

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
15-07-2024 AT 10:30 AM**

**CP (IB) No. 111/7/HDB/2017
AND**

**IA No. 143/2018, IA(IBC) 573, 570 & 974/2024, IA(IBC) 1134/2024 in IA
974/2024, IA (IBC) 1366/2024 in IA (IBC) 974/2024 & IA (IBC) 975/2024 in
CP (IB) No. 111/7/HDB/2017
u/s. 7 of IBC, 2016**

IN THE MATTER OF:

IDBI Bank Limited

...Financial Creditor

AND

Lanco Infratech Limited

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Ms Anuradha Bisani, Liquidator present through Video Conference.

IA No. 143/2018

Orders pronounced. In the result, **this application is dismissed. No costs.**

IA(IBC) 573/2024

Orders pronounced. In the result, **this application is dismissed. No costs.**

IA(IBC) 570/2024

Learned Counsel Mr Narendar Naik, for applicant present through Video
Conference.

Learned Counsel Mr Anand Das, for Respondent Nos 2 and 3 present through Video Conference and states that a memo has been filed in compliance of the direction. However, details are not furnished. Matter passed over.

Matter called again. It is found that necessary memo has been filed. Hence the same is taken on record. **Accordingly, this application is closed.**

IA(IBC) 974/2024

Learned Counsel Mr G P Yash Vardhan, for applicant present physically.

Learned Senior Counsel Mr Vivek Reddy, for Respondent present through Video Conference. Matter passed over.

Matter called again. Learned Senior Counsel Mr Avinash Desai, for applicant present through Video Conference.

Learned Counsel Mr Yash Vardhan Bandi, for respondent present through Video Conference.

Learned Senior Counsel for applicant has made a brief submission stating that the whatever may be outcome of the proceedings before the Hon'ble High Court, the same would have no bearing on the prayer in this application, as the challenge in this application is to the liquidation regulation and not regarding the "disciplinary action" as against the erstwhile liquidator. For consideration of hearing of the Learned senior counsel for respondent and for reply by the learned counsel for the applicant, matter adjourned to 06.08.2024.

IA(IBC) 1134/2024 in IA 974/2024

Learned Counsel Mr Yash Vardhan Bandi, for applicant present through Video Conference.

Learned Counsel Mr GP Vardhan, for respondent No.1 present physically.

Matter passed over.

Matter called again. Counter of Respondent No.1 filed.

Later learned senior counsel Mr Vivek Reddy, for applicant present through Video Conference.

For hearing, matter adjourned to 06.08.2024.

IA (IBC) 1366/2024 in IA (IBC) 974/2024

Learned Counsel Mr Rajesh Herur, for applicant present through Video Conference.

This is an application filed by the 2nd respondent seeking to set aside the order dated 28.05.2024 whereby the applicant herein was set ex-parte, for non-appearance, despite service of notice. Notice given to the respondents. No counter filed. perused the record. Learned Counsel for the respondent would submit that, though the applicant herein was set ex-parte on 28.05.2024 the applicant did not choose to file the application within the reasonable time, and only where the IA No 974/2024 come up for hearing, the present application is filed, besides no tenable reason is pleaded for not filing the counter within a reasonable time, hence

this belated application be dismissed. Having heard the learned counsel, it is to be stated that mere ground of delay, it is not proper to dismiss this application, when negligence is not pleaded. Therefore, in the interests of justice **we allow this application** by following conditions:

- (i) Counter if any in IA No 974/2024 shall be filed by 19.07.2024 and a copy of the same be served on the other side in IA No 974/2024.
- (ii) Application is allowed with costs of Rupees 15,000/- to the Prime Minister Relief Fund by 19.07.2024.
- (iii) In default of any of the above conditions the application stands dismissed.
- (iv) For rejoinder if any in IA No 974/2024 be filed within one week.

Accordingly, **this application is allowed and disposed of.**

IA (IBC) 975/2024

Learned Counsel Mr N Kumaraswamy, for applicant present through Video Conference.

Heard. **For orders on 19.08.2024**, meanwhile five page written submissions by both sides within one week.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-I**

**IA.No.143 of 2018
in
CP (IB) No. 111/7/ HDB/2017**

Under section 66 of the Insolvency & Bankruptcy Code, 2016.

In the matter of:

IDBI Bank Limited ... Financial Creditor

Versus

M/s Lanco Infratech Ltd. ... Corporate Debtor

AND

IN THE MATTER BETWEEN:

KRS Erectors Private Limited
Registered Office: Plot No.921
Flat No.401, DK Towers
Ayyappa Society, Opp. Oil Bunk
Madhapur, Hyderabad – 500034

Having its Corporate Office at:
Flat No.305, Highway Towers
NH-5, Tadepalli – 522501
Guntur District.

