



**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II), CHANDIGARH**

**IA(IBC)/89(CH)2023 & IA(IBC)/90(CH)2023
In
CP(IB) No.15/Chd/Chd/2017
(Admitted)**

*(Application under sub-section (5) of section 60 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 and Rule 32 of NCLT Rules, 2016)*

IA(IBC)/89(CH)2023:

Nehru Place Hotels and Real Estates Private Limited

Through Mr. Pankaj Sethi,
Office: 8th Floor, Eros Corporate Tower, Nehru Place,
New Delhi -110019

...Applicant

Vs.

1 Joint Commissionior, Municipal Corporation Chandigarh

New Deluxe Building, Sector 17, Chandigarh - 160017

...Respondent No.1

2 Navneet Gupta, Liquidator James Hotels Limited

H. NO. 1598, First Floor,
Sector 22-8, Chandigarh - 160022

...Respondent No. 2

And

And in the matter of IA(IBC)/90(CH)2023:

Nehru Place Hotels and Real Estates Private Limited

Through Mr. Pankaj Sethi,
Office: 8th Floor, Eros Corporate Tower, Nehru Place,
New Delhi -110019



...Applicant

Vs.

1 Joint Commissionior, Municipal Corporation Chandigarh

New Deluxe Building, Sector 17, Chandigarh - 160017

...Respondent No.1

2 Navneet Gupta, Liquidator James Hotels Limited

H. NO. 1598, First Floor,
sector 22-8, Chandigarh - 160022

...Respondent No. 2

In the main matter of:

CP(IB) No.15/Chd/Chd/2017

(An application under section 7 of the Insolvency and Bankruptcy Code, 2016)

PUNJAB NATIONAL BANK

.....Petitioner/ Financial Creditor

Vs.

JAMES HOTELS LTD

.....Respondent/Corporate Debtor

Order delivered on: 31.07.2026

CORAM: MR. KAUSHALENDRA KUMAR SINGH, MEMBER(TECHNICAL)

MR. KHETRABASI BISWAL, MEMBER (JUDICIAL)

Present:-

For the Applicant : Mr. NPS Chawla, Advocate and Mr. G.S. Sarin, PCS

For the Respondent No. 1 : Ms. Vandana Kohli, Advocate



For the Respondent No. 2 : Mr. Aalok Jagga, Mr. Sahil Lohan, Mr.
APS Madaan, Advocates

ORDER

IA(IBC)/89(CH)2023 & 90(CH)2023

Since both the Interlocutory Application bearing **IA(IBC)/89(CH)2023** & **IA(IBC)/90(CH)2023** are arising out of the same liquidation proceedings, between the same parties and emanate from the property tax demands raised by Respondent No.1 after the sale of the Corporate Debtor as a going concern, the issues involved are being common and interconnected, both the Applications are considered together and are disposed of by this common order.

2. The Interlocutory Application bearing **IA(IBC)/89(CH)2023** has been filed by **Nehru Place Hotels and Real Estates Private Limited** (hereinafter referred to as the “Applicant”) stated to be successful bidder in the e-auction conducted by **Navneet Gupta, Liquidator of James Hotels Limited** (hereinafter referred to as the ‘Respondent No.2’) under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “Code”) read with Rule 11 of the National Company Law Tribunal Rules, 2016 (hereinafter referred to as the ‘NCLT Rules’) seeking quashing and setting aside of the attachment order dated 26.12.2022 issued by the **Joint Commissioner, Municipal Corporation Chandigarh** (hereinafter referred to as the ‘Respondent No.1), the demand



notice dated 26.11.2022 forming the basis thereof, and all consequential proceedings arising therefrom.

3. The Interlocutory Application bearing **IA(IBC)/90(CH)2023** has been filed by the Applicant, being the successful bidder, inter alia, seeking interim stay of the operation and effect of the demand notice dated 26.11.2022 and the attachment order dated 26.12.2022 issued by Respondent No. 1 during the pendency of IA(IBC)/89(CH)2023, wherein the Applicant has sought quashing of the said demand notice and attachment order.

