

S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
29-04-2024 AT 10:30 AM**

**CP(IB) No. 663/7/HDB/2018**

**AND**

**IA(IBC) 1077 & 2012/2023, IA(IBC) 57/2021 in CP(IB) No. 663/7/HDB/2018**

u/s. 7 of IBC, 2016

**IN THE MATTER OF:**

State Bank of India

**...Financial Creditor**

**AND**

Mr. Umesh Purshottam Jethwani  
(M/s. Meena Jewellers Pvt Ltd)

**...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) 1077 /2023**

Orders pronounced. In the result, **this application is allowed** and necessary directions are given as mentioned in the order.

**IA(IBC) 2012/2023**

In the light of the orders passed in IA No 1077/2023 whereby this Tribunal has passed an order quashing the letter dated.29.10.2022 issued by Commissioner of customs, we are of the view that the time consumed in between 30.06.2021 and 29.11.2022 can be excluded from the period of liquidation. Accordingly, this application is allowed and the period commencing from 30.06.2021 to 29.11.2022 is hereby excluded from the liquidation period and the liquidator is directed to complete the liquidation period within the time now available. With this direction **this application is allowed and disposed of.**

**IA(IBC) 57/2021**

Orders not pronounced. Matter re-opened for clarification from the liquidator and heard both sides. None appeared for respondents.

Call on 05.06.2024.

**Sd/-**

**MEMBER (T)**

**Sd/-**

**MEMBER (J)**

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

**IA No.1077 of 2023  
in  
CP (IB) No.663/7/HDB/2018**

*Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 44 of the IBBI (Liquidation Process) Regulations, 2016 and Rule 11 of National Company Law Tribunal Rules, 2016*

**In the matter of M/s.Meena Jewellers Exclusive Private Limited**

**Between:**

Mr. Sri Vamsi Kambhammettu,  
Liquidator of  
M/s.Meena Jewellers Exclusive Private Limited,  
Registered Office at Rao & Rao,  
Chartered Accountants, A85, #DX4, Level No.2,  
Road No.11, Film Nagar,  
Jubilee Hills, Hyderabad – 500 033.

...Applicant/Liquidator

**A N D**

The Deputy Commissioner of Customs,  
Airport Special Cargo Commissionerate,  
Registered Office at Avas Corporate Point,  
Andheri-Kurla Road, Mumbai – 59.

...Respondent

**DATE OF ORDER: 29.04.2024**

**CORAM:**

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

**Counsels present:**

For the Applicant : Mr.V.V.S.N.Raju, Advocate

For the Respondent : Mr.Sundari R. Pisupati, Sr. Standing Counsel

**PER : BENCH**

**ORDER**

1. This Application is filed by the Applicant/ Liquidator under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 44 of the IBBI (Liquidation Process) Regulations, 2016 and Rule 11 of National Company Law Tribunal Rules, 2016 praying to :
  - a. Direct the Customs Department/Respondent to issue a Letter to State Bank of India, Overseas, having its registered office at SS3- Rajala Chambers, Plot No. 241-A, Rd Number 36, Jubilee Hills, Hyderabad, Telangana 500001 for Lifting of Attachment and to proceed in accordance with the Insolvency and Bankruptcy Code, 2016.
  - b. Direct the Customs Department/Respondent to issue a Letter to State Bank of India, Overseas, having its registered office at SS3- Rajala Chambers, Plot No.241-A, Rd Number 36, Jubilee Hills, Hyderabad, Telangana 500001 to Defreeze the Account of the Corporate Debtor vide Account Number. 40228175373.
2. **Brief averments of the Application are:**
  - 2.1 It is stated that the Company Petition (IB) No. 663/7/HDB/2018 was preferred by the State Bank of India (Financial Creditor) which was admitted by this Tribunal vide order dated 26.11.2019 thereby

appointing Dr. K.V.Srinivas as Interim Resolution Professional. Further, the Committee of Creditors (CoC) also in its 1<sup>st</sup> Meeting held on 02.01.2020 confirmed the appointment of the Applicant herein as Resolution Professional.