**... Applicant/
Acquirer**

(Amended as per the directions of this Tribunal dated 10.08.2023)

VERSUS

1. Kineta Global Limited
566, Road No.31
Jubilee Hills
Hyderabad – 500 033.

2. Allam Lourdu Reddy
4-22-85/4, Mother Teresa STR
Muthyala Reddy NA, Ward 41
Guntur,
Andhra Pradesh – 522007.
3. Vallabhaneni Balashowry
Road No.31, Jubilee Hills
Hyderabad – 500 033.
4. Vallabhaneni Bhanumathi
Road No.31, Jubilee Hills
Hyderabad – 500 033.

.. Respondents

Date of Order: 15.07.2024

Coram:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
HON'BLE MEMBER (JUDICIAL)**

and

SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Parties / Counsels Present

For Applicant : Mr. Mayur Mundra, Advocate
For Respondents : Mr. Y. Suryanarayana, Advocate with
Mr. G. Bhupesh, Advocate.
For Liquidator : Ms. Anuradha Bisani, Chairman,
Monitoring Committee/ Liquidator.

PER BENCH

ORDER

1. This application was initially filed on 08.05.2018 by the Resolution Professional of Lanco Infratech Limited. Subsequently, with the leave

granted by the Tribunal vide order dated 10.08.2023 the applicant/ Resolution Professional has been substituted with acquirer and neat copy of the application was filed on 17.08.2023 with necessary amendments.

2. This application is filed on behalf of the Resolution Professional of Corporate Debtor seeking directions of this Tribunal in respect of transactions entered into by the Corporate Debtor with Kineta Global Limited (KGL), R/1 herein which appear to be fraudulent trading transactions under section 66 of the IBC.

3. This application is filed by the applicant for the following reliefs:

“(a) Direct the immediate avoidance of the fraudulent transactions highlighted in the Audit Report and instruct Kineta Global Limited and common directors, namely, Mr. Allam Lourdu Reddy, Mr. Vallabhaneni Balashowry and Mr. Vallabhaneni Bhanumathi and/ or the other directors, Key Managerial Persons of the Corporate Debtor who are knowingly parties to the carrying on the business in the fraudulent manner to make contributions to the assets of the Corporate Debtor as this Hon’ble Tribunal may deem fit; or

(b) In the alternative, this Bench may pass appropriate directions to appoint an investigative agency to investigate the directors, key managerial persons and employees of the Corporate Debtor and Kineta Global Limited to determine the persons involved in the fraudulent trading transactions;

(c) Direct the immediate avoidance of the fraudulent trading transactions or direct the persons who are determined to be knowingly parties to the carrying on of the business in the fraudulent manner to make contributions to the assets of the Corporate Debtor as this Hon’ble Tribunal may deem fit.”

4. AVERMENTS MADE BY THE APPLICANT:

4.1 The applicant/ KRS Erectors Private Limited has appointed Grant Thornton India LLP vide its letter dated 17.11.2017 to conduct a review of transactions carried out by the Corporate Debtor during the period 06.08.2015 and 06.08.2017, inter alia, on points (i) to (v) in para 2 of this application. The Auditor has submitted its Report dated March 2018 (ANNEXURE A-1). The Report identified certain suspect transactions with R/1, KGL, which require further investigation by this Tribunal.

4.2 The Auditor in its Executive Summary has made the following key observations:

“We identified 43 instances based on the narration (mentioned in the creditor’s ledger) amounting to INR 99.81 crores, where KGL appears to have transferred funds to the Corporate Debtor that are contrary transactions where vendor making payments to the company.

In our review of the sundry debtor’s ledger, we further noted that the Corporate Debtor had made sales (items like TMT steel bars) amounting to INR 171.80 to KGL during the Review Period.

KGL does not have any registered website that appears to be unusual of a vendor involved in such voluminous transactions.

Further, Annual reports were not uploaded/ available of KGL on the MCA website for the Review Period.”

4.3 There are certain other issues as well, as described in paras 8, 9 and 10 of the application. Based on such suspicious transactions and based on the subject Audit Report the applicant came to the conclusion that the

Suspicious Transactions amount to fraudulent trading under section 66 of the I&B Code, 2016.

4.4 The applicant submits that KGL is a related party of the Corporate Debtor for the reasons below:

(a) During the review period three of the directors of KGL were also directors of Omega Solar Projects Pvt Ltd (OSPPL), namely, Allam Lourdu Reddy (DIN: 06462562), Vallabhaneni Balashowry (DIN: 01606496), Vallabhaneni Bhanumathi (DIN: 01606546).