BRIEF FACTS

4. The averments made by the Applicant in its Application and as narrated by the Learned Counsel are summarised as under:

(i) The Corporate Debtor was incorporated on 25.08.1980 as a publicly listed company under the name Mehfil Restaurants & Hotels Private Limited. The Chandigarh Administration entered into a lease deed with Mehfil Restaurants & Hotels Private Limited in respect of a plot bearing Block No. 10, Sector 17, Chandigarh, measuring approximately 9603 sq. yards, on which the hotel property is situated. The lease was for a period of 99 years. Subsequently, the name of the Corporate Debtor was changed to James Hotels Limited.

(ii) The account of the Corporate Debtor was declared Non-Performing Asset (NPA) on 30.06.2014. Thereafter, Punjab National Bank filed an



application under Section 7 of the Code before this Adjudicating Authority bearing CP (IB) No. 15/Chd/CHD/2017 for initiation of CIRP. Vide order dated 27.04.2017, the Corporate Debtor was admitted into Corporate Insolvency Resolution process (hereinafter referred to as the 'CIRP').

(iii) A public announcement was issued inviting claims from all creditors. Respondent No. 1 did not file any claim before the Resolution Professional during CIRP. On 19.09.2018, Respondent No. 1 issued a demand notice to the Corporate Debtor claiming property tax dues. Respondent No. 2, vide letter dated 27.09.2018, replied stating that property tax had been regularly paid as per invoices raised and no dues were pending. Thereafter, Respondent No. 2 sought clarification from Respondent No. 1 regarding retrospective application of revised property tax rates; however, no reply was received.

(iv) As no resolution plan was approved by the Committee of Creditors, liquidation of the Corporate Debtor was ordered and Respondent No. 2 was appointed as Liquidator. During liquidation, claims were invited from stakeholders; however, Respondent No. 1 again did not submit any claim.

(v) The Liquidator proceeded to sell the Corporate Debtor as a going concern and issued multiple sale notices to maximize value. Ultimately, a fresh auction notice dated 18.12.2019 was issued fixing reserve price at



Rs. 150 crores. The Applicant participated in the auction and was declared the successful bidder on 03.02.2020 for a consideration of Rs. 150.05 crores. A Letter of Intent (LOI) dated 06.02.2020 was issued in its favour. The Applicant deposited the entire bid amount on 21.02.2020. Thereafter, a sale confirmation letter dated 20.03.2020 was issued by the Liquidator, declaring completion of sale of the Corporate Debtor as a going concern and transfer of ownership to the Applicant.

(vi) Thereafter, Respondent No. 1 issued a property tax bill dated 01.04.2020 bearing PID No. 130463 under Section 101 of the Punjab Municipal Corporation Act, 1976 for the financial year 2020–21 in respect of the property in question. As per the said bill, the net property tax payable for the year 2020–21 was Rs. 8,71,237/- (due date 31.05.2020). The bill also included arrears of previous years amounting to Rs. 1,98,05,365/-, stated to pertain to the period commencing from the year 2004 onwards.

(vii) Respondent No. 1 had not filed any claim before the Resolution Professional/Liquidator during CIRP or liquidation. Following completion of sale, changes were effected in the management and board of the Corporate Debtor, and new directors were appointed. The shareholding structure of the Corporate Debtor also underwent complete change, with extinguishment of earlier shareholding and issuance of fresh securities.



Control and management of the Corporate Debtor stood transferred to the Applicant post sale as a going concern. Applicant and its management were not related to the erstwhile management of the Corporate Debtor and were eligible under Section 29A of the Code. In view of change in management and as per the provisions of the Code, liabilities pertaining to the period prior to CIRP cannot be fastened upon the Applicant.