2.2 It is averred that the Resolution Professional conducted the Corporate Insolvency Resolution Process (CIRP) in terms of the provisions of the Code. However, no Resolution Plans were received and having exhausted all further avenues for resolution, the CoC, in its wisdom, voted in favour of Liquidation of the Corporate Debtor. As such an Interim Application vide I.A. No 673/2020 was filed seeking Order of liquidation of the Corporate Debtor which was allowed by this Tribunal vide its order dated 26.04.2021 and appointed Mr. Sri Vamsi Kambhammettu as Liquidator/Applicant for the Corporate Debtor. However, the Liquidator, i.e., the Applicant received the order dated 26.04.2021 intimating appointing him as Liquidator only on 29.04.2021 and commended the Liquidation process from 29.04.2021. Copy of the order dated 26.04.2021 initiating the Liquidation process of the Corporate Debtor and appointing the Liquidator is annexed as **Annexure-A** to the Application.

2.3 It is averred that while conducting the process of Liquidation, a notice was served by Dy. Commissioner of Customs to the applicant under Section 142 of the Customs Act, 1962 to the financial creditor (State Bank of India) imposing a penalty of Rs.18,29,948/- under section 114A of Custom act 1962 on the Corporate Debtor. Further, a penalty

of Rs.12,00,000/- under Section 112(a) and U/s 114 AA of Custom Act, 1962 has been imposed on Corporate Debtor and M/s.Umesh Jethwani, Suspended Director of the Corporate Debtor. Under Section 142 (d) of the Customs Act, 1962, the Corporate Debtor and M/s.Umesh Jethwani, Suspended Director of CD has to pay to the government forthwith any amount from State Bank of India to or, held by State Bank of India, which is the Sole Financial Creditor in the present matter.

- 2.4 It is averred that the Liquidator had invited claims. Claims from Income Tax Department and Margadarshi Chit Fund were received, but no claim was received from the Customs Department/Respondent. Further, the Applicant also sent a letter on 25.11.2022 to the Customs Department/ Respondent on receipt of the Notice from the Customs Department/ Respondent informing them about the Liquidation of the Corporate Debtor and the last day to file their claim with the Applicant is 29.05.2021 i.e., the last day for receipt of Claims. The Customs Department/Respondent failed to submit their claim when invited and later on have issued the aforesaid notice and are in no legal position to impose Attachment of Customs to the account of the Corporate Debtor.
- 2.5 It is averred that under section 14 of the Insolvency and Bankruptcy Code, 2016, institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority, transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right

or beneficial interest is prohibited by the adjudicating authority. It is further submitted that under the provisions of Section 35(1)(k) of the Insolvency and Bankruptcy Code, 2016, the Liquidator shall institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the CD until the winding up of the Corporate Debtor.

- 2.6 It is averred that there is an attachment of Account No.40228175373 of the CD from the Customs Department/Respondent, which cannot subsist during the liquidation process of the CD in terms of provisions of the Insolvency and Bankruptcy Code, 2016 and the balance available in these accounts shall not be appropriated in any way without the authority of the applicant in writing.
- 2.7 It is submitted that under section 53 of the Insolvency and Bankruptcy Code, 2016 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 according to the Insolvency and Bankruptcy Code, 2016.
- 2.8 It is further submitted under the provision of Section 36(2) of the Insolvency and Bankruptcy code, 2016 where the Liquidator shall hold the Liquidation Estate as a fiduciary for the benefit of all the creditors. It is stated that under the provision of Section 33(5) where a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor. In view of the above said provisions, the Customs Department should submit their claim if any

with the Liquidator which he shall later seek permission from the Adjudicating Authority for further consideration and upon which it will constitute in the Liquidation Estate and shall further be distributed in accordance with the Code and the Regulations thereunder.

2.9 It is submitted that the Customs Department Respondent have no legal right or claim in issuing the Notice and freezing the account of the Corporate Debtor with an intention to claim the penalty thereunder penalty thereunder. In view of the above facts and circumstances, the Applicant herein is approaching this Hon'ble Tribunal vide the present application humbly seeking for directions in lifting of Attachment by the Customs Department/Respondent in order to complete the Sale of the assets and the liquidation process of the Corporate Debtor successfully. As the order of the Customs Department/Respondent is completely illegal and holds no grounds, it is most respectfully submitted that if such lifting of the Attachments is not granted then the Stakeholders of the Corporate Debtor shall be subject to grave loss and the purpose of maximization of the asset value and Liquidation of Corporate Debtor will stance defeated.

