

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
05-04-2024 AT 10:30 AM**

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

**AND**

**IA (IBC) 1459/2023, IA No. 143/2018, IA No. 449/2019, IA(IBC) 1722/2023, IA(IBC)  
178/2024, IA(IBC) 41, 570 & 573/2024 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**

**IA (IBC) 1459/2023**

Learned Counsel Mr Anand Das, for applicant present through Video Conference.

Smt Anuradha Bisani, Chairman of Monitoring Committee/Liquidator present physically

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

**IA No. 143/2018**

Learned Counsel Mr G Bhupesh, for applicant present physically.

Smt Anuradha Bisani, Chairman of Monitoring Committee/Liquidator present physically

Orders not pronounced. **For orders on 22.04.2024.**

**IA No. 449/2019**

Orders pronounced. In the result, **this application is allowed and disposed of.**

**IA(IBC) 1722/2023**

Learned Senior Counsel Mr SR Rajagopalan along with Mr Anoop Rawat, Mr. Sagar Dhawan, Mr Allwin Godwin, Mr Vimal Asthana, Mr Aditya M, Ms Aishani Das, Mr Niranjana Pandian for applicant,

Learned Senior Counsel Mr Om Prakash for the counsel on record Mr P. Rohit Pogula for first respondent

Smt Anuradha Bisani, Chairman of Monitoring Committee/Liquidator present physically.

Pleadings completed. Oral arguments were heard. Written submissions by both sides in respect of the prayers E,F and G in the memo dated 16.11.2023 which was filed. Pursuant to the direction given by this bench in the interim order. Therefore, learned counsel for both sides pray for an opportunity to file written arguments in reliefs A and B of this application. Hence, we grant five days time to both sides to file written submissions. Heard. **For orders on 22.04.2024.**

**IA(IBC) 178/2024**

Learned Senior Counsel Mr Adinarayana Rao, for applicant present through Video Conference.

Learned Senior Counsel Mr S Raja Gopal, for respondent present physically.

For hearing on 22.04.2024.

**IA(IBC) 41/2024**

For hearing, matter adjourned to 22.04.2024.

**IA(IBC) 570/2024**

Heard, learned counsel for the applicant. Considering the facts and circumstances of this case and in the interest of liquidation of the Corporate Debtor, we pass the following interim order: (Vide Separate Order) there shall be an interim suspension of all further proceedings to pursuant to (i) Recovery Attachment Letter dt. 05.06.2023 issued by the respondent no.2

(ii) proceedings dated 06.02.2024 issued by respondent no.3. We further direct the respondent nos 2 and 3 not to take any coercive steps against the applicant in relation to pre CIRP Dues i.e., 07.08.2017.

The applicant shall take notice to respondent nos 2 and 3 through registered/speed post and also by e-mail and file proof of service. Call on 22.04.2024.

**IA(IBC) 573/2024**

Learned Counsel for the applicant present. Issue Notice to the respondents by registered/ speed post and through e-mail, to be taken up within 3 days' time. Meanwhile, counter if any be filed well before the next hearing date. Posted to 22.04.2024 for filing proof of service and for counter.

Sd/-

**MEMBER (T)**

Sd/-

**MEMBER (J)**



**THE NATIONAL COMPANY LAW TRIBUNAL  
BENCH - I, AT HYDERABAD**

**I.A. No. 570 of 2024**

**IN**

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

**In the matter of M/s Lanco Infratech Limited**

**Between**

**KRS Erectors Private Limited**

**...Applicant/ Successful Acquirer/ Bidder**

**AND**

**1. Ms. Anuradha Bisani,**

Liquidator of Lanco Infratech Limited,

**...Respondent No.1/ Liquidator**

**2. The Deputy Commissioner of CT & GST,**

CT & GST Circle, Cuttack I East,

**...Respondent No.2**

**3. The Additional Commissioner of CT & GST,**

CT & GST Territorial Range, Cuttack I,

**...Respondent No.3**

**4. The Branch Manager,**

Axis Bank Limited, Vijayawada Branch,

**...Respondent No.4**

**Date of order: 05.04.2024**

**Coram:**

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)

Shri Charan Singh, Hon'ble Member (Technical)

Appearance:

For Applicant: Shri D. Narendra Naik, Advocate

### **ORDER ON INTERIM RELIEF**

1. IA No. 570/2024 is filed by KRS Erectors Private Limited i.e. Successful Acquirer/Bidder of Lanco Infratech Limited, aggrieved by the Recovery Attachment Letter dated 05.06.2023 issued by Respondent no.2/Deputy Commissioner of CT & GST and proceedings dated 06.02.2024 ordered by Respondent No.3 i.e. the Additional Commissioner of CT & GST. The main and interim reliefs sought in this Application are as under :-

#### **Main reliefs:-**

- (i) Pass an Order directing the Respondent No. 2 & No.3 not to claim/demand any Pre- CIRP Dues or a part/portion thereof from the Applicant *herein* which were pertaining to time period 01.04.2011 to 30.09.2015, 01.10.2015 to 31.03.2016 & 01.04.2016 to 30.06.2017 {*which were prior to 26.09.2022 i.e., the Effective date of the Plan r/w. Amended Plan /Approval Order date*);
- (ii) Consequently set aside the Recovery Attachment Letter dated 05.06.2023 issued by the Respondent No.2; and also set aside the proceedings dated 06.02.2024 issued by Respondent No.3, for being untenable in law.
- (iii) Further instruct/ direct Respondent No.2/No.3 to claim their Pre-CIRP Dues (if any) by filing valid appropriate claim before the Respondent No.1 in accordance with law.

**Interim reliefs:**

- i. Grant an ex-parte stay/suspension of all further proceedings emerging from the (i). Recovery Attachment Letter dated 05.06.2023 issued by the Respondent No.2 to Respondent No.4; (ii). Proceedings dated 06.02.2024 issued by Respondent No.3 and further direct the Respondent No.2, & No.3 not take any coercive steps against the Applicant *herein* in relation to the Pre- CIRP Dues or a part/portion thereof.
2. This Tribunal vide order dated 26.09.2022 passed in IA 561/2021 approved the plan, read with Amended Plan for sale of the assets of the Corporate Debtor as a going concern as per terms and conditions mentioned therein.
3. Pursuant thereto, the Applicant remitted Rs. 5,00,00,000/- vide demand draft dated 22.09.2021 towards upfront payment as provided under the Resolution Plan/Amended Plan. The Applicant unconditionally accepted the Letter of Intent dated 22.09.2021 in its favour.
4. As per the approved Resolution Plan, under Clause 5.7 & 5.8 of the Plan r/w amended plan, upon making payment of upfront amount, all the financial claims and liabilities against the Corporate Debtor prior to 26.09.2022 stood cancelled and waived.

5. Therefore, the 2<sup>nd</sup> Respondent under the impugned Recovery Attachment letter No. 620/T & GST dated 05.06.2023, is not entitled to demand payment of Rs. 740,20,84,617/- towards pre-CIRP dues commencing from 01.04.2011 to 30.09.2015, 01.10.2015 to 31.03.2016 and 01.04.2016 to 30.06.2017 and for non-payment of the same, directed the Respondent No.4 not to transfer the account of the Corporate Debtor which is now being operated by the Acquirer/Applicant to Hyderabad.
6. It is settled law that the dues, if any, payable by the Corporate Debtor pre-CIRP period must be raised in the form of a claim before the IRP/RP or the Liquidator by the Claimant. It appears that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have not made any such claim and on the contrary instructed the 4<sup>th</sup> respondent where the account of the Corporate Debtor is lying not to transfer the amount to the applicant account. Accordingly, the 4<sup>th</sup> respondent stopped transfer of funds.
7. In this regard reliance can be placed on the Hon'ble Supreme Court in Ghanshyam Mishra & Sons Pvt Ltd versus Edelweiss Asset Reconstruction Company ltd & others, in Civil Appeal No. 8129 of 2019, wherein Hon'ble Supreme Court has laid down the proposition that the successful resolution applicant of the corporate debtor Company cannot be burdened with past liabilities of the corporate debtor

8. Therefore, considering the facts and circumstances of the case and in the interest of liquidation of the Corporate Debtor, we pass the following interim order: -

(a) There shall be an *interim suspension* of all further proceedings pursuant to (i) Recovery Attachment Letter dated 05.06.2023 issued by Respondent No.2 and (ii) Proceedings dated 06.02.2024 issued by Respondent No.3.

(b) We further direct the Respondents 2 & 3 not to take any coercive steps against applicant in relation to pre-CIRP dues i.e. prior to 07.08.2017. The Applicant shall take notice to Respondents No. 2 & 3 through Registered /speed post and also by email and file proof of service.

Matter be listed on 22.04.2024.

SD/-

(Charan Singh)  
Member (Technical)

SD/-

(Dr. N.Venkata Ramakrishna Badarinath)  
Member (Judicial)

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

**IA.NO. 449 OF 2019  
IN  
CP (IB) No. 111/07/HDB/2017**

*Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with rule  
11 of the National Company Law Tribunal Rules, 2016.*

**Between:**

M/s. Lanco Infratech Limited  
Representing by its Liquidator  
Mrs. Anuradha Bisani  
Having office situated at 3-6-106/A,  
Om Sri Sai Towers, Flat No.102,  
St.No.19, Near Vijaya Diagnostic Center,  
Himayatnagar, Hyderabad, Telangana - 500029

... Applicant

Versus

J.C. Flowers Asset Reconstruction Private Limited,  
Acting in the capacity of JCF Yes Trust 2022-23/18  
Having its registered office situated at  
12<sup>th</sup> Floor, Crompton Graves House,  
Dr. Annie Beasant Road, Worli,  
Mumbai, Maharastra – 400 030.