(b) During the review period, viz. 06.08.2015 to 14.03.2016, held 51% shareholding in OSPPL was held by Lanco Solar Energy Private Limited (LSEPL), OSPPL was thereafter sold to KGL. LSEPL, in turn, is a wholly owned subsidiary of the Corporate Debtor.

5. Respondent no.1/ Kineta Global Limited has filed COUNTER dated 30.04.2019 with the following submissions:

5.1 The answering respondent refutes the contention of the applicant raised in para 12 of the application that the R/1 is a related party to the Corporate Debtor. R/1 is an independent company, which is trading of iron ore. Relying on the definition of 'related party' as provided in

clauses (a) to (m) in section 5(24) of the I&B Code, 2016, the answering respondent submits that R/1 does not fall in any of the categories stated in the said definition. Besides, in the list of operational creditors (ANNEXURE R/1, Pages 13-54 of this Counter) shown on the website, name of R/1 is not shown. Thus, R/1 is not a related party.

5.2 Following new facts and voluminous annexures are brought in by R/1 by way of this COUNTER:

- (i) The answering respondent states that Lanco Solar Energy Private Limited (LSEPL) has submitted Request for Proposal (RFP) dated 11.03.2013 for selection of the project of capacity of 10 MW in Punjab under new grid connected solar photovoltaic power projects of phase-I for supply of power. Copy of RFP is at ANNEXURE R/2, pages 56-316 of Counter. In response thereto Punjab Energy Development Agency (PEDA), vide letter dated 22.07.2013 has awarded the said project to LSEPL. Copy of amendment to RFP is at ANNEXURE R/3, pages 317-342 of Counter.
- (ii) The answering respondent submits that R/1 has initially indirectly acquired 49% in Omega Solar Projects Pvt Ltd by acquiring total

shareholding of Ursa Solar Projects Pvt Ltd which was holding 49% stake in Omega solar Projects Ltd. Copy of share purchase agreement dated 22.09.2014 entered for acquiring 100% shares in Ursa Solar Projects Pvt Ltd is at ANNEXURE R/4, pages 343-362 of Counter.

- (iii) The answering respondent submits that the project as contemplated in RFP has commenced on 13.03.2015. R/1 has entered into Share Purchase Agreement on 15.03.2016 (ANNEXURE R/5, pages 363- 369 of this Counter) and acquired 51% share in Omega Solar Projects Pvt Ltd held by Lanco Solar Energy Pvt Ltd.
- (iv) The answering respondent submits that principal business of R.1 is buying and selling steel. Corporate Debtor has purchased material from R/1 at the price similar to what it was purchasing from Jindal, etc. Statement showing details of procurement made by the respondent including price and sale of materials to Corporate Debtor is at ANNEXURE R/6, page 370 of the Counter. From the said statement it is clear that R/1 has earned only a 'partly' profit (it ought to be 'paltry profit') of Rs.20,79,041/- on the transaction value of Rs.278.02 crores, viz.

• Sales	..	Rs.196.40 crores
• Purchases	..	Rs.081.61 crores
• TOTAL	..	Rs.278.02 crores
• Profit earned	..	Rs.20,79,041/-
		OR
		0.07%

6. The Liquidator has filed MEMO dated 13.01.2023 reporting compliance of the directions issued by this Tribunal as under:

6.1 An acquisition Plan was approved by this Tribunal on 29.09.2022 for sale of Corporate Debtor as a going concern and the same is under implementation. As per the same, the acquirer/ bidder chooses to pursue the cases specified under Annexure-VI as Annexure III-B – Actionable Claims.

6.2 This Tribunal vide order dated 02.01.2023 has directed the Liquidator to communicate to the secured creditors that the present IA shall be pursued by them. Accordingly, the Liquidator has sent e-mail dated 10.01.2023 to all the secured creditors. Said e-mail communication is annexed at page 4 of this Memo.

7. In the light of the contest put forth by both the parties, the following point arises for our consideration:

Point : Whether the reliefs as sought by the Applicant in the extant application under Section 66 of Insolvency and Bankruptcy Code, 2016, can be granted against the Respondents?

8. We have heard Learned Counsel Mr.Mayur Mundra for the Applicant, Learned Counsels Mr.Y.Suryanarayana and Mr.G.Bhupesh for the Respondents and Learned Liquidator Ms. Anuradha Bisani, perused the record.

Point: Whether the reliefs as sought by the Applicant in the extant application under Section 66 of Insolvency and Bankruptcy Code, 2016, can be granted against the Respondents?