3. **The Counsel for the Respondent filed written submission inter-alia stating that:**

3.1 It is stated that the Liquidator filed the present IA seeking a direction from the Hon'ble Tribunal to direct the Respondent herein to issue a letter to State Bank of India, Overseas Branch for lifting of Attachment

and de-freezing of the Bank Account of the Corporate Debtor vide Account No. 40228175373.

3.2 It is stated that for a proper and just appreciation of the merits of the present application, it is necessary to advert to the following factual matrix:

a. Intelligence gathered by the Directorate of Revenue Intelligence (DRI) revealed that some importers were importing gold jewelry from Thailand and were availing duty exemption under Notification No. 85/2004-Cus, dt. 31.08.2004 read with Notification No. 101/2004- Customs (N.T) dated 13.08.2004, issued by the Ministry of Finance, Government of India. fraudulently by mis-declaring the percentage of local value-added content criteria.

b. In pursuance of the said intelligence, action was initiated by the Respondent against the Corporate Debtor. Upon thorough investigation and hearing and after the Corporate Debtor availing ample opportunities for personal hearing, the Respondent vide Order-in-Original No. ADC/PK/54/2018-19/APSC dated 28.02.2019 (Annexure-1) imposed, inter alia, penalty of Rs. 18,29,948/- u/s 114A of the Customs Act, 1962 on the Corporate Debtor and further imposed a penalty of Rs. 12,00,000/- under Section 112(a) and u/s 114AA of the Customs Act, 1962 on Mr. Umesh Jethwani, Director of the Corporate Debtor. As no challenge proceedings were preferred by the Corporate Debtor, the said order attained finality and the dues payable to the Respondent stood crystallized which, in terms of



Date of Order: 29.04.2024

Section 142A of the Customs Act, 1962, is a First Charge on the property of the Corporate Debtor.

- c. Subsequent to the abovementioned order, unknown to the Respondent, the State Bank of India (Financial Creditor) filed CP (IB) No. 663/7/HDB/2018 against the Corporate Debtor. The Hon'ble Adjudicating Authority was pleased to admit the application on 26.11.2019 and moratorium was imposed u/s 14 of the IBC. However, the resolution process failed and the Corporate Debtor went into liquidation vide order of this Hon'ble Adjudicating Authority dated 26.04.2021. The moratorium u/s 14 of the IBC was lifted w.e.f. 26.04.2021 and the Applicant was appointed as the Liquidator for the Corporate Debtor.
- d. Unaware of pending CIRP/Liquidation in respect of the Corporate Debtor, the Respondent issued a garnishee notice dated 29.10.2022 (Refer Annexure B of the Application) under Section 142(d) of the Customs Act, 1962 to the State Bank of India, Overseas, Jubilee Hills, Hyderabad for payment of money held by the bank for or on account of the Corporate Debtor up to the amount of arrears still remaining unpaid.
- e. However, the Respondent received a communication dt. 25.11.2022 (Refer Annexure C of the Application) from the Liquidator informing them that the liquidation of the Corporate Debtor had commenced with effect from 26.04.2021 and that the last date to file their claim with the Liquidator herein was on or before 29.05.2021

which had expired. It was only then that the Respondent came to know for the first time regarding the Corporate Debtor being under CIRP/Liquidation.

