

**THE NATIONAL COMPANY LAW TRIBUNAL**

**COURT VI, NEW DELHI**

**I.A. 763/ND/2022**

**IN**

**Company Petition No. (IB) – 2484/(ND)/2019**

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

**IN THE MATTER OF:**

Adecco India Pvt. Ltd

.... Operational Creditor

**VERSUS**

Aventura Components Pvt. Ltd

.... Corporate Debtor

**AND IN THE MATTER OF-**

Mr. Ravindra Kumar Goyal

.... Applicant

**VERSUS**

Office of the Commissioner  
of Customs, Import Bond Section

...Respondent No 1

Atul Sons Logistics Pvt Ltd  
1-24 Nanik Niwas Bhulabhai Desai Road  
Breach Candy, Mumbai, 400036.

AND  
MTNL Telephone Exchange  
A-205/208/209/210, Steel Chamber Towers  
Near Kalamboli Navi Mumbai  
Maharashtra 410218

...Respondent No 2

DHL Logistics Pvt Ltd  
201 A Silver Utopia,  
Cardinal Gracious Road  
Chakala Andheri (E).

...Respondent No 3

**CORAM:**

**SHRI P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

For the Applicant: Mr. Samaksh Goyal, Adv.

For the Respondent: :Mr. Amit Dayal, Adv. for R3

**ORDER**

**PER- SHRI P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL) &**

**SHRI RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

**Order Pronounced on: 15.12.2023**

1. This application has been filed under Section 14, 18(f),  
20(1), 20(2)(e), 23(2), 25(1), 25(2)(a), 32(A), 60(5) of the

2

*I.A. 763/ND/2022,  
IN  
(IB)- 2484/(ND)/2019*

Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking directions against Respondents.

2. Briefly stated the facts of the case as mentioned in the instant application, which are necessary for adjudication, are as follows: -

- i. That Corporate Insolvency Resolution Process of Corporate Debtor was commenced vide order dated 12.03.2021 and Mr. Satya Prakash was appointed as IRP in the matter.
- ii. The Respondent No 1 is a statutory body which was formed under the provisions of Customs Act, 1962 for the purpose of collecting custom duty.
- iii. Respondent No 2 & 3 is bonded warehouse affiliated to the Respondent No 1 who is having possession and custody of assets of CD at the behest of Respondent No 1
- iv. That certain goods belonging to CD were stored in one of the bonded warehouses namely M/s Atulsons Logistics Pvt Ltd. (Respondent No 2). Custom duty was levied by the Respondent No 1 against the said goods however the CD was unable to pay the same due to cash crunch. Hence due

to inability of CD the Respondent No 1 issued disposal order dated 14.02.2020 with respect to the aforesaid goods lying in possession of Respondent No 2 in order to sell the goods belonging to CD to recover the dues payable to Respondent No 1. Details of the goods lying in the warehouse facility are as under: -

Disposal Order No.	Date	Description of Good	Bond No & Date	W/H B/E No.	Total Duty Liability (Bal. Qty.)	Date of Expiry	Date of issue of Notice U/S 72(1)	Date of issue of Notice U/S 72(2)
20/2020-21	14.2.20	Fiber enforced plastic for water purification	Atul-06-20012445578 dated 23.06.17	2122919 dated 16.06.17	Rs.7,541(95 CTN)	22.06.18	4.8.18	15.9.18
22/2020-21	14.2.20	Fiber re-enforced plastic tank for water	Atul-06-2001459615 dated 10.9.18	7898965 dated 4.09.18	Rs.1,62,342 (134PKG)	9.9.19	4.11.19	12.12.19
23/2020-21	14.2.20	Fiber re-enforced Plastic tank	Atul-09-2001463732 dated 18.9.18	8000826 dated 11.9.18	Rs.84,644/- (59CRT)	17.9.19	4.11.19	9.12.19