SUBMISSIONS:

9. The Learned Counsel for the Applicant submitted that this Application was initially filed on 08.05.2018 by the Resolution Professional of Corporate Debtor but now Successful Resolution Applicant of the Corporate Debtor, M/s.KRS Erectors Private Limited, has been substituted as Applicant as per the directions of this Tribunal. The Learned Counsel further submitted that this Application is filed against M/s.Kineta Global Limited and its 3 directors on the basis of Transaction Audit Report given by Grant Thornton India LLP.
10. The Learned Counsel further submitted that 3 of the directors of Kineta Global Limited were also directors of Omega Solar Projects Private Limited (OSPPL) in which Lanco Solar Energy Private Limited

(LSEPL) holds 51% of shares and Lanco Solar Energy Private Limited was 100% wholly owned subsidiary of the Corporate Debtor. Therefore, Kineta Global Limited is a related party to the Corporate Debtor.

11. The Learned Counsel further submitted that audit report has identified 43 instances amounting to INR 99.81 crores, based on the narration (mentioned in the creditor's ledger) where KGL appears to have transferred funds to the Corporate Debtor which are contrary transactions whereunder vendor has made payments to the company. Learned Counsel further submitted that Corporate Debtor had made sales (items like TMT steel bars) amounting to INR 171.80 to KGL during the Review Period. Whereas, KGL does not have any registered website that appears to be unusual of a vendor involved in such voluminous transactions.

12. The Learned Counsel further submitted that in view of the above this transaction can be treated as fraudulent transaction under Section 66 of Insolvency and Bankruptcy Code, 2016 and a suitable order may be passed against the Respondents for recovery of the amount.

13. Per contra, the Learned Counsel for the Respondents submitted that Respondent No.1 is an independent Company which is in trading of iron ore and cannot be treated as related party to the Corporate Debtor as alleged by the Applicant. The Learned Counsel relied on Section 5(24) of the Insolvency and Bankruptcy Code, 2016 and submitted that Respondent No.1 does not fall in any of the categories stated in the said definition.

14. The Learned Counsel further submitted that principal business of Respondent No.1 Company is buying and selling of steel and accordingly it has sold steel to Corporate Debtor also. The Learned Counsel contended that it has sold steel to Corporate Debtor on the similar rates on which Corporate Debtor has purchased steel from Jindal, etc. The Learned Counsel further submitted that though the volume of sales and purchase with the Corporate Debtor are high at Rs.278.02 Crores but the profit earned by respondents in these transactions was very meagre, only Rs.20,79,041/-, which comes to 0.07% of the transaction value. The Learned Counsel for the Respondent submitted that these transactions were normal business transactions without any fraudulent intention or actual fraud perpetrated

on Corporate Debtor, hence cannot be treated as fraudulent transactions under Section 66 of IBC, 2016.

OUR ANALYSIS AND FINDINGS:

15. Before we proceed further, we feel it proper to extract Section 5(24) clauses (a) to (m) of Insolvency and Bankruptcy Code, 2016 which are relevant for the purpose of deciding that whether the Respondents are related party to the Corporate Debtor. Accordingly, the same is reproduced herein:

“5. In this Part, unless the context otherwise requires,—

.....

(24) "related party", in relation to a corporate debtor, means—

(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;

(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;

(c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;

(d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;

(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;

(j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;
(k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;
(l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;
(m) any person who is associated with the corporate debtor on account of—
(i) participation in policy making processes of the corporate debtor; or
(ii) having more than two directors in common between the corporate debtor and such person; or (iii) interchange of managerial personnel between the corporate debtor and such person; or
(iv) provision of essential technical information to, or from, the corporate debtor;”

On careful perusal of the above clauses of Section 5(24) we find that Respondents does not fit into any of these clauses on the basis of which they can be treated as related party to the Corporate Debtor. We have observed from the records that M/s.Kineta Global Limited acquired 49% stake in Omega Solar Projects Private Limited from a company called Ursa Solar Projects Private Limited. As per records Omega Solar Projects Private Limited is a step-down subsidiary of Corporate Debtor in which 51% shareholding is hold by M/s.Lanco Solar Energy Private Limited which is 100% owned by the Corporate Debtor. On careful perusal of facts of the case, we find that since Omega Solar Projects Private Limited is a step-down subsidiary of Corporate Debtor it may be considered as related party to the Corporate Debtor because clause (i) of Section 5(24) defines that a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a

subsidiary can be considered as a related party to the Corporate Debtor. But we observe that M/s Kineta Global Limited which is an independent Company having no shareholding of Corporate Debtor or any of its subsidiary, hence cannot be considered as a related party of the Corporate Debtor.