(viii) In response to the demand raised by Respondent No. 1, Respondent No. 2 issued a detailed reply dated 27.07.2020 with reference to Property Tax Bill bearing PID No. 130463 dated 01.04.2020. In the said reply, Respondent No. 2 furnished details of payments made towards property tax for the period from 22.11.2004 to 31.03.2019, stating that payments had been made as per bills raised from time to time. It was also recorded in the said reply that no arrears had been reflected in the earlier property tax bills issued prior to the demand dated 19.09.2018. Further, Respondent No. 2 referred to the demand notice dated 19.09.2018 raising an amount of Rs. 57,87,779/- towards alleged arrears and stated that details of payments along with deposit slips and calculations had been provided. Respondent No. 2 also sought clarification and supporting documents from Respondent No. 1 regarding the basis of revision of property tax and its retrospective application. Respondent No. 1,



however, continued to raise demands alleging arrears and issued further communications in this regard. The demand raised included recalculation of property tax for earlier years along with interest.

(ix) Respondent No. 2 reiterated that Respondent No. 1 had not filed any claim during CIRP/liquidation and therefore such claims stood extinguished. Thereafter, Respondent No. 2 issued a further communication dated 27.10.2020 to Respondent No. 1 with reference to earlier correspondence, including a letter dated 07.10.2020 issued by Respondent No. 1. In the said communication, Respondent No. 2 referred to the property tax demands raised by Respondent No. 1 and recorded that payments towards property tax had been made by the Corporate Debtor in accordance with the bills raised from time to time. Respondent No. 2 also referred to the demand raised via Property Tax Bill bearing PID No. 130463 dated 01.04.2020 and the earlier demand notice dated 19.09.2018. The said communication also made reference to the transfer of ownership of the Corporate Debtor pursuant to sale as a going concern and the consequent change in management and control.

(x) Subsequently, Respondent No. 1 issued another property tax demand bill dated 01.04.2021 for the financial year 2021–22 in respect of the subject property. As per the said bill, property tax of Rs. 8,71,236/- was levied for the year 2021–22 along with an additional amount of Rs.



75,04,387/- towards arrears of previous years. Prior to the due date mentioned in the said bill, Respondent No. 1 initiated coercive action by issuing an attachment order against the property of the Corporate Debtor. Thereafter, the Corporate Debtor made payment of Rs. 8,71,236/- towards property tax for the year 2021-22. The amount of annual property tax for the year 2021-22 was similar to the amount reflected for the previous financial year 2020-21. Despite knowledge of CIRP and liquidation proceedings, Respondent No. 1 continued to raise demands towards alleged arrears for prior periods.

(xi) Respondent No. 1 issued an attachment order dated 27.04.2021 attaching the property of the Corporate Debtor under Section 138 of the Punjab Municipal Corporation Act, 1976. Various representations were made by Respondent No. 2 and the Applicant seeking withdrawal of the attachment order and personal hearing was conducted. Respondent No. 1, however, rejected the representations and raised further demand for Rs. 78,99,926/-. Further representations and RTI proceedings were undertaken by the Applicant to obtain the basis of the demand.

(xii) Corporate Debtor has continued to pay current property tax for subsequent financial years. The Applicant has placed on record payments made towards property tax for financial years 2020-21, 2021-22 and 2022-23. Thereafter, the Applicant received the impugned



attachment order dated 26.12.2022 issued by Respondent No. 1 directing attachment of the property of the Corporate Debtor and disconnection of essential services.

(xiii) Applicant has relied on the judgement of Hon'ble Apex Court passed in the matter of *Manish Kumar v. Union of India & Ors.*, WP (C) No. 209/2020, judgment of the Division Bench of the Hon'ble Rajasthan High Court in *Ultra Tech Nathdwara ment Limited, in Civil Writ Petition No. 9480 of 2119* and National Company Law Appellate Tribunal order dated 17.02.2020 in *JSW Steel Limited v. Mahender Kumar khandelwal Company Appeal (AT) (Insolvency) No. 957 of 2019*.

REPLY OF THE RESPONDENT NO.1 :

5. The Respondent No. 1 i.e. the Municipal Corporation, Chandigarh has denied the averments made by the Applicant by the submissions made by the Respondent in its reply and its written submissions which are summarized hereunder:

(i) The Corporate Debtor was granted leasehold rights in respect of a plot situated at Block No. 10, Sector 17, Chandigarh, measuring 9603 sq. yards for a period of 99 years. A lease deed dated 23.01.1986 was executed between the Chandigarh Administration and the Corporate Debtor. As per the terms of the lease deed dated 23.01.1986, the lessee



was required to pay all rates, taxes, charges and assessments imposed on the property from time to time.