**(Amended as per the directions of this Hon'ble Tribunal  
vide in its order dated 10.08.2023)**

... Respondent

**In the matter of:**

IDBI Bank Limited

... Financial Creditor

Versus

Lanco Infratech Limited

... Corporate Debtor

**DATE OF ORDER: 05.04.2024**

**CORAM:-**

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)  
Shri. Charan Singh, Hon'ble Member (Technical)

**PARTIES/COUNSELS APPEARANCE:-**

For the Applicant : Shri VK Sajith & Shri V Ravi Kumar, Counsel  
For Respondent : Shri Avinash Desai, Senior Counsel assisted by  
Shri Nethan Reddy & Shri Kopal Sharaf,  
Counsel

**PER: BENCH**

**ORDER**

1. This Application is filed by the Applicant under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 seeking directions to the Respondent to deposit the amount realized from the enforcement of the security interest in relation to the Secured Assets in the liquidation account/escrow account(s) maintained by the Applicant, for appropriation/ realization first towards CIRP cost and liquidation cost (wherever applicable) in full and thereafter shall be distributed amongst the various stakeholders as per their respective rights under and/or pursuant to section 52 or section 53 of the Code.
2. **The averments put forth by the Applicant are:**
  - 2.1 It is averred that the present application has been filed by Mr. Savan Godiawala in his capacity as the Liquidator of Lanco Infratech Limited (Corporate Debtor) to carry out the beneficial liquidation of the Corporate

Debtor and to preserve/enhance the value of the liquidation estate of the Corporate Debtor for the benefit of all the stakeholders of the Corporate Debtor.

- 2.2 It is stated that this Tribunal by way of its order dated 07.08.2017 (which is annexed as **Annexure-I**) admitted on application under Section 7 of the Code by IDBI Bank Limited against the Corporate Debtor and appointed the Applicant to act as the interim resolution professional of the Corporate Debtor.
- 2.3 Thereafter, upon an application filed by the resolution professional, this Tribunal vide its order dated 27.08.2018 (which is annexed as **Annexure-II**) ordered the initiation of the liquidation process of the Corporate Debtor and appointed the Applicant to act as the Liquidator of the Corporate Debtor.
- 2.4 It is stated that prior to initiation of its corporate insolvency resolution process, the Corporate Debtor had availed a term loan facility amounting to Rs.63,50,00,000/- (Rupees Sixty Three Crores and Fifty Lakhs only) from the Respondent, on the terms and conditions stipulated in the Facility Letter bearing no. YBL/DEL/FL/133/2010-11 dated 24.05.2010 (“Facility Letter”) read with the loan agreement dated 04.05.2010 executed by and between the Corporate Debtor and the Respondent (“Loan Agreement”). A copy of each of the said Facility Letter and the Loan Agreement is annexed and marked as **Annexure-III** and **Annexure-IV** respectively.
- 2.5 It is stated that principal amount of Rs.23,39,95,492/- (Rupees Twenty-Three Crore Thirty-Nine Lakh Ninety-Five Thousand Four Hundred and

Ninety-Two only) (“Principal Amount”) and interest thereon of Rs.8,11,19,826/- (Rupees Eight Crore Eleven Lakhs Nineteen Thousand Eight Hundred Twenty-Six only) (“Interest”), was due and payable by the Corporate Debtor to the Respondent as on the liquidation commencement date of the Corporate Debtor. The total amount of debt admitted by the Liquidator as per the claim received from the Respondent is Rs.31,51,15,318/- (Rupees Thirty-One Crore Fifty-One Lakh Fifteen Thousand Three Hundred and Eighteen only). The Principal Amount and the Interest in respect of the term loan facility availed by the Corporate Debtor shall herein after be collectively referred to as the “Outstanding Amounts”.

2.6 It is stated that for the purpose of securing the facility advanced by the Respondent to the Corporate Debtor in terms of the Loan Agreement, the Corporate Debtor had created exclusive security interest in favour of the Respondent on the assets forming part of a 5 MW grid connected solar photovoltaic power generation plant situated in Bhadrada Village, Sami Tehsil, Patan District, Gujarat (“Secured Assets”) by way of mortgage as recorded in the memorandum of entry dated 04.01.2011. In relation to the aforesaid a director’s declaration dated 19.03.2011 has also been executed by the Corporate Debtor. Hereto annexed and marked as **Annexure V** and **Annexure VI** respectively is a copy of the said memorandum of entry dated 04.06.2011 and the director’s declaration dated 19.03.2011.

2.7 It is stated that the Respondent has by way of its letter/ communication dated 26.09.2018, indicated that the Respondent proposes to realize/dispose of the Secured Asses for due repayment of the Outstanding Amounts in accordance with the provisions of Section 52 of the Code. Hereto annexed

and marked as **Annexure VII** as a copy of the letter/ communicated dated 26.09.2018 issued by the Respondent to the Applicant.

2.8 It is stated that Section 5(13) of the Code defines “insolvency resolution process cost” to mean as follows:

- “(a) the amount of any interim finance and the costs incurred in raising such finance;*
- (b) the fees payable to any person acting as a resolution professional;*
- (c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;*
- (d) any costs incurred at the expense of the Government to facilities the insolvency resolution process; and*
- (e) any other costs as may be specified by the Board.”*

Further, in terms of Section 5(13)(e) above, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) the following are also included in the meaning of the insolvency resolution process costs:

- “(a) amounts due to suppliers of essential goods and services under Regulation 32;*
- (aa) fee payable to authorized representative under sub-regulation (7) of regulation 16A;*
- (ab) out of pocket expenses of authorized representative for discharge of his functions under section 25;*
- (b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);*
- (c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;*
- (d) expenses incurred on or by the resolution professional fixed under Regulation 34; and*
- (e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.”*

It may be noted in a liquidation scenario, the payment of CIRP costs is provided for under two provisions of the Code, i.e., Section 52(8) and Section 53(1). Reference in this regard may be made to the provisions of

Section 52(8) of the Code, relevant portions of which are reproduced herein below:

***“52. Secured creditor in liquidation proceedings: -***

- (1) A secured creditor in the liquidation proceedings may-*
- (a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in Section 53;*
- or*
- (b) realise its security interest in the manner specified in this section.*
- (2) ...*
- (3) ...*
- (4) A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realized and to the secured creditor and apply the proceeds to recover the debts due to it.*
- (5) ...*
- (6) ...*
- (7) Where the enforcement of the security interest under sub-section (4) yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall-*
- (a) Account to the liquidator for such surplus; and*
- (b) Tender to the liquidator any surplus funds received from the enforcement of such secured assets.*
- (8) The amount of the insolvency process resolution costs, due from secured creditors who realise their security interests in the manner provided in this Section, shall be deducted from the proceeds of any realization of such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate”*

***(Emphasis supplied)***

2.9 Reference is also made to Section 53(1) of the Code, relevant portion of which is reproduced herein below:

***“53. Distribution of assets. –***

- (1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period as may be specified, namely: -*
- (a) The insolvency resolution process costs and the liquidation costs paid in full;*
- ...*

2.10 It is stated that in terms of Section 52 of the Code, a secured creditor has the right to realize its security interest outside the liquidation process of the Corporate Debtor. The Section duly provides that (i) if the secured creditor

realizes less than the amount owed to him by disposing of its security interest, such secured creditor shall be paid the remainder of its dues in accordance with the payment mechanism set out under Section 53 of the Code, and (ii) if the amount realized by the Corporate Debtor by disposing of its security interest in accordance with Section 52 (1) (b) is higher than the total amount payable to such secured creditor, the secured creditor shall deposit such excess amount in the liquidation estate formed by the Corporate Debtor.

2.11 It is stated that according to the scheme of the Code, the Respondent being a secured creditor while realizing its security interest under Section 52 of the Code by effectively standing out of the liquidation process of the Corporate Debtor. Therefore, sub clause (8) in Section 52 has been inserted in the Code which aims at ensuring that the corporate insolvency resolution process (“CIRP Cost”) of the corporate debtor is secured and paid.

2.12 It is stated that the said provision stipulates that the amount of the insolvency resolution process costs due from such secured creditors shall be deducted from the proceeds of any realization of such secured creditors. It is however pertinent to note that the Code as well as the regulations framed thereunder do not specifically stipulate the manner in which the share of CIRP Cost owed by such secured creditors shall be arrived at. However, from the bare reading of Section 53(1)(a) of the Code it is clear that the intention of the legislature is that the CIRP Cost and liquidation cost is required to be paid in full.

2.13 It is further stated that in a scenario where a secured creditor would have relinquished its security interest in terms of Section 52(1)(a) of the Code,

CIRP Cost along with the liquidation cost (wherever applicable) would have been paid in priority in full from the amount realized from the sale of the liquidation estate of the Corporate Debtor, in terms of Section 53(1)(a) of the Code. Only upon payment of the CIRP Cost and liquidation cost (wherever applicable) in full, the remainder amount in the liquidation estate shall be available for payment towards other debts. Therefore, provisions of Section 52(8) of the Code have to be read in line with the principles elucidated in Section 53 of the Code i.e., the CIRP Cost and the liquidation Cost (wherever applicable) has to be recovered in full from the value realized from the sale of estate/ all secured assets of the Corporate Debtor. Therefore, it can be said that CIRP Cost payable in the aforesaid scenario would be a proportion of the amount realized pursuant to the enforcement of the security interest to the realized value of the estate/all secured assets of the corporate debtor.

2.14 It is stated that the secured creditor, in terms of Section 52(1)(b), chooses to exercise such right of realization of its secured interest outside the liquidation process, it does not mean that the methodology for the calculation and obligation for the payment of CIRP cost shall change. Therefore, it would be prudent to apply the rational used for the payment of the CIRP Cost in terms of Section 53(1) (a) of the Code, wherein the sales proceeds of the estate of the Corporate Debtor including all secured assets are taken into consideration for the payment of CIRP Cost and the liquidation cost (wherever applicable) in full.