16. On careful perusal of Section 66 of Insolvency and Bankruptcy Code, 2016 we find that section 66 of Insolvency and Bankruptcy Code, 2016 confers vide powers on the Adjudicating Authority to pass appropriate orders and to do justice where during the pendency of CIRP or Liquidation process, it suspects that the directors/partners or any other persons related to the Corporate Debtor were involved in carrying out any business “with the intent to defraud creditors of the Corporate Debtor or for any fraudulent purpose”. In our view, the Applicant has filed this Application treating the Respondent Company (R1) and its Directors (R2, R3 and R4) as related party to the Corporate Debtor as none of them is Director/ Partner of Corporate debtor. We already hold in the preceding paragraph that Respondents cannot be treated as related party to the Corporate Debtor, hence this application is not maintainable as per Section 66 of Insolvency and Bankruptcy Code, 2016.

17. We also place our reliance on case law “*Gluchrich Capital Private Limited Vs. The State of West Bengal & Ors., in Miscellaneous Application No.1302 of 2023 (Interlocutory Application No.102537 of 2023) in Special Leave Petition (Crl.) No. of 2023 (Diary No. 6732 of 2023) by Hon’ble Supreme Court of India.* The relevant part of the order is reproduced as under:

“....

10. We are of the considered opinion that in such circumstances, it is for the Resolution Professional or the successful resolution applicant, as the case may be, to take such civil remedies against third party, for recovery of dues payable to corporate debtor, which may be available in law. The remedy against third party, however, is not available under Section 66 of IBC, and the civil remedies which may be available in law, are independent of the said section.”

18. In view of the above, we hold that the reliefs as sought by the Applicant in this application under Section 66 of Insolvency and Bankruptcy Code, 2016, cannot be granted against the Respondents. The point is answered accordingly.

19. In view of the above, this Application is dismissed, with no costs.

Sd/-
Charan Singh
Member (Technical)

Sd/-
Dr. Venkata Ramakrishna Badarinath Nandula
Member (Judicial)

Karim/ Sridher

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-I**

**IA.No. 573 of 2024
in
CP (IB) No.111/ 7/ HDB/ 2017**

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

IN MATTER OF M/s. LANCO INFRATECH LIMITED

BETWEEN

Assistant Commissioner of State Tax,
Unit-69, 3rd Floor, Jilla Seva Sadan,
Panwadi, Vyara, Gujarat – 394650.

...Appellant/ Applicant

AND

Ms. Anuradha Basani,
Liquidator of M/s. Lanco Infratech Limited,
3-6-106/a, Om Sri Sai Towers,
Flat No. 102, Street No.19, Himayatnagar,
Hyderabad – 500029.

...Respondent/ Liquidator

In the matter of :
IDBI Bank Limited

... Financial Creditor

Versus

Lanco Infratech Limited

... Corporate Debtor

Date of Order: 15.07.2024

Coram:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
HON'BLE MEMBER (JUDICIAL)**

SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Parties / Counsels Present

For the Appellant/Applicant : Mr. Raman K.V, Counsel.
For Respondent : Ms.CS Anuradha Bisani, Liquidator.

PER BENCH

ORDER

1. This present Application is filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 praying to:
 - a) Direct the Liquidator to consider the request of the Applicant dated 29.03.2023 to treat it as a secured creditor;
 - b) In the alternative, grant liberty to the Applicant to take appropriate steps under law, including under the GVAT Act, 2003, and
 - c) Pass any such other order or orders as this Hon'ble Tribunal may deem fit.
2. **Gist of the Application:**
 - 2.1 It is stated by the Applicant (Assistant Commissioner of State Tax) that on 20.03.2019 issued an Assessment order for unpaid tax, interest and penalty for a total amount of Rs.83,71,445/- for the FY 2014-15, remained unpaid by the Corporate Debtor and in the meantime, on 27.08.2018 the

Corporate Debtor was admitted into liquidation and the Applicant submitted his claim to the then Liquidator of the Corporate Debtor.

2.2 It is stated that the Applicant made his requests to the erstwhile Liquidator Mr. Savan Godiawala to consider the Applicant as secured creditor vide various emails dated 12.10.2021, 02.01.2023 and 07.01.2023 and there was no response or consideration received from the Liquidator. It is stated that in March, 2023 the Applicant came to know that the erstwhile Liquidator was no longer the Liquidator of the Corporate Debtor and the Respondent appointed had been appointed by this Hon'ble Tribunal.

2.3 It is further stated that on 29.03.2023, the Applicant wrote to the Respondent stating that the Applicant has not received an amount and that also it was not considered as secured creditor despite the Hon'ble Supreme Court's judgement in *State Tax Officer vs Rainbow Papers Ltd.* [(2023 9 SCC 545)] in which it was held that VAT dues under the GVAT Act, 2003 are to be considered as secured claims.