- f. In accordance with the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the IRP/RP under Regulation 6A ought to have issued a letter of communication annexing a copy of the Public Announcement to the Respondent herein stating that the Corporate Debtor is under CIRP and that claims against the Corporate Debtor are invited. However, the Respondent did not receive any such communication until the letter dt. 25.11.2022 issued by the Liquidator.
- g. The Respondent, after consulting with the Liquidator, duly filed with the Liquidator “Form -C” “Proof of Claim by Operational Creditors except Workmen and Employees” vide its communication dt. 02.06.2023 (Annexure-2) and further requested that delay in submission of the proof of claim against the Corporate Debtor be condoned.
- h. The total claim amount including interest as at Liquidation Commencement Date i.e., 16.04.2021 as stated in the FORM C is Rs.24,23,302/- (Rs. Twenty Four Lakhs Twenty Three Thousand Three Hundred and Two only/-).
- i. However, the Liquidator has, till date, neither acknowledged the claim nor intimated the Respondent regarding the acceptance of the

said claim. The status of the claim that has been filed before the Liquidator is therefore unclear and unknown.

3.3 It is averred that what has been impugned in the present application filed by the Liquidator is only a garnishee notice issued under Section 142 of the Customs Act to a third party SBI (financial creditor to the Corporate Debtor) and not to the Corporate Debtor (under liquidation). Further, if the bank discharged its liability to the Corporate Debtor after receipt of the garnishee notice, the bank will be personally liable to the Respondent to the extent of Liability discharged and upon failure to pay pursuant to the notice, the bank will be deemed to be the defaulter in default and further proceedings may be taken against the Bank for the realization of the amount as if it were arrear of amount due from the bank and the notice shall have the same effect as an attachment of property under Section 142 of the Customs Act, 1962.

3.4 Therefore, it is stated that issuance of mere garnishee notice to a third party under Section 142 of the Customs Act after passing of the liquidation order (when the moratorium under Section 14 of the IBC is lifted) in respect of debt owed by the Corporate Debtor to the Respondent crystallized even prior to the initiation of the insolvency proceedings is neither a 'suit' nor other 'legal proceeding' 'instituted against the Corporate Debtor' and therefore, is not barred under Section 33(5) of the IBC.

3.5 It is humbly submitted that the judgment of the Hon'ble Supreme Court in *Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of*

*Indirect Taxes Civil Appeal 7667/2021 dt. 26.08.2022 (Annexure-3)* was rendered in the context of issuance of demand notices to the Corporate Debtor itself under Section 72(1) of the Customs during the subsistence of moratorium u/s 14 of the IBC during CIRP and under Section 33(5) of the IBC during liquidation proceedings and therefore, is inapplicable to the facts of the present case.

3.6 Even assuming that there is a deemed attachment of the bank account of the Corporate Debtor because of the garnishee notice in question, it is humbly submitted that the Liquidator is not barred from selling or listing the encumbered properties in the Liquidation Estate in terms of Section 36(3)(b) of the IBC which takes precedence over the Customs Act. It is open to the Liquidator to raise the issue of deemed attachment as per mechanisms provided under the Customs Act, 1962 and take steps to have it lifted. Reliance is placed on the judgment of the Hon'ble NCLT Chennai Bench of *C. Ramasubramaniam, Liquidator of M/s. Padmaadevi Sugars Ltd. v. The Assistant Commissioner of GST & Central Excise & Ors, LA(IBC)/815(CHE)/2021 in CP(IB)/768(CHE)/2018 dt. 25.04.2022 and Leo Edibles & Fats Ltd. v. Income Tax Department [WP No. 8560/2018 High Court of Hyderabad dt. 26.07.2018] (Annexure-4).*

3.7 It is stated that in any case, the Respondent, after consulting with the Liquidator, has duly filed with the Liquidator "Form C" for a total claim amount of Rs.24,23,302/- including interest as at Liquidation Commencement Date Le, 16.04.2021) and further requested that delay

in submission of the proof of claim against the Corporate Debtor be condoned. However, the Liquidator has, till date, neither acknowledged the claim nor intimated the Respondent regarding the acceptance of the said claim. The status of the claim that has been filed before the Liquidator is therefore unclear and unknown.

3.8 It is humbly submitted that no prejudice will be caused in the present case if the delayed submission of the claim of the Respondent is accepted as the delay was neither wilful nor intentional and the claim of the Respondent has been made well in time ahead of the distribution of Liquidation assets of the Corporate Debtor in terms of Section 53 of the IBC.