(ii) In the year 2003, revised rates of property tax were brought into effect via the Chandigarh Municipal Corporation (Tax on Commercial, Industrial and Institutional Lands and Buildings) Bye Laws, 2003. In or around the year 2018, it was observed that the property of the Corporate Debtor had been assessed under an incorrect category for property tax purposes, and accordingly a recovery notice dated 19.09.2018 was issued for arrears amounting to Rs. 57,87,779/-. The property of the Corporate Debtor was required to be assessed at commercial rates as per Group 1, Zone A under the 2003 Bye Laws.

(iii) Respondent No. 2 admits that the property tax leviable on the property in question is at commercial rate as per Group 1 Zone A provided in the 2003 Bye Laws. In this regard the demand notices dated 01.04.2020 and 01.04.2021 may be adverted to which levy the property tax for the current year at commercial rate as per Group 1 Zone A provided in the 2003 Bye Laws, and which have been paid by the Respondent No. 2 without the arrears/outstanding dues for wrongly assessed previous years.

(iv) The Corporate Debtor, in its reply dated 01.10.2018 to the recovery notice dated 19.09.2018, acknowledged the applicability of commercial



rates and sought details regarding the revised assessment. Despite the existence of the liability on the Corporate Debtor in respect of "arrears of property tax" and penalty for non-payment Respondent No.2 did not pay such outstanding dues - rather proceeded to sell the Corporate Debtor AS A GOING CONCERN on "AS IS WHERE IS WHATEVER IS AND WITHOUT RECOURSE BASIS".

(v) As per the terms and conditions of the e-Auction Notice dated 28.12.2019 and E-auction Process Information Sheet, notwithstanding submission or nonsubmission of the claim by the Respondent-Municipal Corporation on account of liability of the Corporate Debtor as regards the outstanding property tax dues before the Liquidator it was incumbent upon the Successful Bidder i.e. the Applicant to make its independent inquiry by carrying out due diligence to ascertain any outstanding/pending liabilities/encumbrances.

(vi) No such due diligence was carried by the Applicant rather provisions of the code are being adverted to absolve itself of liability it agreed/undertook to pay as a condition of buying the Corporate Debtor as a going concern on "AS IS WHERE IS WHATEVER IS AND WITHOUT RECOURSE BASIS". Had an independent inquiry into the affairs of the Corporate Debtor been carried out the Applicant would have stumbled upon the liability of outstanding arrears of property tax, which are now



being sought to be erroneously extinguished as Pre-CIRP dues. In this regard, even the Letter of Intent (LOI) dated 06.02.2020 and Sale Confirmation Certificate (SCC) dated 20.03.2020 bind the Successful Bidder i.e., the Applicant by the terms and conditions set out in the auction notice dated 18.12.2019 especially Condition No. 4 and 9 thereof.

(vii) The total liability in respect of the outstanding dues calculated as on 09.01.2023 is Rs 83,56,434/- and its detailed calculation sheet is annexed as Annexure R-3 of the reply.

(viii) The sale of Corporate Debtor on Going Concern Basis includes both assets and liabilities. This was held by Hon'ble NCLAT vide its order dated 11.01.2022 in *M/s Visisth Services Limited VS. S.V. Ramani in Company Appeal (At) (Insolvency) No. 896 of 2020* in the similar circumstances of the present case. The coordinate bench of Hon'ble NCLAT, Chennai Bench in its order dated 15.02.2022 in *I.A./1215/CHE/2021 in CP/699/IB/2017 in S. Viswanathan Vs. Pixtronic Global Technologies Pvt. Ltd* by relying on the above judgement of the Hon'ble NCLAT in *M/s Visisth Services Limited VS. S.V. Ramani in Company Appeal (AT) (Insolvency) No. 896 of 2020* clearly held that the Sale of Corporate Debtor as a 'Going Concern 'as is where is' basis under Regulation 32 A of the IBBI (Liquidation Process) Regulations, 2016 and



the Code means sale of assets as well as liabilities and not assets sans liabilities.