2.4 It is averred that on 11.04.2023, the Liquidator replied that she was unable to decide the request of the Applicant, while agreeing that the issue on merits is covered by the judgement of the Hon'ble Supreme Court and it was also brought to the attention of the Applicant that the Corporate

Debtor was sold as a going concern under liquidation to another entity by way of an approved acquisition plan, and that the same was approved and allowed by this Authority by way of order dated 26.09.2022 and that the said acquisition plan was under implementation. It is stated that as per the acquisition plan, only payments to the secured financial creditor were contemplated to be made by the acquirer, and the liquidator has no control to distribute any amounts under the waterfall mechanism.

2.5 It is further stated that from the perusal of the records vide order dated 26.09.2022 it is found that this Tribunal was pleased to approve the Acquisition Plan of one M/s. KRS Erectors (“Acquirer”) and the said acquirer would pay an upfront amount of Rs.4 Crores to be distributed in terms of Section 53 of the Code. Further the Acquirer would sell certain assets and also prosecute actionable claims of the Corporate Debtor and would provide a percentage of the proceeds of such claims to the stakeholders in terms of the Acquisition plan as in accordance with Section 53 of the Code.

2.6 It is stated that this Hon’ble Tribunal has directed the Acquirer to approach the authorities concerned for any concessions and reliefs. Being a secured creditor, the applicant has not been made a part of the meetings

of the SCC and was not provided any opportunity to provide its view on the said plan at any point of time. The applicant is also unaware of the exact terms of the Acquisition plan, except as recorded in the order of this Tribunal dated 26.09.2022.

2.7 It is stated that as per the order of this Hon'ble Tribunal, the amounts that would possibly be realized by the Acquirer would have to be distributed to the stakeholders in terms of the Acquisition Plan and also in terms of Section 53 of the Code. As there are further amounts that have to be distributed in the future, the Respondent's contention that she cannot treat the Applicant as a secured creditor is an abdication of the Respondent's duty. It is open to the Respondent to reclassify the Applicant, if not already done, in accordance with the law laid down by the Hon'ble Supreme Court, as amounts receivable by the stakeholders of the Corporate Debtor having not yet been received.

2.8 It is stated that in the alternative, no concessions have been approved by this Hon'ble Tribunal and neither the Corporate Debtor nor the Acquirer have approached the Applicant requesting any concession. As the Corporate Debtor has been taken over by an Acquisition Plan, or a sale as a going concern on an "as is where is" and "as is what is" basis under

liquidation, without any concessions having been given, and without the IBBI (Liquidation Regulations), 2016 providing otherwise, it is open to the Applicant to proceed under law, including under the GVAT Act, 2003.

3. Counter filed by Respondent/Liquidator inter-alia submitting that:

3.1 It is stated by the Respondent that nothing shall be deemed to be admitted herein unless specifically admitted to hereinafter by this answering respondent. It is stated by the Respondent that the Applicant made his averments in the captioned application to be wrong, incorrect, illegal or untenable in law and shall be deemed to be denied until and unless specifically admitted here under and nothing stated in the application shall be deemed to be admitted merely because the same is not specifically traversed.

3.2 It is further stated by the Respondent that the application filed by the Applicant is misconceived and not maintainable either in law or facts and none of the grounds mentioned in this application apply to the facts placed and prayers sought, therefore this application is liable to be dismissed in limini with exemplary costs.

3.3 It is submitted that the grievances of the appellant in the captioned Appeal are:

- (i) Direct the liquidator to consider the request of the Applicant dated 29.03.2023 to treat it as a secured creditor.
- (ii) In the alternative, grant liberty to the Applicant to take appropriate steps under law, including under the GVAT Act, 2003: and
- (iii) Pass any such other order or orders as this Tribunal may deem fit.

3.4 It is further submitted that a petition filed under Section 7 of IBC, 2016 by IDBI Bank Limited and on 07.08.2017 CIRP was initiated against the Corporate Debtor and Mr. Savan Godiawala appointed as Interim Resolution Professional and thereafter he was confirmed as Resolution Professional by the Committee of Creditors. The Company has decided to push the company into liquidation due to non-receipt of any viable resolution plans. On 27.08.2018 this Tribunal initiated the Liquidation process against the corporate debtor and confirmed the appointment of the then Resolution Professional as Liquidator.

3.5 It is further submitted that under Regulation 12 of IBBI Liquidation Regulations, 2016 in Form B informing the General Public about the initiation of the Liquidation Process against the corporate debtor and directed the creditors to submit their claim before the liquidator.