24/2020-21	14.2.20	Fiber re-enforced Plastic tank	Atul-05-2001467355 dated 26.9.2018	8095843 dated 18.9.18	Rs.68,654/- (41PKG)	25.9.19	4.11.19	9.12.19
26/2020-21	14.2.20	Burton Ro Membrane	Atul-09-2001259485 dated 24.7.17	2513613 dated 19.7.17	Rs.2,05,416/- (78CTN)	23.7.18	15.9.18	6.10.18
27/2020-21	14.2.20	UF Membrane Filter	Atul-09-2001360911 dated 20.2.18	4944822 dated 25.11.18	Rs.8,15,073/- (212CTN)	19.2.19	6.5.19	4.6.19
28/2020-21	14.2.20	Centrifugal Pump	Atul-06/2001298161 dated 13.10.17	3406851 dated 27.9.17	Rs.76,025/- (2CTN)	12.10.18	3.12.18	15.12.18
29/2020-21	14.2.20	Burton Ro Membrane	Atul-06-2001298536 dated 16.10.17	3406974 dated 27.9.17	Rs.5,04,419/- (120CTN)	15.10.18	3.12.18	15.12.18
30/2020-21	14.2.20	Booster Pump	Atul-09-2001266105 dated 4.8.17	2684018 dated 1.8.17	Rs.1,02,959/- (155CTN)	3.8.18	6.10.18	10.11.18
34/2020-21	14.2.20	Burton Ro Membrane	Atul-09-2001347826 dated 24.1.18	4818267 dated 16.1.18	Rs.480,257/- (160CTN)	23.1.19	26.2.19	23.1.19



36/2020-21	14.2.20	Fiber reinforced plastic tank	Atul-09-2001459614-dated 10.9.18	7898665 dated 4.9.18	Rs.69,685/- (35PKG)	9.9.19	4.11.19	9.12.19
		Centrifugal Pump BLT-2-9	Atulsons	5392102 dtd 28.2.2018	Rs.54089 (5 PKG)	7.3.19	20.4.21	7.8.21
		Centrifugal Pump BLT 2-15	Atulsons	5392102 dtd 28.2.2018	Rs.35,77,330/- (300PKG)			

- v. That certain other goods/assets of CD were also stored in warehouse Facility of Respondent No 3 namely DHL Logistics unit against which Respondent No 1 issued an auction notice dated 27.09.2020. Details of the goods lying in the warehouse facility are as under: -

Sr.No.	Buyer Name	Part Number	Uo M	Location Name	Location	Unit Price(USD)	Amount	Warehouse
	Aventura Compone	36*72 FRP TANK (4"-	PC S	FLOORAR EA	24	306.09	7346.16	DHL

	nts Pvt.Ltd.	4") NATURAL OUTSIDE*						
2.	Aventura Compone nts Pvt.Ltd.	10*54 FRP TANK (2.5") NATURAL OUTSIDE*	PC S	FLOORAR EA	35	20.70	724.50	DHL
3.	Aventura Compone nts Pvt.Ltd.	30*72 FRP TANK (4"- 4") NATURAL OUTSIDE*	PC S	FLOORAR EA	16	250.36	4005.76	DHL
4.	Aventura Compone nts Pvt.Ltd.	08*44 FRP TANK (2.5") NATURAL OUTSIDE*	PC S	FLOORAR EA	10	15.75	157.50	DHL
	Aventura Compone	AV-4R2- 63(Top/Bot tom Mount	NO S	FLOORAR EA	76	1.50	114.00	DHL



	nts Pvt.Ltd.	Stack Diffuser System) For FRP 36x72						
6.	Aventura Compon nts Pvt.Ltd.	AV-436- 63(Bottom Mount Hub & Lateral System- 436-63) For FRP 36x72	NO S	FLOORAR EA	25	17.71	442.75	DHL
7.	Aventura Compon nts Pvt.Ltd	AV-436- 63(Bottom Mount Hub & Lateral System- 430-63) For FRP 36x72	NO S	FLOORAR EA	16	18.71	283.36	DHL
8.	Aventura Compon	Vaaccum Breaker (Vaaccum	NO S	FLOORAR EA	76	10	760.00	DHL

	nts Pvt.Ltd	Breaker for Filter Tank)						
					USD	13,834		
					INR	1,049,450		

- vi. Despite issuance of Disposal orders bearing No 20/2020-2021, 22/2020-21, 23/2020-21, 24/2020-21, 26/2020- 21, 27/2020-21, 28/2020-21, 29/2020-21, 30/2020-21, 34/2020-21 and 36/2020-21 all dated 14.02.2021 by the Respondent No 1 for executing the sale of goods and despite issuing Auction Notice dated 27.09.2020 the goods were not sold. That the disposal orders were not executed hence those assets belong to CD.
- vii. That the aforesaid assets which are in custody of Respondents be transferred to the RP of the CD to enable the RP to perform his duties under the CIRP of CD. Hence the applicant prayed for the following relief(s)

*a.This Hon'ble Bench may pass necessary Orders of injunction, injuncting, precluding and prohibiting the Respondent No.1, Respondent No.2 and Respondent No.3, or their agents, servant, representatives etc., to execute said Disposal Orders bearing No' s 20/2020-21, 22/2020-*

