

look-back period in terms of Section 43 of the Insolvency and Bankruptcy Code, 2016;

- b) *That this Hon'ble Tribunal be pleased to direct Respondent No. 1 and 2 to make contribution to the account of the Corporate Debtor to the extent of Rs. 1,64,28,839/- being the amount that is receivable by the Corporate Debtor towards the construction work carried out in favor of the Respondent No. 3 under the Revised Work Order dated 23.04.2015, which is being wrongfully and fraudulently adjusted against penalties levied by the Respondent No. 3, in terms of Section 66 of the Insolvency and Bankruptcy Code, 2016;*
- c) *That this Hon'ble Tribunal be pleased to pass any such further orders and reliefs as this Hon'ble Tribunal deem fit and proper given the facts and circumstances of the present case"*
2. Ld. Counsel for the Applicant submits in the averment, there are separate paragraphs clearly covering the transactions under section 66 and under section 43 of IBC and no transactions are overlapping. Considering the submission of the Ld. counsel for Applicant, we allow the present application and accordingly the prayers in IA 1900 are amended as reproduced in para 1 above.
3. Ld. Counsel for R-3 submits that reply has been filed on behalf of R-3. He further submits that in view of the judgment in **Glukrich Capital Pvt. Ltd. v. The State of West Bengal & Ors**, Miscellaneous Application No.1302/2023 in SLP (Criminal No -/2023: Diary No. 6732/2023, no application can be filed against a third party under Section 66 of the IBC, 2016.
4. In the judgment of **Glukrich Capital** (Supra) the Hon'ble Supreme Court has referred to its own judgment in the case of **Usha Ananthasubramanian vs. Union of India**, under Section 339(1) of

Companies Act, 2013 which is para material with Section 66 of IBC. The Hon'ble Supreme Court has also referred to the Tripura High Court judgment in the case of **Sudipa Nath Vs. Union of India**. The Hon'ble Supreme Court has further taken cognizance of the fact that even the NCLT in other similar matters are following the judgment of **Usha Ananthasubramanian** (supra) and held that the remedy against third party is not available under Section 66 of IBC, and the civil remedies which may be available in law, are independent of the said Section.

5. It is not disputed by the Applicant that R-3 is a third party. In view of the above discussions and settled law that no remedy is available under section 66 of the IBC against third parties, R-3 is discharged in I.A. 1900/2022.

I.A. is **allowed in above terms** and **disposed of**.

Company Appeal/32/2023

1. This appeal has been filed by Department of State Tax through the Assistant Commissioner of State Tax Mumbai-VAT-D-706, seeking condonation of delay of 1102 in lodging the claim with the Liquidator.
2. It is seen that the admission order initiating CIRP was passed on 17.05.2018 and the Liquidation order was passed on 26.07.2019. We further find that the claim was filed for the first time before RP on 26.03.2021, when the RP was no longer RP of the CD. Therefore, the RP advised the Appellant to file the claim before the Liquidator. However, the Appellant did not file the claim till 27.12.2022 and filed the claim finally on 28.12.2022.
3. In the meantime, all the assets of the CD have been sold and proceeds distributed in accordance with the provisions of section 53 of IBC, and the application for dissolution of the CD has been filed on 05.03.2021 bearing I.A. 511/2021.
4. Distribution of the assets of the CD as per section 53 of IBC cannot be disturbed at this belated stage when the objective of IBC is time-bound

manner. In our considered view this is not a fit case for condonation of delay of 1105 days. Accordingly, Company Appeal 32/2023 is **dismissed**.

List **I.A. 511/2021** on **15.04.2024** and **I.A.1900/2020** on **19.04.2024**.

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

Sd/-
LAKSHMI GURUNG
Member (Judicial)

//NSW//