2.15 It is stated that the CIRP Cost payable by a secured creditor pursuant to the realization made on the enforcement of the security interest outside liquidation process should be based on the same proportion that the amount



realized by such secured creditor bears to the amount realized from the aggregate assets of the Corporate Debtor. By way of an example, if a secured creditor realizes its security interest in terms of Section 52 (1) (b) of the Code and the amount realized by the secured creditor upon enforcement of security interest is X and the aggregate amount realized from the assets of the corporate debtor is Y, then the percentage of CIRP cost payable by such secured creditor should be the same percentage/proportion that the amounts realized by such secured creditors bears to the amounts realized from the sale of all the assets of the corporate debtor. Therefore, the percentage of the CIRP Cost owed by the secured creditor shall be  $X/Y*100$ .

2.16 It is further stated that actual realizable value of the Corporate Debtor may not have been arrived at the time when the secured creditor seeks to realize the value of its security under Section 52. This is because the liquidation process undertaken by the Liquidator, may result in realization of different assets of the Corporate Debtor at different points of time. As a result of the aforesaid, the actual amount of realization from all assets of corporate debtor would be known only upon realization from sale of all assets of the Corporate Debtor.

2.17 It is stated that the share of the CIRP Cost accruing to the Respondent ought to be the percentage/proportion of the amount realized by the secured creditor enforcing the security outside liquidation proceedings which is calculated on the same proportion/percentage that such amount realized by the secured creditor bears to the total realized value of the assets of the Corporate Debtor.

2.18 It is stated that the actual realized value of the Corporate Debtor would be ascertained upon completion of the process of sale of estate/ all secured assets of the corporate debtor and thereupon the actual proportion of CIRP Cost to be allocated to each creditor would be known. Accordingly, the entire sale proceeds whether realized within or outside the liquidation process should be deposited in the liquidation account/escrow account(s) maintained by the Applicant.

2.19 It is stated that in terms of Section 52(8) of the Code read with Section 53(1)(a) of the Code, the amount realized outside the liquidation process, as deposited in the liquidation account/escrow account(s) maintained by the Applicant shall be utilized first for making payment of the CIRP Cost in full. Upon the full realization from the assets of the corporate debtor, within the liquidation process or from the enforcement of security interest outside the liquidation process, the amount remaining after the payment of the CIRP Cost and liquidation cost (wherever applicable) in full, shall be distributed amongst the various stakeholders as per their respective rights under and/or pursuant to Section 52 or Section 53 of the Code.

2.20 It is further submitted that in terms of Section 35(1)(j) of the Code, it is the duty of the liquidator to distribute proceeds in accordance with the provisions of the Code. Therefore, in order to enable the Applicant to ensure that the proceeds are distributed in accordance with the provisions of the Code, it is imperative that the realizations from the sale of the assets of the Corporate Debtor, outside the liquidation process, is deposited in the liquidation account/escrow account(s) maintained by the Applicant.

3. **Counter filed by the Respondent/Yes Bank Limited, inter-alia stating that:**

3.1. It is stated that the Respondent deny all the contents of the application which is contrary to the record and no contention/allegation is deemed to be admitted unless it is specifically admitted. Before replying on the contents of the application it is pertinent to stipulate the following most relevant factual and legal background pertaining to the Respondent, the Corporate Debtor and liquidation process:

- i. The answering Respondent has exclusive charge by way of hypothecation of movable fixed assets and current assets (including receivables) (present and future) pertaining to 5 MW grid connected solar photovoltaic power generation plant situated in Bhadrada Village, Sami Tehsil, Patan District, Gujarat (hereinafter referred to as “the Bhadrada Project).
- ii. The answering Respondent has exclusive charge by way of mortgage of land and immovable assets (present and future) pertaining to the Bhadrada Project.
- iii. As a consequence of exclusive charge, monies deposited in the Escrow Account (on which Respondent has exclusive charge) under the existing Power Purchase Agreement (PPA) with Gujarat Urja Vidyut Nigam Limited (hereinafter referred to as “GUVNL”) since March 2012, are being utilized for repayment of the loan obtained by the Corporate Debtor from the Respondent as per the terms of the loan agreement on exclusive basis. Copy of the loan agreement dated 04.09.2010 is filed herewith as **Annexure R-2.**

- iv. During CIRP, the proceeds of Escrow Account were duly transferred by the answering Respondent into the account controlled by the Resolution Professional. This fact is not disclosed in the Application.
- v. That the Hon'ble Adjudicating Authority passed an order in terms of Section 33(1) (i) of the Code on August 27, 2018 requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter III of the Code.
- vi. At this stage the Code entitles a secured creditor to decide whether it wants to be governed by Section 53 of the Code or it wants to first act in terms of Section 52 of the Code.
- vii. In terms of Section 52(1) (b) read with Sub-section (2) of Section 52 of the Code, the Respondent has exercised its right to realize security on exclusively charged assets of the Bhadrada Project and duly informed the liquidator on September 26, 2018.

Copy of the e-mail dated 26.09.2018 addressed by the Respondent to the Applicant clearly intimating the Application about realizing the security interest under Section 52(1) (b) of the Code is filed herewith as **Annexure R-3.**

3.2. The Respondent gave para wise reply to the application stating that the present application is part of a series of frivolous Applications filed by the Applicant against the Respondent to coerce the Respondent into making payments which are not due to the Applicant. It is stated that it has incomplete reference to security interest of the Respondent. It is stated that Respondent also has exclusive charge by way of hypothecation on movable fixed assets and current assets (including receivables) (present and future) on Bhadrada Project, which was created by way of Deed of Hypothecation dated 04.08.2010. Copy of the Deed of Hypothecation dated 04.08.2010

executed by the Corporate Debtor in favour of the Applicant herein is filed herewith as **Annexure R-4**. Copy of Registered Equitable Mortgage for **Bhadrada Project** in favour of the Applicant with the Ministry of Corporate Affairs is filed herewith as **Annexure R-5**.

- 3.3. It is stated that the averments in Para No.8 are baseless and devoid of merit. The contents are contrary to legal provisions of the Code. It is pertinent to refer to Section 52(7) of the Code, which makes it crystal clear that post adjustment of enforcement proceeds with the debt of such secured creditor, if there is any surplus then such excess amount needs to be transferred to the liquidator. Whereas, the liquidator in Para 8 has stated otherwise, Section 52(7) is reproduced hereunder for ready references:

*“(7) Where the enforcement of the security interest under sub-section (4) yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall –*  
*(a) Account to the liquidator for such surplus; and (b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.”*

- 3.4. It is stated that the Respondent bank is in the process of selling the secured interest and therefore cannot at this stage be asked to deposit all the amounts accruing from the secured interest, in gross contravention of the provisions of the Code.
- 3.5. It is stated that the averments in Para 9,10 and 11 are reproduction of legal provisions of the Code. It is stated that under Section 52 (8), it is categorically provided that the secured creditor opting to realise security interest outside liquidation under Section 52(1)(b), shall only pay CIRP Cost due from such secured creditor, i.e., same percentage of CIRP cost as the voting percentage of such secured creditor during the CIRP. Further, as

far as answering Respondent is concerned, operation of Section 53 of the Code is limited to sub-section 1 (e) (ii) and nothing else, as the answering Respondent has exercised statutory rights under Section 52 of the Code. Moreover, Section 53 deals with payment inter alia of CIRP Cost from proceeds from sale of liquidation assets. Whereas, once secured creditor has exercised its right under Section 52 of the Code then such exclusively charged secured assets will not form a part of the liquidation assets. Hence, reliance on Section 53 is grossly misinterpreted. It is stated that as the Respondent has stood out of liquidation under Section 52(1)(b) on September 26, 2018, the Respondent is liable to pay such percentage of CIRP Cost post realization of the secured asset, which was equivalent to voting share of the answering Respondent during CIRP. Section 52(8) of the Code is unambiguous on this point. The said provision is reproduced hereunder for ready reference:

*“The amount of insolvency resolution process costs, due from secured creditors who realize their security interests in the manner provided in this section, shall be deducted from the proceeds of any realization by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.”*

- 3.6. It is stated that in reply to para 14, it is absolutely incorrect to state that the Code and regulations thereunder do not stipulate the manner in which CIRP Cost is to be shared by a secured creditor who stands out in liquidation. It is stated that the Applicant admits that answering Respondent has to transfer only the excess amount, post adjustment if its dues out of proceeds of independent enforcement of the exclusively charged assets. It is stated that Section 52(8) of the Code makes it amply clear that such secured creditor has to pay CIRP Cost only to the extent “due from such secured creditor” and therefore the same needs to be determined as per the voting share of

such secured creditor during CIRP. While referring to Section 53 of the Code for payment of CIRP cost and liquidation cost in full, the Applicant is deliberately avoiding to state that Section 53 governs the liquidation estate only, whereas the assets exclusively charged to the answering Respondent do not form part of liquidation estate.

- 3.7. It is stated that in Para 15, 16 and 17 are misconceived and hence denied. The Applicant is trying to impose its own interpretation into a statutory provision which is plain and unambiguous. Section 52(8) of the Code is amply clear that the secured creditor who decided to realize its security in terms of Section 52(1)(b) of the Code will firstly enforce the security interest as per applicable law. The proceeds of enforcement will be utilized towards debt due to such secured creditor and CIRP cost payable by such secured creditor.
- 3.8. It is stated that in Para 18 are misconceived and hence denied. There is no relevance of actual realizable value in reference to implementation of requirement prescribed in Section 52(8) of the Code. The Applicant is trying to infuse ambiguity in otherwise clear provision of Section 52(8) of the Code.
- 3.9. It is stated that in reply to Para Nos. 19 and 20 that it is incorrect to state that CIRP Cost is a proportion of the amount realized pursuant to enforcement of security interest to the realized value of the estate/ all secured assets of the Corporate Debtor. It is stated that Section 52(8) of the Code does not stipulate that entire CIRP Cost has to be paid by the secured creditor standing out in liquidation under Section 52(1)(b) of the Code. Section 52(8) of the Code also makes it amply clear that contribution of

such secured creditor shall be limited to what is due from such secured creditor towards the CIRP cost, which is to be calculated as per the voting share of such creditor.