3.9 In view of the above submissions, it is humbly prayed that this Hon'ble Tribunal may be pleased to dispose of the present Application with direction to the Liquidator to verify and accept the claim submitted by the Respondent vide its communication dt. 02.06.2023.

4. In the light of the above context the point that emerges for our consideration is:-

**Whether the notice issued by the respondent under Section 142 of the Customs Act, 1962 dated 29.10.2022, to the Applicant Company (under liquidation) is sustainable under law?.**

5. We have heard learned counsel for the Applicant Shri V.V.S.N Raju, and Learned counsel for the Respondent Shri.Sundari R. Pisupati, Sr. Standing Counsel. Perused the documents filed.
  
6. According to the learned counsel for the petitioner, during the liquidation process, notice was served by Dy.Commissioner of Customs(Respondent herein) under Section 142 of the customs Act, 1962 to the SBI, a penalty of Rs.18,29,948 U/S 114A of Custom Act 1962 has been imposed on the corporate debtor. Further penalty of Rs. 12,00,000/- under Section 112(a) and u/s 114AA of the Customs Act, 1962 has been imposed on corporate debtor and M/s.Umesh Jethwani, suspended Director of the corporate debtor. It is averred that Under Section 142 (d) of the Customs Act, 1962, the Corporate Debtor and M/s.Umesh Jethwani, Suspended Director of CD has to pay to the government forthwith any amount from State Bank of India to or, held by State Bank of India, which is the Sole Financial Creditor in the present matter.

7. Learned Counsel further submits that, even though the Applicant has invited for claims, only Income Tax Department and Margadarshi Chit fund had filed their claims and no claims has been received from the Customs Department. Further, the Applicant also sent a letter on 25.11.2022 to the Customs Department/ Respondent on receipt of the Notice from the Customs Department/ Respondent informing them about the Liquidation of the Corporate Debtor and the last day to file their claim with the Applicant is 29.05.2021 i.e., the last day for receipt of Claims. The Customs Department/Respondent failed to submit their claim when invited and later on have issued the aforesaid notice and are in no legal position to impose Attachment of Customs to the account of the Corporate Debtor.
8. Learned Counsel further submitted that under the provisions of Section 35(1)(k) of the Insolvency and Bankruptcy Code, 2016, the Liquidator shall institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the CD until the winding up of the Corporate Debtor. The attachment of Account No.40228175373 of the CD from the Customs Department/Respondent, which cannot subsist during the liquidation

process of the CD in terms of provisions of the Insolvency and Bankruptcy Code, 2016 and the balance available in these accounts shall not be appropriated in any way without the authority of the applicant in writing.

9. Learned Counsel submits that under section 53 of the Insolvency and Bankruptcy Code, 2016 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 according to the Insolvency and Bankruptcy Code, 2016.
10. Learned Counsel further submitted that under the provision of Section 36(2) of the Insolvency and Bankruptcy code, 2016 where the Liquidator shall hold the Liquidation Estate as a fiduciary for the benefit of all the creditors. It is stated that under the provision of Section 33(5) where a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor. In view of the above said provisions, the Customs Department should submit their claim if any with the Liquidator which he shall later seek permission from the Adjudicating Authority for further consideration and upon which it will constitute in the Liquidation Estate and shall



further be distributed in accordance with the Code and the Regulations thereunder. Thus, it is stated that Customs Department Respondent have no legal right or claim in issuing the Notice and freezing the account of the Corporate Debtor with an intention to claim the penalty thereunder penalty thereunder.

11. However, refuting the same, Learned counsel for Dy.Commissioner of Customs, has stated that action was initiated by the Respondent against the corporate debtor after thorough investigation and giving ample opportunities for hearing. It is averred that respondent vide Order-in-Original No. ADC/PK/54/2018-19/APSC dated 28.02.2019 (Annexure-1) imposed, inter alia, penalty of Rs. 18,29,948/- u/s 114A of the Customs Act, 1962 on the Corporate Debtor and further imposed a penalty of Rs. 12,00,000/- under Section 112(a) and u/s 114AA of the Customs Act, 1962 on Mr. Umesh Jethwani, Director of the Corporate Debtor. Since there was no further proceedings preferred by the corporate debtor, the said order attained finality and the dues payable stood crystalized in terms of Section 142 A of Customs Act, 1962.
12. Learned counsel for respondent submitted that, respondent was unaware of the CIRP/Liquidation of the corporate debtor, thus issued a