- 3.6 It is further submitted that on 20.03.2019 an assessment order passed by the Applicant Authority for unpaid tax, interest and penalty for the period 2014-15, which was unpaid by the Corporate Debtor. Based on the above order, the Applicant Authority had submitted its claim form in Form-B on 22.09.2021 before the then liquidator of the Corporate Debtor for an amount of Rs.83,71,445/- which includes Tax, Penalty and Interest.
- 3.7 It is stated that the Claim Form to be submitted by the applicant being a Statutory authority during the Liquidation Process is Form C under Regulation 17 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016). But the Applicant authority had submitted its claim in Form B under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which is a wrong form during the liquidation process. Based on the above contention itself the present application is not maintainable under the law and the same needs to be dismissed in limini.
- 3.8 It is stated that the Applicant Authority on 23.03.2023 had sent a Letter to this Respondent/Liquidator informing that their claim has to be treated as a secured debt as per the Rainbow Paper Judgment and further informed

that the claim of the Applicant Authority is only a delayed claim. This Respondent/ Liquidator by mentioned the factual aspects and the status of their claim submitted before the then Liquidator rejected the plea of the applicant authority.

3.9 It is stated that during the course of the liquidation process the then liquidator had sold the corporate debtor as a Going Concern by accepting the Acquisition Plan proposed by M/s. KRS Erectors Private Limited and the Acquisition Plan was approved and admitted by this Hon'ble Tribunal and ordered for implementation of the Plan vide order dated 26.09.2022. The approved Acquisition Plan is under implementation as on the date of this reply.

3.10 It is stated that once a Plan for the revival of the corporate debtor company is approved by the Adjudicating Authority to run the business of the Corporate Debtor as a going concern, the role of the liquidator is set to rest and "sunset clause" in the plan prohibits the liquidator to accept any claim or recognize any status of the creditor i.e., classification/ re-classification of a creditor as secured, unsecured, financial operational or as other creditors of whatsoever is the nature of claim. The approved Acquisition Plan do not recognize or entitle any payment to the creditors

except to the Secured Financial Creditors. As per the terms of the approved Acquisition plan, the role of this Respondent Liquidator is limited to extend the assistance to the Acquirer in completing certain corporate actions to be carried out to give effect to the approved plan.

4. The Counsel for the Applicant filed Written Submissions by reiterating the contents of the Application, apart from that:

4.1 It is stated that it is settled law that there is no restriction on assessment/qualification of demand during moratorium, as held by the Hon'ble Supreme Court in *Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes & Customs [(2023) 1 SCC 472]*, the relevant extracts of which are as under:

“54. On the basis of the above discussions, following are our conclusions:

i) Once moratorium is imposed in terms of Sections 14 or 33(5) of the Insolvency and Bankruptcy Code, 2016 as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.(...)”

4.2 It is stated that this Hon'ble Tribunal had not granted the concession requested for by the Acquirer in its Order dated 26.09.2022, and had directed the Acquirer to approach the concerned authorities. The relevant extract of the said order is as under:

“51. We hereby make it clear that in so far as the relief of granting the concessions and reliefs mentioned in Annexure-2 of the acquisition plan is concerned, we hereby direct M/s. KRS Erectors Private Limited, to approach the Authorities concerned as per the procedure and the concerned authorities concerned may consider the same as per the provisions of the relevant law.”

However, the Acquirer has not approached the Applicant herein. The ratio of the Hon’ble Supreme Court’s Judgement in *Rainbow Papers* is directly applicable to the present case, as the claims of the Applicant also arise out of the GVAT Act.

4.3 It is stated that the Hon’ble NCLAT in *Visisth Services Ltd. Vs. SV Ramani [CA(AT)(Ins)No.896/2020]* held as follows:

“9. It can be seen from the afore-noted discussion as well as Regulation 32 A of the IBBI (Liquidation Process) Regulations, 2016 that Sale as a ‘Going Concern’ means sale of assets as well as liabilities and not assets sans liabilities. Paragraphs 3.2.1 and 4.2.1 of the afore-noted discussion paper amply specified that all assets and liabilities, which constitute an integral business of the Corporate Debtor Company would be transferred together and the consideration paid must be for the business of the Corporate Debtor. We conclude that Sale of a Company as a ‘Going Concern’ means sale of both assets and liabilities, if it is stated on ‘as is where is basis’.”

In the present case, as the liabilities of the Corporate Debtor have not been extinguished by way of any concessions granted in the Order dated 26.09.2022, the alternate relief sought by the Applicant to grant liberty to proceed under law, including the GVAT Act, still subsists.

5. The Counsel for the Respondent/Liquidator filed Written Submissions by re-iterating the contents of the Application, apart from that it is stated that

the Liquidation Proceedings of the Corporate Debtor were initiated on 27.08.2018 and the last date for submission of claims by all the creditors was 26.09.2018. However, after a considerable delay of 3 calendar years, the claim was submitted on 22.09.2021 by the Applicant Authority based on an Assessment Order dated 20.03.2019 in Form-B. It is stated that the applicant authority failed to file a petition with this Hon'ble Tribunal for condonation of delay in filing the claim form or appeal under section 42 of Insolvency and Bankruptcy Code, 2016.