3.10.It is stated that Section 52(8) of the Code makes it abundantly clear that CIRP Cost due from such secured creditor needs to be deducted from the sale proceeds of the security interest and such secured creditor has to transfer such amounts to the liquidator, which then get included in the liquidation estate. Hence it is absolutely unjustified and unreasonable to demand entire sale proceeds to be deposited in the accounts maintained with the liquidator.

3.11.In reply to para 21, it is stated that Applicant's repeated attempt of reading Section 52(8) along with Section 53(1)(a) of the Code tramples the legislative distinction created between Section 52(1)(a) on the one hand and Section 52(1)(b) on the other hand. Section 52(8) of the Code makes it abundantly clear that CIRP Cost, if any due from such secured creditor needs to be deducted by the secured creditor from the sale proceeds of the security interest and such secured creditor has to transfer such amounts to the liquidator, which then get included in the liquidation estate and therefore the claim of the Applicant that all monies from sale of assets whether in liquidation or outside liquidation, shall be deposited with the accounts maintained with the liquidator has no basis in the Code.

3.12.It is stated that the averments in para 22 are denied in entirety. It is incorrect to state that the Liquidator to act as per Section 35(1)(j) of the Code would require that proceeds accruing of the sale of secured asset be deposited into the liquidation account. It is stated that once the secured creditor realizes



secured interest as per Section 52(1)(b) of the Code, it stops being an asset of the Corporate Debtor and the Liquidation under Section 35(1)(j) of the Code would have no powers over the asset.

3.13. It is stated that prayer C1 if granted would be in direct contravention of Section 52(8) as the prayer necessarily brings the entirety of secured asset under the Liquidation Estate, even though when the answering Respondent has exercised its right under Section 52(1)(b) of the Code to realize the security. It is stated that the Liquidator through this Application is attempting to coerce the Respondent to act as per Section 52(1)(a) even though it has exercised its right under Section 52(1)(b). In view of the above, it is submitted that the Tribunal may dismiss the present Applicant with costs.

**4. As per the directions of the Tribunal dated 10.07.2023, the Applicant/Liquidator filed memo dated 17.07.2023, stating that:**

4.1 It is stated that in the cause titled application, the respondent bank has assigned its debt to an ARC i.e., M/s. J.C.Flowers Asset Reconstruction Private Limited on execution of an Assignment Deed, and the same got registered with the Sub-Registrar office, New Delhi vide Document No. 2487 on 17.03.2023. By virtue of the Assignment Deed, the said ARC came into the picture in place of Yes Bank and moved an Application IA.No.233 of 2023 seeking to substitute their name in place of the respondent bank. This Tribunal vide order dated 10.07.2023 allowed the said application by approving the said substitution and directed the Applicant i.e., the liquidator herein to carry out the above amendment in the cause titled Application. In compliance with the direction of this Tribunal, the liquidator herein files the

memo of parties to replace the same with the cause titled IA. Hence in compliance with the directions of this Tribunal and in view of the Memo of Parties filed with this Memo and the same is part and parcel of the cause titled application by effecting the amendment carried out by this applicant by amending the name of the Respondent from Yes Bank Limited to J.C.Flowers Asset Reconstruction Private Limited in the interest of Justice.

**5. After the amendment carried out, the Respondent/M/s.J.C. Flowers Asset Reconstruction Private Limited filed additional affidavit on 11.10.2023, stating that:**

- 5.1 It is stated that the Respondent herein is the exclusive charge holder on the Bhadrada Project including the Escrow Account over which the Respondent has rights and control on it. It is pertinent to note that Yes Bank Limited vide Assignment Agreement dated 16.12.2022 has irrevocably and unconditionally assigned the financial assets pertaining to the Borrower i.e., Lanco Infratech Limited together with all its right, title, and interest therein along with the security interest created thereof, in favour of the Respondent herein under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, 2002 (the “SARFAESI Act”) pursuant to which the Respondent stepped into the shoes of Yes Bank Limited.
- 5.2 It is stated that the Respondent herein sent an intimation to the general public of the E-Auction sale notice in the newspaper dated March 7<sup>th</sup>, 2023, and the same was apprised to the Liquidator vide email dated 07.03.2023. It is stated that the Respondent has sold the entire immovable and moveable property on 25.04.2023 as described in the sale notice dated 07.03.2023 vide E-Auction dated 11.04.2023 under the SARFAESI Act, 2002 on ‘as-

is-where-is”, “whatever there is” and “no recourse” basis to M/s. Kundan Solar (Astonfiled) Private Limited for a total sale consideration of INR 8,05,00,000/- (Rupees Eight Crores Five Lakh only). Copy of the Sale Notice published in newspapers is attached herewith as **Annexure-1**. Copy of the Email dated 07.03.2023 is attached herewith as **Annexure-2**. Copy of the Sale Certificate dated 25.04.2023 is attached herewith as **Annexure-3**. Copy of the letter dated 11.07.2023 issued to the Liquidator is attached herewith as **Annexure-4**.

**6. As per the directions of the Tribunal dated 16.10.2023, the Counsel for the Applicant/Liquidator filed memo on 14.12.2023, stating that:**

6.1 It is stated that the Respondent Creditor has filed its claim for an amount of Rs.31,51,15,318/- (Rupees Thirty-One Crores Fifty-One Lakhs Fifteen Thousand Three Hundred and Eighteen Only) as on the Liquidation commencement date i.e., 27.08.2018. The secured creditor (Yes Bank Limited) had informed its decision of realizing the security interest as per the provisions of section 52(2) of the Code in respect of the assets held by the secured creditor having exclusive charge on the same and hence the said asset did not form part of Liquidation Estate.

6.2 It is stated that the notice of this Tribunal with respect to Section 52(8) of IBC, 2016 wherein it is stated that *“The amount of insolvency resolution process costs, due from secured creditors who realize their security interests in the manner provided in this section, shall be deducted from the proceeds of any realization by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.”*

5.3 Hence, the then liquidator has moved the captioned Application before this Tribunal for directions against the respondent bank for payment of CIRP Cost. As per Section 52(8) of the code, out of the proceeds of the realization, the Insolvency Resolution Process costs shall be deducted and the secured creditor shall transfer such amount to the Liquidation account. As per the Directions of this Tribunal to inform about the IRP Costs, in compliance to the same the details are as under:

<b>S.No.</b>	<b>Particulars</b>	<b>Amount (Rs.)</b>
1	CIRP Cost as on 27.08.2018	1,44,16,51,324.77/-
2	Claim of the Respondent Creditor	31,51,15,318/-
3	Amount realized out of the sale of Secured Asset by the Respondent	8,05,00,000/-
4	Voting share in the COC	0.18%
5	Amount due from secured creditor payable to the Liquidation Account (0.18% of CIRP costs)	25,94,972.38/-

Therefore, by virtue of this Memo the applicant/liquidator submits to this Tribunal that, in compliance to the provisions prescribed under the code direct the respondent to Transfer Rs.25,94,972.38/- (Rupees Twenty Five Lakhs Ninety Four Thousand Nine Hundred and Seventy Two and Thirty Eight Paise Only) towards their share of Insolvency Resolution Process Cost in the interest of Justice.

**7. The Counsel for the Respondent filed written submissions on 22.12.2023 by reiterating the contents of the counter and additional affidavit, apart from that it is stated that:**

7.1 It is stated that the liquidation of the Corporate Debtor was ordered on 27.08.2018 (Annexure-II, application), and the Respondent had exercised its right under Section 52(1)(b) of the Code to realize its security interests,

and informed the Applicant in accordance with Section 52(2) on 26.09.2018 (Annexure R-3, Counter r/w Annexure-VII, Application). Regulation 2A and 21A requiring payment towards liquidation costs (“Where a secured creditor proceeds to realize its security interest, it shall pay amount payable under clause (a).. of sub-section (1) of section 53”) were only thereafter inserted in the IBBI (Liquidation Process) Regulations, 2016 (“Regulations”) (25.07.2019). The explanation to such Regulations thereafter clarified the prospective nature of the amendment, by providing that the requirements of this regulation would only apply to the liquidation processes commencing after the date of the commencement of the IBBI (Liquidation Process) (Amendment) Regulations, 2019, i.e., 25.07.2019. As such, it is evident that no amount is payable by the Respondent herein for appropriation/realization towards Liquidation Costs as the liquidation commencement date was much prior to the amendment to the Regulations.

7.2 It is further stated that even if Section 52(8) of the Code is considered, Section 52(8) provides that “*the amount of insolvency resolution process costs, due from secured creditors who realize their security interests... shall be deducted from the proceeds of any realization*”. Since the Applicant had entirely failed to quantify or provide any amounts of CIRP costs which were due from the Respondent in its Application, this Tribunal vide Order dated 16.10.2023 had directed the Applicant to ‘disclose’ the amount of CIRP Costs. The Applicant’s Memo dated 01.12.2023 filed in this regard arbitrarily arrives at a figure of Rs.144,16,51,324.77/- as the “CIRP Cost as on 27.08.2018”, and the “amount due from the secured creditor payable to the Liquidation Account” as Rs.25,94,972.38/- (Rupees Twenty Five Lakhs Ninety Four Thousand Nine Hundred and Seventy Two and Thirty Eight Paise Only) without providing any substantiation or by placing any requisite

documents to showcase how the aforementioned figure was arrived at. The memo placed on record by the Liquidator is lacking any details and is severely riddled with infirmities.

