

**NATIONAL COMPANY LAW TRIBUNAL      ITEM NO : 20  
ALLAHABAD BENCH**

**IA NO.128/2020 IN  
CP NO.(IB)189/ALD/2019**

**ATTENDENCE - CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 16.10.2020 AT 11:30 AM THROUGH VIDEO CONFERENCING.**

**NAME OF THE COMPANY : MKM TECHNOLOGIES PVT. LTD. V/S M/S LEEL ELECTRICALS LTD.**

**SECTION: 17, 18, 19 & 60(5) OF IBC**

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**PRESENT : HON'BLE MR. JUSTICE (RETD.) RAJESH DAYAL KHARE,  
MEMBER (J)**

**COUNSEL FOR APPLICANT/ IRP            : SH. P.K. SACHDEVA, ADV.**

**FOR CUSTOM DEPARTMENT                : NONE.**

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**IA NO.128/2020 IN CP NO.(IB)189/ALD/2019**

The matter was taken up today through Video Conferencing at 02:10 PM.

Heard Sh. P.K. Sachdeva, Advocate for the applicant/ IRP through video conferencing.

Order pronounced through Video Conferencing.

Application disposed off, vide separate order-sheet.

— Sd —

**Dated : 16.10.2020**

**JUSTICE RAJESH DAYAL KHARE  
(MEMBER JUDICIAL)**

*Typed by :  
Kavya Prakash Srivastava  
(Stenographer)*

IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH

IA No.128 of 2020  
IN  
CP (IB) No.189/ALD/2019

**IN THE MATTER OF:**

**Arvind Mittal**  
Interim Resolution Professional

.....**APPLICANT**

**In the matter of :**

**MKM TECHNOLOGIES PVT. LTD**

.....*Operational Creditor/ Applicant.*

**VERSUS**

**LEEL ELECTRICALS LIMITED**

.....*Corporate Debtor/Respondent.*

**ORDER DELIVERED ON :16.10.2020**

**CORAM:**

**Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial**

**For the IRP: Mr. P.K. Sachdeva, Adv**  
**For the Custom Department: None**

**Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)**

**Order**

1. The present application is filed under Section 60 read with sec 17, 18 and Sec 19 of the Insolvency and Bankruptcy Code by the Interim Resolution Professional, with the prayer to direct the Commissioner of Customs to hand over the goods/ assets owned by the Corporate Debtor and lying with it as on the date of CIRP immediately to the IRP.
2. It is stated in the application that the Adjudicating Authority vide its order dated 04.03.2020 based on a petition filed by the Operational Creditor under Section 9 of the Code, initiated the

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CIRP in respect of Corporate Debtor Company and appointed the Mr. Arvind Mittal as IRP.

3. Further, it is stated that the applicant has made a public announcement on 07.03.2020 and as per the provisions of the Code the IRP was supposed to take charge of the assets of the corporate debtor, even if the assets are in possession of someone else other than the corporate debtor.
4. Thus, the corporate Debtor as on the date of CIRP was having certain goods imported as per law, lying with the Commissioner of Customs, Noida, the value of which as per the information provided by the corporate Debtor is Rs. 36,44,46,464.88 as on 04.03.2020. The IRP has sent the communications to the office of The Commissioner Of Customs to hand over the possession of the goods owned by the Corporate Debtor and lying with the office of the Commissioner of Customs but the IRP did not get any response from the office of the Commissioner of Custom. Subsequently the IRP sent a legal notice dated 20.05.2020 and also called upon the office of the Department for handling the possession of the goods owned by the Corporate debtor and lying with the Custom Department but to that also no response has been received by the IRP.
5. It is submitted by the counsel for applicant that as per the provisions of the code the dues payable by Central and State Government are covered under the definition of Operational debt and taking over the possession of all the goods/ assets owned by the corporate Debtor and which are lying with the Commissioner of Custom is essential for completion of CIRP in respect of the

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corporate Debtor and delay in taking possession of the goods owned by the Corporate Debtor will deteriorate the value of assets and will be detrimental to the interest of all concerned.

6. The custom department in its representation stated that as per condition 4 of the bond furnished by the importer i.e Leel Electricals Ltd. which is reproduced as *"In the event of our failure to discharge our obligation, pay the full amount of duty chargeable on account of such goods together with their interest, fine and penalties payable under Sec 72 , in respect of such goods, Then the above written bond shall be void and of no effect otherwise the same shall remain in full force and virtue*

*It is hereby agreed and declared that:*

- 1) *The bond shall continue in full force notwithstanding the transfer of the goods to another warehouse.*
- 2) *The President through the Deputy/ Assistant Commissioner or any other officer may recover any amount due under this bond in the manner laid down under sub-section (1) of Section 142 of the said Act without prejudice to any other mode of recovery.*

And stated that the Department can recover the Government dues , interest & other penalties/ fine etc. payable, under the provisions of Sec 72 of The Custom Act 1962, in case the importer fails to comply with the conditions of the bond.

