agreement of Sale." As per the High Court, these statutory liabilities would include excise dues. We find that the High Court has missed the true intent and purport of this clause. The expressions in the Sale Deed as well as in the Agreement for purchase of plant and machinery talks of statutory liabilities "arising out of the land" or statutory liabilities "arising out of the said properties" (i.e. the machinery). Thus, it is only that statutory liability which arises out of the land and building or out of

plant and machinery which is to be discharged by the purchaser. Excise dues are not the statutory liabilities which arise out of the land and building or the plant and machinery. Statutory liabilities arising out of the land and building could be in the form of the property tax or other types of cess relating to property etc. Likewise, statutory liability arising out of the plant and machinery could be the sales tax etc. payable on the said machinery. As far as dues of the Central Excise are concerned, they were not related to the said plant and machinery or the land and building and thus did not arise out of those properties. Dues of the Excise Department became payable on the manufacturing of excisable items by the erstwhile owner, therefore, these statutory dues are in respect of those items produced and not the plant and machinery which was used for the purposes of manufacture. This fine distinction is not taken note at all by the High Court."

36. In view of this law position entries in 7/12 extract of charge is having no effect. Liquidator already admitted the claim of Sales Tax Department. As such, there is no impediment in allowing the Petition. Accordingly, the Writ Petition needs to be allowed in terms of prayer clause (a) and (b), which reads as under :

(a) Quash and set aside the Attachment recorded by the respondent no. 1 vide Entry No. 2081 dated 12.2.2018 and Entry No. 1986 dated 2.11.2016

(Annexure XI) at the behest of the respondent no.3 and 4.

(b) Direct the respondent no.3 and 4 to remove the Charge recorded on the properties at Annexure XI.

The Writ Petition stand disposed of in the above terms. No order as to costs.

(PRAVIN S. PATIL, J.)

(SMT. M.S. JAWALKAR, J.)

Kirtak