7.3 It is stated that Regulation 34 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (“CIRP Regulations”) stipulates for the committee of creditors (‘CoC’) to fix the expenses to be incurred on or by the resolution professional and these expenses shall also constitute insolvency resolution process costs. Pursuant to Regulation 34 of the CIRP Regulations, the CoC is required to ratify the CIRP cost. However, the Applicant herein has failed to place on record any documentary proof to show that these costs have been approved ratified by the CoC. Further, only the CIRP costs, to the extent not paid during the CIRP from the internal sources of the Corporate Debtor, shall be met in the manner provided in Section 53 [Circular No. IBBI/IP/013/2018 dated 12 June, 2018]. The Applicant herein has not placed on record any such figures or quantification to show what percentage of the CIRP costs were met from the internal sources of the Corporate Debtor. It is also pertinent to note that the Applicant has not placed on record any quantification of the CIRP costs which have already been paid, and rather than disclosing what the outstanding CIRP costs are as on date, the Applicant has only provided an arbitrary figure of "CIRP Cost as on 27.08.2018".

7.4 It is further stated that the CIRP Regulations require the Applicant to give a break-up of the CIRP cost and a valuation report, if necessary. A plethora of NCLAT decisions have upheld that the power to ratify, modify or set

aside the cost lies in the domain of CoC and a break- up of those costs along with a valuation report may be asked to be submitted in a few cases. Without adducing the necessary proof of the quantification of the CIRP cost, the present Memo has been filed with an arbitrary figure sought to be recovered from the Respondent, and in the lack of any such adequate proof or justification, the prayer sought in the instant Application cannot be granted. The Hon'ble NCLT, Chennai Bench, in “*Andhra Pradesh State Financial Corporation vs. S. Rajendran, Liquidator of Krishna Industrial Corporation Limited [MANU/NC/1431/2021]*” has held in the context of CIRP and liquidation costs that, “...*the Liquidator cannot demand fanciful sums and any amount claimed, even a single rupee is required to be properly justified with adequate proof or justification being produced in advance to the financial creditors concerned from whom the amounts are demanded as estimated liquidation costs.....*”

- 7.5 It is stated that it is a matter of fact that the Respondent herein has not recovered the total admitted claim of Rs.31,51,15,318/- (Rupees Thirty-One Crores Fifty-One Lakh Fifteen Thousand Three Hundred Eighteen only), and has in fact, faced a deficit in recovery.
- 7.6 In accordance with Section 52(9) of the Code, when the secured creditor recovers in deficit from the realization of the secured asset, the balance amounts due to it will be paid as per the waterfall mechanism contemplated under Section 53 (1) of the Code. Under such waterfall mechanism. Section 53(1)(a) once again firstly requires amounts be recovered towards CIRP costs and liquidation costs till they are paid in full. Assuming without admitting, if the Applicant is permitted to recover the CIRP Costs from the Respondent at this stage, it would amount to a double recovery, which is

beyond the intent of the Code. As the Respondent only recovered its claim amount in deficit, it will amount to double recovery if it has to pay CIRP costs when it recovered the amounts in deficit in the first instance and then again when it falls back into the waterfall mechanism under Section 53(1) of the Code, which goes against the spirit of the Code as it disincentivises prudential secured creditors. Therefore, it is prayed in the present Application for appropriation of amounts towards payment of CIRP Costs and Liquidation Costs ought not to be granted.

**8. The Applicant/Liquidator filed memo on 01.02.2024, inter-alia stating that:**

- 8.1. It is stated that the present application was filed against YES BANK by the Liquidator with a prayer to direct the respondent to deposit the amount realized from the enforcement of the security interest in the liquidation account/escrow account maintained by the Liquidator towards the CIRP cost and liquidation cost for the purpose of distribution among the various stake holders. It was noticed that YES Bank has assigned its Debt to M/s.J.C Flowers Asset Reconstruction Private Limited. The said fact was also brought to the notice of this Hon'ble Tribunal and necessary steps have already been taken for amendment of the cause title etc.
- 8.2. It is stated that the respondent in the said IA has filed the counter/objections to the memo filed by the Liquidator dated 30.11.2023 giving details of the CIRP costs and the amount due to be received from the Respondent towards their share of CIRP costs and the matter has come up for hearing on 10.01.2024.



- 8.3. It is stated that this Hon'ble Tribunal after hearing both sides directed the Liquidator to give clarity regarding the CIRP costs of Rs.144.16 crores and file a copy of ratification of CIRP costs by COC. This Hon'ble Tribunal also directed the Liquidator to state whether the CIRP expenses are met out of the income that is generated by the corporate debtor and also sought the particulars relating to the amounts paid and the current outstanding.
- 8.4. It is submitted that the present Liquidator was appointed in the place of earlier Liquidator on 10.10.2022 subsequent to the Corporate Debtor being sold as a going concern. In view of this, after passing the above order on 10.01.2024 the present Liquidator has had a discussion with the erstwhile Liquidator relating to the CIRP costs, ratification of costs, etc. Further, the order copy was made available to the erstwhile Liquidator for getting the clarification sought by this Hon'ble Tribunal.
- 8.5. It is stated that after seeking clarifications and information from the erstwhile Liquidator, it is humbly submitted that the last meeting during CIRP period was 19<sup>th</sup> meeting of committee of creditors held on 23.07.2018. In the notice along with agenda items circulated on 17.07.2018 by way of an email to all the members of CoC including YES Bank (being one of the members of CoC). The 5<sup>th</sup> item of the agenda illustrated complete details of estimated CIRP costs and the details of cash flow and operations of LITL were given in Agenda No.7 Relevant extracts of the same is enclosed along with this memo as **Annexure-I**.
- 8.6. From the said details the estimated cost of CIRP up to July, 2018 is Rs.149.80 crores out of which a sum of Rs.89.70 crores have already been paid. The said amount was paid by virtue of realization/invocation of bank

guarantees and the other amounts recovered/received by the erstwhile Liquidator. The estimated balance amount to be payable is Rs. 67.05 crores. Further, the expenses classified as CIRP is Rs.73.71 crores. The necessary parts of the minutes of 19<sup>th</sup> CoC meeting and details of CIRP costs which were placed before the CoC is as below:

**“Agenda 5: To discuss and ratify CIRP cost incurred”**

*The chair highlighted that a total of 149.80 crore (exclusive of service tax) is the estimated cost till July 28, 2018. Of the total amount majority of the payment i.e., INR 79.58 crores is attributable to employee expenses, INR 32.78 is related to the statutory liabilities & INR 23.2 crores is attributable to RP fees, RP legal counsel fees, valuers fees, CoC evaluator fees, RPF fees etc. Employee expense includes unpaid salaries, gratuity and certain F&F components like Annual Medical, Annual LTA.*

*The Chair further informed that INR 89.70 of the estimated cost has been paid from the amount recovered from the receivables, BG invocation etc. Balance of INR 67.29 is needs to be paid which is expected to increase to INR 73.95 by the end of July 2018. So total estimated CIRP cost is Rs. 73.95 crore. This estimated CIRP cost includes CAM's fees of Rs.21.93 lakhs pertaining to bill for the duration from 30 Sep 2017 to 4 May 2018.”*

- 8.7. It is further submitted that the erstwhile Liquidator has informed that the minutes of the meeting are duly circulated to all the members not only who participated physically but also to all the members who have participated in the video conference on 25.07.2018 and no member has opposed the contents of the minutes and none of the members has rejected any item in the agenda.

- 8.8. It is submitted that as regards to meeting of the CIRP expenses from the income generated by the corporate debtor is concerned, the details of the cash flow and operations of LITL which is filed along with this Memo (as Annexure 1) clearly shows the amounts were received by the Resolution Professional by virtue of encashment of BGs and certain amounts by virtue of Art sale, consultancy fees, etc.
- 8.9. It is submitted that the CIRP cost was estimated as Rs 149.80 crores in the 19<sup>th</sup> meeting of COC. However, after due adjustments made to the estimated CIRP costs, subsequent to the circular issued by IBBI on 12<sup>th</sup> June, 2018 the total CIRP costs were finalised as INR 1,44,16,51,324.77/-. The details of this cost sheet for Insolvency Resolution of Corporate Debtor as mentioned in the above referred circular were duly filed with the IPA of the CA institute. The Form II and Form III filed with the IPA reflects and conforms to the figure reported in the memo dated 30.11.2023 filed by the Liquidator. The Form II and Form III are enclosed as **Annexure II**.
- 8.10. It is submitted that the sale of assets of the Corporate Debtor was affected after appointment of Liquidator and the present amount is claimed by the Liquidator under Sec 52(8) of IB Code, 2016 and the respondent is liable to deposit the same before the Liquidator. The said amount shall be included in the Liquidation estate and dealt with in accordance with Sec.53 of IB Code, 2016. It is stated that the CIRP cost was contributed by all the members of the CoC i.e., wherever the proceeds are received by the RP/Liquidator. In other words, the RP/Liquidator distributed the sale proceeds after deducting the CIRP cost as per section 53(1) of the IB Code 2016. The present respondent cannot stand outside the CIRP since he is the

member of the CoC and the respondent has sold the properties which are charged to them.

8.11. It is stated that the voting share of the respondent in CoC is 0.18% and on that prorata basis the respondent is liable to pay/deposit the amount of INR 25,94,972.38/- (Rupees Twenty-Five Lakhs Ninety-four thousand nine hundred and seventy-two and thirty-eight paise) in the Liquidation account being their share of CIRP costs. The bifurcation of figures was placed before this Hon'ble Tribunal in the Memo dated 30.11.2023 which was filed by the Liquidator on 14.12.2023 and a copy of the same was duly served upon the Respondent.