7. Further stated that the Disposal Manual-2019 read with sec 72 of the Customs Act, 1962, empowers the Proper Officer to sell the bonded goods, which have not been cleared by the owner on payment of duty within the time limit prescribed therein or within the extended time limit, as the case may be, to recover the duty

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leviable on the goods. Sec 72 also requires the proper officer to issue a notice demanding the full amount of duty, together with penalties, rent interest and other charges payable after the expiry of the time limit, before detaining and selling of goods.

8. Further referring to Sec 14(1)(d) and (2A) of IBC, 2016 it is stated that in the present case there is a default in payment of dues, as the party has neither submitted the dues for the extension of the bond period nor the party has responded even after various notices from the concerned warehouse custodians. Further stated that Sec 14 (2A) IBC shows that even the essential goods or services to the corporate debtor may be terminated, suspended or interrupted if the debtor has not paid dues arising from such supply and the present case is a case of default in payment of dues.

9. Further stated that in few cases of import consignments, the importer M/s Leel Electricals Ltd. has not filed Bill of Entry required to be filed under Sec 46 of the Customs Act 1960 even after a lapse of more than one year and has not responded even after issuance of several notices. Also stated that the custom/central government is neither party nor respondent in the present case and the disposal proceedings of the subject goods have already been initiated well before March 2020 by way of issuing various notices from the concerned custodians to the party (M/s Leel Electricals) . Therefore, it is submitted that the Department is legally empowered to dispose off the goods for recovery of amounts due, as per the Bond conditions.

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10. In reply to this, the learned counsel for the liquidator in its rejoinder stated that the bond submitted by the Corporate debtor to the office of Commissioner of Custom is not relevant under the present case, in view of the moratorium imposed under Sec 14 IBC and further IBC has overriding effect on all existing laws and even the Central & State Government are covered under the definition of Operational Creditor. Further submitted that had if the respondent would have sold the goods prior to the date of CIRP under the bond, it would have been a different issue. In this case, the proceedings have not been completed even as per its own submissions and in view of the overriding effect of IBC and moratorium imposed under the proceedings for recovery of duty cannot continued and the goods lying with the customs and owed by the Corporate Debtor are to be given under the possession of IRP mandatorily and the duty payable to the custom Department of goods under question can be claimed as per the Code.
11. The applicant has also referred the judgment of Hon'ble NCLAT in the matter of **Commissioner of Customs,(Preventive) West Bengal vs. Ram Swaroop Industries Ltd & Others with Company Appeal (AT) (Insolvency) No. 563 of 2018** in which it was held that the after the order of moratorium has been passed by the Adjudicating Authority, the custom Department cannot issue auction notice despite the fact that the goods in question are lying in their possession for years.

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12. Referring to the judgment and the submissions raised by the parties, this Adjudicating Authority is of the view that as Sec 14 of the I&B Code,2016 relates to moratorium and is read as follows:

*(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:*

*(a) the 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;*

*(b)transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

*(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

*(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

*Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law*

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*for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.]*

*2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

*(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]*

*(3) The provisions of sub-section (1) shall not apply to —*

*(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;*

*(b) a surety in a contract of guarantee to a corporate debtor.*

*(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

*Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves*

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*the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.*

13. It is clear from the aforesaid provision that during the period of Moratorium, the assets of the corporate debtor cannot be alienated, transferred or sold to the third party.

14. It is further observed by this Adjudicating Authority that the goods were lying with the custom Department under the bond prior to initiation of CIRP and but has not been sold and thereafter moratorium was imposed against the corporate debtor. Thus, this Adjudicating Authority is of the view as per sec 238 of IBC which is as quoted below:

***Section 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.*

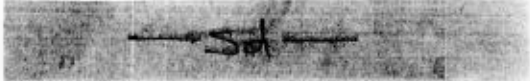
The code will have an overriding effect over any other laws and as moratorium has being imposed by this Adjudicating Authority against the Corporate Debtor thus the proceedings for recovery of duty cannot be continued and the goods lying with the Customs which is owned by the Corporate Debtor are to be handed in the possession of Interim Resolution Professional for completion of CIRP efficiently as well as for maximisation of value of assets of the corporate Debtor which is the object of the Code.

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15. As the ownership right of the goods in question is of the corporate debtor which is under CIRP. Therefore IRP has the right to take control and custody of the of the asset, though at present it lies in the possession of Custom Department.

16. In view of the above, this Adjudicating Authority hereby direct the Commissioner of Customs, Noida to hand over the goods owned by the Corporate Debtor lying with it as on the date of initiation of CIRP within 15 days from the date of order.

Thus, IA No. 128/2020 is **allowed** and accordingly **disposed of**.

  
**JUSTICE RAJESH DAYAL KHARE**  
**MEMBER (J)**

**Date: 16.10.2020**

Swati Gupta  
(LRA)