(ix) There is limited protection to Auction Purchasers. Non-registration of claim is not material in leasehold especially when conditions of auction stipulate payment of dues in respect of the asset by the auction purchase. Thus, the clearance of liability in respect of property tax, the payment of which is even a specific condition of maintaining leasehold rights was incumbent upon the Applicant for being successfully recognized as the Auction Purchaser. Failing this, not only does the Applicant violate the conditions of the Lease Deed dated 23.01.1986 but also violate the terms and conditions of auction notice dated 18.12.2019. Hence the dues in the present case partake the character of statutory contractual dues/obligations.

(x) On similar facts, albeit in the context of lease rent the arrears of which were not paid by the Auction Purchaser citing various provisions of the IBC, 2016 as is being done in the present case, the Hon'ble High Court of Allahabad in *CWP No. 10123 of 2021 titled Palika Towns LLP Vs. State of UP and 2 others* categorically held as under:

“38. Nonetheless, the sale certificate dated 30.07.2021 itself pressed into service the contractual obligation as set out in the lease deed and Transfer Memorandum as these are the instruments which not



only delivered the possession of the lease land but also created relationship of lessor and lessee. In the opinion of the Court the IBC Code 2016 only grants limited protection to the petitioner to be inducted by mode of stepping into the shoes of Corporate Debtor, however, in order to be a lessee the conditions so provided in the lease deed and the Transfer Memorandum are to be adhered to. This Court has also to bear in mind the fact that the petitioner rights as a lessee has not been created by any fiction of law, however, the same is to be governed by the obligation so contained in the lease deed. Thus, this Court is of the firm opinion that IBC Code-2016 does not grant any protection to the petitioner for possessing the status of an auction purchaser in such a manner so as to wriggle out from the contractual obligation of nonpayment of lease rents in the light of doctrine of "AS IS WHERE IS", "AS IS WHAT IS", "WHATEVER THERE IS" AND "NO RECOURSE."

(xi) Similar view has been taken by the Hon'ble Supreme Court in *Telangana State Southern Power Distribution Company Anisha Limited and another v. Srigdhaa Beverages*, (2020) 6 SCC 404 albeit in respect of payment of outstanding electricity dues by the Auction Purchaser holding that when the sale is on "as is where is, whatever there is and without recourse basis, the liability to pay outstanding dues exists on the auction purchaser.



REPLY OF THE RESPONDENT NO.2 :

6. The Respondent no. 2 i.e. the Liquidator has denied the averments made by the Applicant and has made the following submissions:

(i) During the CIRP and liquidation period, the Corporate Debtor had continued to pay the regular yearly property tax as per bills raised from time to time. during CIRP. The present case is relating to arrears of property tax with respect to the period commencing from year 2003 and in respect of which no claim were filed on the due dates as per the CIRP/liquidation process, thus such demands for arrears are not payable as they stand extinguished on the principle of clean slate theory. It is a settled law in the case of *Swastik Aqua Limited And Ors. Versus Jharkhand Bijli Vitran Nigam Limited & Ors.* held by the Hon'ble NCLAT that the pre-CIRP dues cannot be recovered from the successful resolution applicant where claims in relation to such pre-CIRP dues was not filed during the CIRP. The electricity of the corporate debtor cannot be disconnected on the basis of such non-payment of such pre-CIRP dues.

(ii) Respondent No. 1 did not raise any objection during the CIRP or liquidation period regarding alleged arrears of property tax and no such dues were reflected in the earlier bills issued prior to 2018.



(iii) The Respondent No. 2 relied on judgement of the Hon'ble Apex Court in *Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta*, (2020) 8 SCC 531 where it has categorically laid down that all the past claims/ liabilities/ demands relating to the period prior to sale of the Corporate Debtor as a going concern stand extinguished. Further, reliance was placed on the judgement of Hon'ble Supreme Court in *Ghanshyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*, (2021) 9 SCC, Hon'ble NCLT, Mumbai Bench, in *Gaurav Jain v. Sanjay Gupta*, 2021 SCC OnLine NCLT 489.