**9. The Counsel for the Respondent filed compliance memo on 11.03.2024, inter-alia stating that:**

9.1 It is stated that the present Memo is being filed by the Respondent in IA 449 of 2019, i.e., J.C. Flowers Asset Reconstruction Private Limited (acting in its capacity as trustee of JCF YES Trust 2022-23/18) ("JCF ARC" or the "Respondent") pursuant to the order of this Hon'ble Tribunal dated 28.12.2024, directing the Respondent herein to file a memo showing the price at which the asset which is kept out of liquidation was sold, and till such time the asset was sold, the income that it had generated.

9.2 It is stated that at the outset, the Respondent herein has been assigned the financial assets of the Corporate Debtor under the provisions of the SARFAESI Act, 2002, and has stepped into the shoes of Yes Bank Limited [original Respondent in IA 449 of 2019] by virtue of the Assignment

Agreement dated 16.12.2022. Further, this Hon'ble Tribunal vide its order dated 10.07.2023 had allowed the IA for substitution filed by JCF ARC.

9.3 It is stated that in relation to the asset in question, i.e., the 5-MW grid-connected solar photovoltaic power generation plant in Bhadrada Village, Gujarat ("Bhadrada Project"), Yes Bank Limited had intimated the Liquidator on 26.09.2018, that it is exercising its right to realise its security interest under Section 52(1)(b) of the IBC [the liquidation process of the Corporate Debtor herein was initiated on 27.08.2018]. Thereafter, on 09.01.2019, Yes Bank Limited issued the Possession Notice under the SARFAESI Act, 2002. Pursuant to the assignment of debt from YES Bank Ltd to JCF ARC and having stepped into the shoes of Yes Bank Limited, the Respondent herein published the e-auction sale notice on 07.03.2023, and the asset was sold on an 'as is where is' basis vide an e-auction on 11.04.2023. The total sale price for both the moveable and immovable properties of the Bhadrada Project was Rs.8,05,00,000/- (Rupees Eight Crore Five Lakhs only). The details of the sale have also already been informed to the Liquidator vide the Respondent's email dated 11.07.2023 issued to the Liquidator. Copy of the email dated 07.03.2023 from the Respondent to the Liquidator including the sale notice, the Sale Certificate dated 25.04.2023, and the Respondent's email dated 11.07.2023 are filed herewith as **Annexure 1** (colly).

9.4 It is stated that in relation to the details regarding generation of revenue, it is submitted that only the IRP/RP would have the requisite details of the revenues generated during the period when the Bhadrada Plant was under the control and possession of the IRP/RP. It is submitted that pursuant to debt assignment from Yes Bank Ltd to JCF ARC, JFC ARC has received

an amount of INR 14,94,27,212/- (Rupees Fourteen Crore Ninety-Four Lakh Twenty-Seven Thousand Two Hundred and Twelve only) from Gujarat Urja Vikas Nigam Ltd ("GUVNL") against the sale of electricity.

9.5 It is pertinent to note that as on the liquidation date, the admitted debt by official liquidator owed to the Respondent was Rs. 31.51 Crores. As such, the Respondent herein has not recovered any monies in excess from the sale of the asset, and its recovery has in fact, been in deficit.

**10. The Counsel for the Respondent filed Additional Written Submissions on 11.03.2024, inter-alia stating that:**

10.1. It is stated that the Applicant has submitted that it is forfeiting its relief seeking deposit of amounts for appropriation realisation towards Liquidation Costs. Further, the Applicant vide it's Memo dated 01.12.2023 ("Memo"), had quantified the CIRP costs sought from the Respondent at 0.18% [i.e., Respondent's voting share in the Committee of Creditors of the Corporate Debtor ("CoC")] of the "CIRP Costs as on 27.08.2018" i.e., Rs.144.16 Crores, amounting to Rs. 25,94,972.38/-.

10.2. It is stated that the Respondent herein had filed its Written Submissions in the present I.A on 21.12.2023. Pursuant to the same, this Hon'ble Tribunal had sought a clarification from the Applicant whether the CIRP costs [of Rs. 144.16 Crores as claimed by the Applicant vide its Memo dated 01.12.2023] had been ratified by the CoC, and pertinently, if any CIRP expenses had been met out by the revenues generated by the Corporate Debtor. The Applicant thereafter filed a memo, placing on record certain extracts of the 19<sup>th</sup> CoC meeting.

- 10.3. It is stated that a perusal of the 19<sup>th</sup> CoC minutes clearly shows that the prayers sought by the Applicant to direct the Respondent to deposit a sum of Rs.25,94,972.38/- towards CIRP costs is miscalculated, and not in accordance with the scheme of the Insolvency and Bankruptcy Code, 2016. It is pertinent to note that as the Memo and the 19<sup>th</sup> CoC minutes show [Agenda 5 r/w Table @ Page 9 of the Memo], out of a total of an estimate of Rs. 149.80 Crores as CIRP Costs/Expenses [later finalised as Rs. 144.16 Crores), an amount of Rs. 89.70 Crores had been met from the internal sources of the Corporate Debtor (receivables, BG encashments, etc).
- 10.4. It is stated that Agenda 5 of the 19<sup>th</sup> CoC meeting read with the Table titled 'Details of CIRP costs' [@ Page 9, Memo] shows that only an amount of Rs. 73.71 Crores (or at best, Rs. 73.95 Crores @ Page 15, Memo) were classified as CIRP Costs/Expenses. As explained in the footnote (3) to the Table, the expenses for running the business of the Corporate Debtor were being met out of the cash flows of the Corporate Debtor, and only the remaining payable amount was considered as CIRP Costs. It is pertinent to note that the cash flows of the Corporate Debtor also included the amounts received from the operations of the Bhadrada Plant [@ Page 12, Memo]. Despite the same, the Applicant continues to erroneously state that the total CIRP costs were finalized as Rs. 1,44,16,51,324.77/- and continues to claim that the Respondent is liable to pay 0.18% of the aforesaid amount. It is also pertinent to note that the Liquidator has failed to submit the status of unpaid CIRP Cost as on date and probable treatment of funds claimed to be payable from the Respondent in this application.

10.5. It is stated that it is clear from the scheme of the IBC that CIRP costs have to be first met from the internal sources of income of the Corporate Debtor and thereafter shall be met in the manner elucidated under Section 53 of the Code, which has also been clarified vide the Insolvency and Bankruptcy Board of India vide Circular No. IBBI/IP/013/2018 dated 12.06.2018 ("Circular") [Paragraph 7(c)]. The above Circular is unambiguous that CIRP costs have to be first paid out of the internal sources of the Corporate Debtor. Balance amount, if any, 'shall be paid either by the Resolution Applicant (under section 30 of IBC) in case of successful resolution or by the liquidation estate (under section 53 IBC) in case of liquidation. No third scenario is envisaged. Copy of the Insolvency and Bankruptcy Board of India Circular No. IBBI/IP/013/2018 dated 12.06.2018 is filed herewith as **Annexure 1**.

10.6. It is submitted that under the scheme of the IBC, creditors are required to contribute the CIRP Costs Expenses only to the extent that they remain unpaid from the internal resources of the Corporate Debtor. Various pronouncements have taken notice of the aforesaid scheme of the IBC. The Hon'ble NCLT, Kolkata Bench, in *Vivid Colors Private Limited vs. Vinay Talwar, Liquidator of Jenson & Nicholson (India) Limited*, while directing the Liquidator to refund the excess CIRP costs paid by the financial creditor therein, held that,

*“13. In this regard we make it clear that only legitimate expenses as mandated by law are to be included in the CIRP expenses, and even though the applicability of the IBBI circular has been contested on the point of its manifestation on a particular date, the ingredients mentioned there in are in rem and should be followed considering the provisions of Regulation 34A of the CIRP regulations. This is also*



*borne out of the stipulations of regulation 39B(3) of the CIRP regulations, which provides that in case the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between the two. This stipulation also supports the assertion of the applicant that as long as the CIRP costs can be met with from the internal resources of the CD, there should not be any need for such a contribution by the creditors.*

*14. In view of the above, we hereby direct the liquidator to carry out a re-conciliation of the account outlining the CIRP expenses and the accruals to the Corporate Debtor during the relevant period, with a copy provided to the applicant and refund the eligible amount as brought out herein above to the applicant. For removal of doubt, it is clarified that only that amount as falls short of total cash accruals and deposits that the CD may have, shall be contributed by the financial creditors towards the CIRP/liquidation cost and excess if contributed must be refunded”*

Copy of the judgment dated 16.05.2023 in *Vivid Colors Private Limited vs. Vinay Talwar, Liquidator of Jenson & Nicholson (India) Limited* is filed herewith as **Annexure A-2**.

- 10.7. It is stated that in light of the aforesaid scheme, CIRP costs, if at all payable by the Respondent herein, would only be limited to 0.18% of the amounts classified as CIRP expenses which were unmet by the internal sources of the Corporate Debtor, i.e., 0.18% of Rs. 73.71 Crores, i.e., Rs.13,26,780/-.
11. In the light of the contest put forth by both the parties the following point emerges for our consideration:

**Point: “ Whether CIRP costs is payable in proportion to its share in CoC by the Respondent who is secured creditor and has not relinquished its assets?”**

12. We have heard Learned Counsels Mr.VK Sajith & Mr.V Ravi Kumar for the Applicant and Mr.Avinash Desai, Senior Counsel assisted by Mr.Nethan Reddy & Mr.Kopal Sharaf for the Respondent. Perused the written submissions and other documents filed with the Tribunal.

**POINT:**

**“ Whether CIRP costs is payable in proportion to its share in CoC by the Respondent who is secured creditor and has not relinquished its assets?”**

13. Before we proceed to decide the point as above, we feel it proper to refer to Section 52(8) and Section 53(1) of IBC, 2016.