2021, 23/2020-21, 24/2020-21, 26/2020- 21, 27/2020-21, 28/2020-21, 29/2020-21, 30/2020-21, 34/2020-21 and 36/2020-21 all dated 14.02.2021, along with notice under Section 72(1) dated 20.4.2021, notice under Section 72(2) dated 07.8.2021 and In-Bond BE of the Customs Act, 1962 with regard to Centrifugal Pump BLT 2-9 and Bill of entry for Ex-Bond bearing no.5392102 dt. 20.2.2018 with regard to Centrifugal Pump BLT 2- 15, issued by the Respondent No.1 to the Corporate Debtor annexed in this instant Application at Exhibit-"B-1" to Exhibit-"B-13". AS WELL AS the auction notice 27.09.2020, bearing reference no. Mum FTWZ / DHL/ Disposal / 2020 / 004 Aventura, issued by the Respondent No 3 (at the behest of Respondent No 1) to the Corporate Debtor, annexed in this instant Application as Exhibit-D and on basis of the same and to restraint the sale of all the goods in the warehouse of the Respondents.

b. To direct all the Respondents to return and hand over the possession and custody of all the goods/tangible assets of the CD as mentioned in the application which belongs to CD but stored in the warehouses of Respondents for smooth facilitation of the CIRP of the CD and to enable the applicant to keep the Corporate Debtor as a going concern.

c. Any other and further relief(s) as deem fit by this Bench.

3. The Respondent 3 has filed its reply and made following submissions: -

i. The Respondent denied the table reproduced by the applicant showing the goods lying in the possession of

the Respondent No 3 and the correct list of the assets is given in auction notice dated 27.09.2020.

- ii. That the Respondent No 3 informed the CD that it may take the assets after taking clearance from Customs and paying outstanding dues to the Respondent No 3. In case, they fail to do so, the said assets would be disposed by way of public auction under the provision of SEZ Act and rules and provisions of Customs Act, 1962.
- iii. The RP vide email dated 04.09.2021 informed the Respondent No 3 that the CIRP of CD was initiated vide order dated 12.03.2021 and moratorium was imposed whereby the auction was prohibited.
- iv. That vide email dated 06.09.2021, the Respondent No 3 informed all the relevant parties that it had stopped the e-auctioning of the assets of the CD.
- v. The applicant and the IRP availed the services of the Respondent by considering the goods essential to facilitate the CIRP of CD. Under the Code, the charges for the essential services falls within the meaning of 'insolvency resolution process cost'. As the Respondent

no 3 stored the goods of CD to sustain the CD as going concern, hence the cost pertaining to the service provided by the Respondent No 3 are to be treated as 'insolvency resolution process cost'.

vi. That the RP may remove the goods lying in the custody of the Respondent No 3 after making the payment of charges.

vii. That the Respondent No 3 has no objection for the removal of the goods by the applicant at its own cost and responsibility after making the payment of the answering Respondent for the services provided by the Respondent No 3.

4. We have gone through the application and documents on record filed the parties and arguments advanced by counsels.

5. Despite service of notice, only Respondent No 3 has filed its reply. The Counsel for the Custom department has appeared but no reply or response in the matter was filed by them.

6. The Hon'ble Supreme Court in the matter of *Sundaresh Bhatt, Liquidator of ABG Shipyard* v.

*Central Board of Indirect Taxes and Customs Civil Appeal No. 7667 of 2021 dated 26 August 2022* held that the Insolvency and Bankruptcy Code, 2016 (IBC) will prevail over the Customs Act, 1962 for recovery of dues once the moratorium under the IBC is declared. The Customs authority can only determine the quantum of duties and levies but cannot initiate recovery proceedings by means of sale/confiscation under the Customs law. Once the insolvency proceedings are initiated under the IBC, the Interim Resolution Professional (IRP) can immediately secure the goods from the Revenue authorities and take appropriate steps under the IBC.

7. The Respondent No 3 has expressed its no objection subject to the payment of its dues.

8. In the present case, after the moratorium was declared the Respondents did not proceed with the auction of the assets of the Corporate Debtor which are in the custody of the Respondents.

9. In view of the aforementioned facts, circumstances, and the judgment referred to above, the Resolution Professional

(RP) is at liberty to take possession of the assets belonging to the Corporate Debtor from the Respondents. The Respondents are also at liberty to file their claims before the Resolution Professional.

10. Accordingly, IA 763/ND/2022 stands allowed in the light of the above.

Let a copy of the order be served to the parties concerned.

**SD/-**

**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

**SD/-**

**(P.S.N PRASAD)**  
**MEMBER (JUDICIAL)**