6. In the light of the above contest put forth by both the parties, the following point arises for our consideration:

Point: Whether prayer of the applicant that it's claim be admitted and be treated as secured creditor can be considered at this stage when the Corporate Debtor is already sold as a going concern to the Successful Acquirer?

7. We have heard Learned Counsel Mr.K.V.Raman for the Applicant and Learned Liquidator Ms. Anuradha Bisani for the Respondent, perused the written submissions and other documents filed with the Tribunal.

Point: -

Whether prayer of the applicant that it's claim be admitted and be treated as secured creditor can be considered at this stage when the Corporate Debtor is already sold as a going concern to the Successful Acquirer?

SUBMISSIONS:

8. The Learned Counsel for the Applicant submitted that on 29.03.2023, the Assistant Commissioner of State Tax, Gujarat/ Applicant requested the liquidator to consider Applicant as secured creditor relying on the Hon'ble Supreme Court's judgement in "*State Tax Officer vs Rainbow Papers Ltd. [(2023 9 SCC 545)]*" in which it was held that VAT dues under the GVAT Act, 2003 are to be considered as secured claims.
9. The Learned Counsel further submitted that Liquidator on 11.04.2023 replied to the same and informed that Corporate Debtor has already been sold as a going concern under Liquidation to Successful by way of an approved acquisition plan and the same acquisition plan is under implementation, hence Liquidator is unable to accept the claim of Applicant as secured creditor. The Learned Counsel submitted that in view of rejection of its claim by the Liquidator, this application has been filed seeking directions to the Liquidator to admit the claim and treat applicant as secured creditor.
10. The Learned Liquidator inter-alia submitted that office of the Liquidator has carried out a paper publication under Regulation 12 of IBBI Liquidation Regulations, 2016 in Form B informing the General Public

about the initiation of the Liquidation Process against the corporate debtor and directed the creditors to submit their claim before the liquidator. The Learned Liquidator further submitted that Liquidation Proceedings of the Corporate Debtor was initiated on 27.08.2018 and the last date for submission of claims by all the creditors was 26.09.2018. However, after a considerable delay of 3 calendar years, the claim was submitted by the applicant on 22.09.2021, on an Assessment Order dated 20.03.2019 in Form-B. The Learned Liquidator further submitted that applicant authority also did not file a petition with this Hon'ble Tribunal for condonation of delay in filing the claim form or appeal under section 42 of Insolvency and Bankruptcy Code, 2016. The Learned Liquidator further submitted that the Applicant has filed its claim in Form-B in spite of the fact that Form-C is the correct format for filing the claim. In view of the above facts, the then Liquidator did not consider the claim. The Applicant also did not make any enquiry about their claim till 29.03.2023, when the applicant wrote to current liquidator to treat its claim as secured creditor.

11. The Learned Liquidator submitted that during the course of the Liquidation process, the Liquidator had sold the Corporate Debtor as a going concern to M/s. KRS Erectors Private Limited in view of the

acquisition plan approval by this Tribunal on 26.09.2022. The Learned Liquidator further submitted that the Applicant raise this issue with Liquidator on 23.03.2023 when the plan was already approved. The Learned Liquidator submitted that in view of the facts and circumstances, the prayer as sought by the applicant cannot be granted, hence prayed for the dismissal of the application as not maintainable.

OUR ANALYSIS AND FINDINGS:

12. On perusal of the facts of the case we find that acquisition plan in this case has already been approved by this Tribunal on 26.09.2022 and Successful Acquirer has taken over the Corporate Debtor as a going concern. Since the claim of the Applicant was not included in the Application for approval of the acquisition plan now at this stage it is not possible to include it, as it will tantamount to modification / recalling of our order approving the acquisition plan.
13. We also observe that applicant did not file its claim on the proper format and also did not file it in stipulated time as per law. Further, the applicant also did not seek condonation of delay from the Adjudicating Authority for filing the claim beyond stipulated time. We further observe that even in this application also the applicant has not sought any condonation of

delay in filing the claim beyond stipulated period. We are of the view, that even if applicant would have sought condonation of delay in filing the claim, it cannot be granted at this stage, keeping in view the facts of the case that acquisition plan is already approved.

14. In the above backdrop, and keeping in view the facts and circumstances of the case, we hold that prayer of the applicant seeking admission of its claim as secured creditor cannot be considered at this stage when the Corporate Debtor is already sold as a going concern to the Acquirer. Accordingly, the point is decided.
15. Keeping in view the above, this application deserves dismissal. Hence, this Application is dismissed, with no costs.

Sd/-
Charan Singh
Member (Technical)

Sd/-
Dr.Venkata Ramakrishna Badarinath Nandula
Member (Judicial)

Sridher