***“52. Secured creditor in liquidation proceedings: -***

....  
*(8) The amount of the insolvency process resolution costs, due from secured creditors who realise their security interests in the manner provided in this Section, shall be deducted from the proceeds of any realization of such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate”*

***“53. Distribution of assets. –***

*(1)Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period as may be specified, namely: -*

*(a)The insolvency resolution process costs and the liquidation costs paid in full;*

**SUBMISSIONS:**

14. This application is filed by the Liquidator seeking direction to the Respondent to deposit amount realized from the enforcement of security interest in relation to the Secured Assets for appropriation/realization towards CIRP cost and Liquidation cost in full.
15. The Learned Counsel for the Applicant submits that the Respondent has realized the assets of the Corporate Debtor outside the Liquidation process, but has not paid the CIRP costs applicable. The Learned Counsel for the Applicant further submits that total CIRP costs is Rs.1,44,16,51,324.77/- whereas the claim lodged by the Respondent is Rs.31,51,15,318/- which works out to 0.18% voting share in the CoC. Therefore, if we calculate the amount due from the Secured Creditors payable to the Liquidation account (0.18% of CIRP costs) comes to Rs.25,94,972.38/-. In view of the above fact, applicant submits to this Tribunal that in compliance of the provisions prescribed under the Code, the Tribunal is requested to direct the Respondent to transfer Rs.25,94,972.38/- towards their share in CIRP/Liquidation in the interest of justice.
16. The Learned Counsel for the Respondent submits that a sum of Rs.89.70 crores of the CIRP costs was met out of cash flow and operations of the Corporate Debtor, therefore the Respondent is not liable to pay its share on the same. The remaining balance amount payable is only Rs.73.71 crores and therefore, the Respondent herein would be liable to pay 0.18% of the unmet amount of CIRP expenses which comes to Rs.13,26,780/-.
17. The Learned Counsel for the Applicant rejected the arguments led by the Counsel for Respondent submitted that the amount of Rs.89.70 crores towards CIRP expenses have not been met out of cash flow generated

during the CIRP process but it has been paid from the recovery of receivables and encashment of Bank Guarantees and therefore the Respondent is liable to pay the full amount of its share which works out to be Rs.25,94,972.38/- .

**OUR FINDINGS:**

18. We find that it is very much clear that as per Section 52(8) of IBC, 2016, *supra*, the amount of CIRP expenses due from Secured Creditors who realized security interest at their own shall be deducted from the proceeds of such realization by Secured Creditor and they shall transfer such amount to the Liquidator to be included in the Liquidation estate.
19. We find that the Respondent has already sold the assets through SARFAESI process and recovered Rs.8.05 crores and also recovered Rs. 14,94,27,212/- from Gujarat Urja Vidyut Nigam Limited, against the sale of electricity during the period , but has not paid even a single penny to the Liquidator as CIRP costs. As far as the contention of the respondent about non contribution of its share towards CIRP expenses met out of cash flow during CIRP/ Liquidation period is concerned, we are of the opinion that since it is a cash generated out of sale of liquidation estate assets i.e invocation of BGs and realization of receivables, we do not find any merit in the contention. Therefore, we find merit in the submissions of the Applicant and decide that the Respondent is liable to pay the CIRP costs as per its share in CoC which works out to Rs.25,94,972.38/-. Accordingly, the point is decided.
20. In view of the above, we direct the Respondent to pay Rs.25,94,972.38/- (Rupees Twenty Five Lakhs Ninety Four Thousand Nine Hundred and

Seventy Two and Thirty Eight Paise Only) to the Liquidator within 15 days from the date of this order and Liquidator to file a compliance memo to this effect to the Tribunal. Accordingly, this Application is allowed and disposed of.

**SD/-**

Charan Singh  
Member (Technical)

**SD/-**

Dr.Venkata Ramakrishna Badarinath Nandula  
Member (Judicial)

*Sridher*

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

**IA (IBC) No.1459 OF 2023  
in  
CP (IB) No. 111/7/ HDB/2017**

Under section 42 of the Insolvency &  
Bankruptcy Code, 2016 read with Rule 11  
of the NCLT Rules, 2016.

In the matter of:

**IDBI Bank Limited**

.. Financial Creditor

**Versus**

**M/s Lanco Infratech Ltd.**

.. Corporate Debtor

IN THE MATTER BETWEEN:

Deputy Commissioner of Commercial Taxes &

GST, CT & GST Circle

Cuttack-I East

Cuttack, Odisha

Represented by Smt. Bijayalaxmi Biswal

Aged about 44 years

d/o Late Sudhakar Biswal

Office : 3<sup>rd</sup> Floor

OSFC Building, OMP Square

Cuttack – 753003.

.. Applicant.

**VERSUS**

Ms. Anuradha Bisani

Liquidator of

M/s Lanco Infratech Ltd

3-6-106/A, Om Sri Sai Towers

Flat No.102, Street No.19  
Himayatnagar  
Near Vijaya Diagnostic Centre  
Hyderabad – 500029.

.. Respondent

**Date of Order: 5<sup>th</sup> April 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. Anand Das, Advocate

Liquidator : Mr. Anuradha Bisani, Chairman,  
Monitoring Committee/ Liquidator.

For Liquidator : Mr. Ravi Kumar, Advocate.

**PER BENCH**

**ORDER**

This application is filed by GST authority for the following reliefs:

*“(1) To condone the delay in filing proof of claim before the Liquidator and admit the appeal.*

*(2) To direct the respondent to admit the claim under Annexure- A/2 and A/3.*

*(3) To further direct the respondent to treat the claim of the appellant under Secured Creditor and update the list of stakeholders accordingly in view of the judgment under annexure A/7 and release the amount as per the said judgment.”*

2. AVERMENTS made in the application.

2.1 The Corporate Debtor was carrying on its business activities of execution of works contract/ trading activities and was registered in Odisha under the erstwhile Orissa Value Added Tax Act, Orissa Entry Ta Act and Central Sales Tax (Odisha) Rules.

2.2 For such business activities within Odia, the Corporate Debtor has been assessed for various tax periods from 01.04.2011 to 30.06.2017 Orissa Value Added Tax Act, Orissa Entry Ta Act and Central Sales Tax (Odisha) Rules, after issuing statutory notices to the Corporate Debtor. Accordingly assessment orders/ demand notices were issued to the Corporate



Debtor. Total arrear of statutory tax dues including interest and penalty stood at Rs.740,20,84,616/-.

2.3 The applicant has issued Show Cause Notice dated 24.07.2020 (ANNEXURE A-1, pages 14-17) under section 50(5) of OVAT Act, 2004. Shri Sachitra Kumar Das, learned advocate, on behalf of the Corporate Debtor has replied on 31.08.2020 (ANNEXURE A-1, pages 18-21) requesting the applicant to drop the proceedings.

2.4 As regards CIRP proceedings and subsequent liquidation proceedings initiated against the Corporate Debtor, the applicant submits that no public announcement was made in regional dailies in the state of Odisha. The applicant learnt about erstwhile Liquidator having issued public announcement in Form-B on 29.08.2018. Such publication was issued within its local jurisdiction only. Thus, the Liquidator did not

follow the due procedure under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Regulation 6 reads as under:

*“6. Public announcement.*

- (1) An insolvency professional shall make a public announcement immediately on his appointment as an interim resolution professional. Explanation: ‘Immediately’ means not later than three days from the date of his appointment.*
- (2) The public announcement referred to in sub-regulation (1) shall:
  - (a) be in Form A of the Schedule;*
  - (b) be published-*
    - (i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the interim resolution professional, the corporate debtor conducts material business operations;*
    - (ii) on the website, if any, of the corporate debtor; and*
    - (iii) on the website, if any, designated by the Board for the purpose,*
  - (c) provide the last date for submission of proofs of claim, which shall be fourteen days from the date of appointment of the interim resolution professional.**
- (3) The applicant shall bear the expenses of the public announcement which may be reimbursed by the committee to the extent it ratifies them.”*

2.5 The applicant submits that the applicant was not aware of either CIRP proceeding or liquidation

proceedings having been initiated against the Corporate Debtor. The applicant gained knowledge of the same only during last week of August 2020. Immediately on learning about the liquidation process initiated against the Corporate Debtor the applicant has submitted its claim in Form-B dated 02.09.2020 (ANNEXURE A/2) to the erstwhile Liquidator for a sum of Rs.740,20,84,616/-. However, no reply was received by the applicant.

2.6 The applicant has realized its mistake and submitted the correct form, viz. Form-C dated 06.10.2020 (ANNEXURE A/3) raising the same demand of Rs.740,20,84,616/- to the Liquidator. The Liquidator has rejected the claim vide e-mail dated 24.11.2020 (ANNEXURE A/4) on the grounds:

- (i) Claim was submitted beyond the date of receipt of claims; and

- (ii) Claim being based on ex parte assessment of which no notice or information was given to the Corporate Debtor.

3. The applicant has offered its explanation for the above grounds of rejection.

**GROUND (i) – DELAY:**

3.1 The applicant was not aware about liquidation proceedings. Public announcement dated 29.08.2018 issued by Liquidator has not been published in any regional daily in the State of Odisha, where the Corporate Debtor was carrying on material business activities. The applicant relied on Regulation 12 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

*“12. Public announcement by liquidator.*

- (1) *The liquidator shall make a public announcement in Form B of Schedule II within five days from his appointment.*
- (2) *The public announcement shall-*
  - (a) *call upon stakeholders to submit their claims or update their claims submitted during the corporate insolvency resolution process, as on the liquidation commencement date; and*
  - (b) *provide the last date for submission or updation of claims, which shall be thirty days from the liquidation commencement date.*
- (3) *The announcement shall be published-*

- (a) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations;*
- (b) on the website, if any, of the corporate debtor; and*
- (c) on the website, if any, designated by the Board for this purpose.”*

3.2 The applicant submits that the erstwhile Liquidator failed to give any information to the tax authorities of Odisha State about commencement of such liquidation proceeding against the Corporate Debtor. The applicant further submits that the provisions of OGST Act, 2017 is in addition to the existing I&B Code, 2016. Both are not contrary to each other.