garnishee notice dated 29.10.2022, u/s 142(d) of the Customs Act, 1962 to the SBI, for payment of money held by the bank. However, Respondent received a communication dated 25.11.2022 from the liquidator stating that the liquidation of corporate debtor had commenced on 26.04.2021 and the last date to file their claim with the liquidator was on or before 29.05.2021, which was already expired. Thereafter, Respondent filed FORM C by requesting the liquidator for condoning the delay in filing the claim of Rs.24,23,302. However, liquidator till date not acknowledged the claim nor confirmed whether the claim is accepted.

13. According to the learned Counsel for the respondent ruling of **Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes Civil Appeal 7667/2021 dt. 26.08.2022** by Hon'ble **Supreme Court of India**, has been rendered in the context of issuance of demand notices to the Corporate Debtor itself under Section 72(1) of the Customs during the subsistence of moratorium u/s 14 of the IBC during CIRP and u/s 33(5) of the IBC during liquidation proceedings and therefore, is inapplicable to the facts of the present case.

14. Having heard the learned counsels for both sides and on perusal of the records and the case laws, we wish to state that , admittedly, the impugned notice under Section 142 of the Customs Act, 1962 has been issued by the respondent during the period of liquidation when corporate debtor is undergoing liquidation pursuant to the order of this Tribunal dated 26.04.2021.
15. The impugned notice addressed to SBI, Branch Manager, Overseas, SS3-RAJALA Chambers, Plot no.241-A, Road No.36, Jubilee Hills, Hyderabad-500 001, clearly states that Branch manager is required under Section 142 (d) of the Customs Act, 1962 to pay to the government forthwith any amount due from the bank or held by the bank for or on account of the said defaulter i.e M/s.Meena Jewelers Exclusive and M/s.Umesh Jethwani, Director of M/S.Meena Jewelers Exclusive up to the amount of arrears shown above. Therefore, it is clear that the respondent is endeavoring to enforce the demand notice.
16. The law insofar as enforcement of Demand notice by way of garnishee order or otherwise is no longer res integra. Hon'ble Supreme Court of India, in re *Hon'ble Supreme Court of India, in re., Sundaresh Bhatt, Liquidator of ABG Shipyard vs. Central Board of Indirect Taxes*

*and Customs in Civil Appeal No.7667 of 2021, dated 26.08.2022,*

wherein the Hon'ble Supreme Court of India, on an identical set of fact situation held as follows:

“We may note that the IBC, being the more recent statute, clearly overrides the Customs Act. This is clearly made out by a reading of Section 142A of the Customs Act. The aforesaid provision notes that the Custom Authorities would have first charge on the assets of an assessee under the Customs Act, except with respect to cases under Section 529A of Companies Act 1956, Recovery of Debts Due to Banks and Financial Institutions Act 1993, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the IBC, 2016. Accordingly, such an exception created under the Customs Act is duly acknowledged under Section 238 of the IBC as well. Additionally, we may note that Section 238 of the IBC clearly overrides any provision of law which is inconsistent with the IBC. Section 238 of IBC provides as under:

**238. Provisions of this Code to override other laws-**

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

38. The NCLAT, while playing down the effect of Section 142A of the Customs Act and Section 238 of the IBC, has held that the Customs Act is a complete code in itself and no person can seek removal of goods from the warehouse without paying customs duty. The NCLAT relies on the judgment in **Collector of Customs v. Dytron (India) Ltd.**, 1999 EKT 342 Cal., by the High Court of Calcutta, which laid down that customs duty carry first charge even during the insolvency process under Section 529 and 530 of Companies Act, 1956. However, reliance on the said precedent is not appropriate as the NCLAT has failed to notice that such interpretation has been legislatively overruled by the inclusion of

Section 142A under the Customs Act, through Section 51 of the Finance Act of 2011.