3.3 Notwithstanding service of notice during the assessment upon the Corporate Debtor, reply was not given about liquidation proceeding to the applicant. On learning of such liquidation proceeding the applicant immediately

lodged the claim with the erstwhile Liquidator. Hence the delay in filing the claim.

**GROUND (ii) – ex parte assessment.**

3.4 As regards the assertion of the erstwhile Liquidator that the claim being based on ex parte assessment of which no notice or information was given to the Corporate Debtor, the applicant submits that the Corporate Debtor has been issued notices of assessment several times through process server as well as e-dispatch to the e-mail id of the Corporate Debtor. Notwithstanding due receipt by Corporate Debtor, there was no representation by Corporate Debtor. Hence orders were passed ex parte.

3.5 Even after passing of orders, no steps to assail the same were taken by the Corporate Debtor.

3.6 The applicant has filed an appeal under section 42 of the Code on 16.12.2020 before this Tribunal bearing e-filing no. 3607130/ 01141/ 2020. Copy of e-filing receipt is at ANNEXURE A/5. However, the Registry has neither registered the said appeal nor listed for hearing. follow up with the Registry was made on 05.02.2021, 08.02.2021, 22.03.2021, 07.04.2021 and 06.05.2021. Copies of aforesaid communications with the Registry are at ANNEXURE A/6.

4. The applicant relies on the following :

(i) Rules 177 and 178 of the Companies (Court) Rules 1959, which are reproduced hereunder:

***“177. Procedure on failure to prove the debt within the time fixed***

*—  
If any creditor fails to file proof of his debt with the Liquidator within the time specified in the advertisement referred to in Rule 148, such creditor may apply to the Court for relief, and the Court may, thereupon, adjudicate upon the debt or direct the Liquidator to do so.*

***178. Right of creditor who has not proved debt before declaration of dividend -***

*Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the Liquidator available*

*for distribution of dividend, any dividend or dividends which he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.”*

(ii) Judgment of the Hon’ble Supreme Court in State Tax Officer v. Rainbow Papers Limited, judgement dated 06.09.2022 in Civil Appeal Nos.1661 and 2568 of 2020, a copy of which is at ANNEXURE A/7.

5. MEMO FILED OF PROOF OF SERVICE dated 12.02.2024 filed by the applicant stating that the applicant has served copy of order dated 06.02.2024 under section 42 of the I&B Code, 2016 through e-mail dated 08.02.2024 (copy is at Annexure-1 of the Memo) and by Registered Post dated 08.02.2024 (copy of Tacking Report is at Annexure-2 of the Memo) at the address of the respondent shown in IBBI website.



6. MEMO DATED 27.03.2024 filed by the applicant for condonation of delay I filing Written Submissions.

6.1 The applicant states that this Tribunal vide order dated 13.03.2024 gave liberty to the applicant to file brief Written submissions within a week. However, the applicant has filed the same on 27.03.2024, viz. seven days belatedly. By this Memo the applicant seeks condonation of delay and requests that the Written Submissions be taken on record.

7. WRITTEN NOTE OF ARGUMENTS DATED 27.03.2024 FILED BY THE APPLICANT.

7.1 The applicant states that the Corporate Debtor was a registered dealer under the applicant's jurisdiction and has been assessed under various local indirect taxation statutes. In all seven Assessment Orders were passed on

31.12.208, 31.12.2018, 31.12.2018, 31.10.2018, 31.10.2018, 20.03.2019 and 20.03.2019, for an aggregated amount of Rs.740,20,84,616.97. When the Corporate Debtor failed to pay tax dues, the applicant issued Show Cause Notice and further pursued the matter with the Liquidator/ NCLT. The applicant states that the applicant came to know through order dated 26.09.2022 passed in IA No.561 of 2021 and memo dated 09.03.2024 filed by the Liquidator that the Corporate Debtor has been sold as a going concern to M/s KRS Erectors Pvt Ltd.; Form-H has been filed and liquidation process is in progress.

7.2 Narrating the above the applicant posed the following issues unto itself:

(i) Was the Liquidator correct in rejecting the claim of the applicant?

The Liquidator has rejected the claim on the ground that the Assessment Orders annexed to Form-C are passed in ex parte manner and on the ground of delay.

The applicant submits that the Corporate Debtor has substantial business in Odisha and it has registered itself under the applicant's jurisdiction as a registered dealer in Odisha. Despite this, the erstwhile Liquidator has failed to make any public announcement in Odisha under Regulation 12(3)(a) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 which reads as under:

*“12. Public announcement by Liquidator.*

*(1) ..*

*(2) ..*

*(3) The announcement shall be published-*

*(a) in one English and one regional language newspaper with wide circulation at the location of the registered*

*office and principal office, if any, of the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations;”*

Besides, the Liquidator failed to intimate the Commissioner of Commercial Tax & GST (CCT & GST) about his appointment or initiation of liquidation proceedings in question as required under section 88(1) of CGST Act, 2017. Said section is reproduced hereunder:

*“88(1) When any company is being wound up whether under the orders of a court of tribunal or otherwise, every person appointed as receiver of any assets of a company (hereafter in this section referred to as the “liquidator”), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.”*

(ii) Can the Liquidator verify and admit the claim of the applicant in the facts and circumstances of the case?

Assessment orders were duly communicated to the Corporate Debtor / liquidator. Vide reply dated 31.08.2020 (ANNEXURE A-1, pages 18-21) it was

stated on behalf of the Corporate Debtor that a revision has been filed before Commissioner of Commercial Tax against the demand. Thus, the Corporate Debtor cannot plead ignorance. In this regard the applicant relied on Regulation 32A of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, which is reproduced hereunder:

*“32A. Sale as a going concern.*

*(1) Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximise the value of the corporate debtor, he shall endeavour to first sell under the said clauses.*

*(2) For the purpose of sale under sub-regulation (1), the group of assets and liabilities of the corporate debtor, as identified by the committee of creditors under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be sold as a going concern.*

*(3) Where the committee of creditors has not identified the assets and liabilities under sub regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall identify and group the assets and liabilities to be sold as a going concern, in consultation with the consultation committee.*

*(4) .. ..”*

Thus, the Liquidator has contravened the said Regulation and caused huge loss to the public exchequer of Odisha.

7.3 The applicant has relied on the following decisions on the subject matter:

- Nabinagar Power Generating Company Nabinagar super Thermal Power Project v. Ram Ratan Modi, Liquidator of DC Industrial Plant Services Pvt Ltd & another, order in Company Appeal (AT) (Ins.) No.478 of 2021 by Hon'ble NCLAT. (Paras 2, 10, 11, 14, 24, 25, 26, 36, 37, 39, 40 & 41).
- Kamla Syntex Ltd., 2018 SCC OnLine Del. 9396.
- General Rolling Stock Company and T.R. Rajakumari v. Motion Picture Producers Combine Ltd., (1942) 1 MLJ 182.

- Ganeshilal gupta v. Bharatpur Oil Mills through Official Liquidator, 1972 SCC OnLine Raj. 220.

8. This is an application filed by Deputy Commissioner of Commercial Taxes & GST, CT & GST Circle, Cuttack-I East, Cuttack, Odisha with the prayer to condone the delay in filing claim before the Liquidator and to direct the respondent/ Liquidator to admit the applicant's claim and treat the applicant as a secured creditor. The point that arises for consideration before us is:

POINT:

- Can the claim as submitted by the applicant be accepted at this stage?

9. We have heard Mr. Anand Das, learned advocate for the applicant, Mr. Anuradha Bisani, Liquidator, and Mr. Ravi Kumar, learned advocate for the Liquidator.

POINT:

- Can the claim as submitted by the applicant be accepted at this stage?

10. Before admission, on 28.02.2024, the learned counsel for the Liquidator and the Liquidator in person were present. The Liquidator made submissions that the Corporate Debtor has been sold as a going concern and it is under control and custody of the acquirer. Therefore, application for admission of a claim at this stage is an exercise in futility. Furthermore, the Liquidator has submitted that he has no power or authority to admit the claim at this stage. The applicant submitted that because it was not aware of proceedings of corporate insolvency resolution/ liquidation, it could not file the claim in time, that led to rejection of its claim on the ground of delay as well as on the ground that Assessment Order annexed to



Form-C is passed in ex-parte manner. The applicant sought directions to the Liquidator to admit the claim of the applicant.

11. After hearing both the parties, we have directed the Liquidator to file a Memo on the present state of the Corporate Debtor for better and proper adjudication of the matter. Accordingly, the Liquidator has filed Memo dated 09.03.2024 and submitted that the Corporate Debtor was sold as a going concern under “As is where is and as is what it is” basis and the same was approved by this Tribunal vide order dated 26.09.2022. The acquirer, as per the approved plan, has deposited full consideration and now the Corporate Debtor is under the control of the acquirer. Certain litigations are still pending, which are handled by the Liquidator on behalf of the Corporate Debtor, and the Liquidator will continue to handle the

same until liquidation process is concluded fully with filing of final report in Form-H.

12. After hearing both the sides and on going through the facts and circumstances placed before us by the Liquidator, we decide the Point in negative.

13. It is made clear that the applicant's claim cannot be accepted in absence of any provision to entertain such claim in the plan approved by the Tribunal, that too at a stage when the Corporate Debtor has already been sold away to an acquirer

14. Therefore, this application is dismissed. No costs.

**SD/-**

**CHARAN SINGH  
MEMBER (TECHNICAL)**

**SD/-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA  
MEMBER (JUDICIAL)**

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