39. From the above, it is to be noted that the Customs Act and the IBC act in their own spheres. In case of any conflict, the IBC overrides the Customs Act. In present context, this Court has to ascertain as to whether there is a conflict in the operation of two different statutes in the given circumstances. As the first effort, this Court is mandated to harmoniously read the two legislations, unless this Court finds a clear conflict in its operation.
40. At the cost of repetition, we may note that the demand notices issued by the respondent are plainly in the teeth of Section 14 of the IBC as they were issued after the initiation of the CIRP proceedings. Moratorium under Section 14 of the IBC was imposed when insolvency proceedings were initiated on 01.08.2017. The first notice sent by the Respondent Authority was on 29.03.2019. Further, when insolvency resolution failed and the liquidation process began, the NCLT passed an order on 25.04.2019 imposing moratorium under Section 33(5) of the IBC. It is only after this order that the Respondent issued a notice under Section 72 of the Customs Act against the Corporate Debtor. The various demand notices have therefore clearly been issued by the Respondent after the initiation of the insolvency proceedings, with some notices issued even after the liquidation moratorium was imposed.
42. We are of the clear opinion that the demand notices to seek enforcement of custom dues during the moratorium period would clearly violate the provisions of Sections 14 or 33(5) of the IBC, as the case may be. This is because the demand notices are an initiation of legal proceedings against the Corporate Debtor. However, the above analysis would not be complete unless this Court examines the extent of powers which the respondent authority can exercise during the moratorium period under the IBC.
44. **Therefore, this Court held that the authorities can only take steps to determine the tax, interest, fines or any penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium. We are of the opinion that the above ratio squarely applies to the interplay between the IBC and the Customs Act in this context.**
45. From the above discussion, we hold that the respondent could only initiate assessment or re-assessment of the duties and other levies. They cannot transgress such boundary and proceed to initiate recovery in violation of Sections 14 or 33(5) of the IBC. The interim resolution professional, resolution professional or the liquidator, as the case may be, has an obligation to ensure that assessment is legal and he has been

provided with sufficient power to question any assessment, if he finds the same to be excessive.

46. There is another aspect of this case that needs to be highlighted to portray the inconsistency of the Customs Act vis-à-vis the IBC during the moratorium period. In the present case, the demand notice dated 11.07.2019 was issued by the respondent under Section 72 of the Customs Act, in clear breach of the moratorium imposed under section 33(5) of the IBC. Issuing a notice under Section 72 of the Customs Act for non-payment of customs duty falls squarely within the ambit of initiation legal proceedings against a Corporate Debtor. Even under the liquidation process, the liquidator is given the responsibility to secure assets and goods of the Corporate Debtor under Section 35(1)(b) of IBC.
  47. As laid down earlier, the Customs Act and IBC can be read in a harmonious manner wherein authorities under the Customs Act have a limited jurisdiction to determine the quantum of operational debt – in this case, the customs duty – in order to stake claim in terms of Section 53 of the IBC before the liquidator. However, the respondent does not have the power to execute its claim beyond the ambit of Section 53 of the IBC. Such harmonious construction would be in line with the ruling in Gujarat Urja Vikar Nigam Ltd. v. Amit Gupta, (2021) 7 SCC 209, wherein a balance was struck by this Court between the jurisdiction of the NCLT under IBC and the potential encroachment on the legitimate jurisdiction of other authorities”.
17. Therefore, by virtue of the above ruling it is overwhelmingly clear that respondent/Authority herein can only take steps to determine the tax, interest, fines or any penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium. Needless to say that even during liquidation moratorium exists.
18. Therefore, the communication from the Respondent i.e Dy.Commissioner of Customs, to the SBI, Branch Manager dated

Date of Order: 29.04.2024

29.10.2022 is hereby set aside and the Branch Manager, SBI, Overseas, Jubilee Hills, Hyderabad -500 001 is directed to send the amount lying in the account no.40228175373, to the liquidation account of the corporate debtor.

19. With these directions, the present Application is allowed and disposed of.

SD

Charan Singh  
Member (Technical)

*Sridher/pavani*

SD

Dr.Venkata Ramakrishna Badarinath Nandula  
Member (Judicial)