(iv) The Hon'ble NCLAT in its subsequent order in *Shiv Shakti Inter Globe Exports Pvt. Ltd. V. KTC Foods Pvt. Ltd.*, (2022) SCC OnLine NCLAT the Hon'ble NCLAT has observed that while approving a 'Corporate Debtor' sale as a 'going concern' in Liquidation Proceedings, once the sale proceeds are distributed in the manner prescribed under Section 53 of the Code, claims of any other creditors including any Government entity cannot claim its past or outstanding dues.

(v) Pursuant to auction notices dated 18.12.2019 and 28.12.2019, the Applicant emerged as the successful bidder for sale of the Corporate Debtor as a going concern. Respondent No. 2 handed over possession of the hotel premises to the successful bidder and also transferred the original title deeds in its favour. Respondent No. 2, vide reply dated



27.07.2020, responded to Property Tax Bill (PID No. 130463) dated 01.04.2020 and provided details of payments made for the period from 22.11.2004 to 31.03.2019. The Corporate Debtor had paid property tax for the financial year 2020-21 amounting to approximately Rs. 8,71,355/-.

(vi) It was brought to the notice of the Respondent No. 1 that since the department had not filed its claim with Respondent No. 2 during the CIRP and Liquidation of the Corporate Debtor, the same stands extinguished and settled at nil as per Section 53 of Code read with Section 32A of the Code.

(vii) In response thereof, on 07.10.2020, the Respondent No. 1 issued its response to the letter of Respondent No. 2 wherein it was stated by the Respondent No. 1 that earlier raised demand notice was inadvertently under the category of Institutional building, whereas the property tax at commercial rate was required to be levied. The Respondent No. 1 therefore revised its demand for the year 2020-21 to Rs. 92,85,399/- (including arrears). The calculation sheet annexed with the demand by Respondent No. 1 clearly indicates that the property tax arrears were being calculated and charged from 2004 to 2021. Such an unreasonable demand upon the Corporate Debtor is untenable for the following reasons:



(a) The Respondent No. 1 failed to issue any notice to the owner/occupier of the Corporate Debtor under Section 101 of the Punjab Municipal Corporation Act before making any revision in the property tax assessment rates.

(b) Any amendment in the property tax cannot be applied retrospectively as laid down in Section 103 of the Punjab Municipal Corporation Act.

(c) The Corporate Debtor had been duly making payments of the property tax year wise since 2004, as per the bills being raised and therefore it is completely arbitrary on the part of the Respondent No. 1 to suddenly re-assess and revise the property tax for the last sixteen years.

(d) The demand for the year 2020-21 is arbitrary and illegal on the face of it for the only reason that while the Respondent No. 1 admits that it was only on 07.10.2020 the Respondent No. 1 realized that the property tax was being assessed wrongly, the interest on the new rate has been applied from the original due date of each of the invoice, subjecting the Corporate Debtor to an unreasonable interest penalty of Rs. 38,56,603/-.

(e) Without prejudice to the above, in view of the scheme of Code the un-claimed operational debt stands extinguished and the



Corporate Debtor cannot be subjected to any liability for any offence/omission/non-compliance which has occurred before the commencement of CIRP of the Corporate Debtor.

(viii) On 27.10.2020, the Respondent No. 2 issued another representation to the Respondent No. 1 against the letter dated 07.10.2020 issued by Respondent No. 1. It was reiterated in the letter dated 27.10.2020 that the Corporate Debtor had duly made payments of all the property tax dues, as per the bills being raised and therefore nothing was payable as arrears. Respondent No. 2 issued another communication dated 27.10.2020 to Respondent No. 1 reiterating that property tax dues had been paid as per bills raised and placing on record that Respondent No. 1 had not filed any claim during CIRP or liquidation. Respondent No. 2 made further representations dated 05.05.2021 and 08.02.2022 to Respondent No. 1 requesting withdrawal of the attachment order dated 27.04.2021.

(ix) Respondent No. 1 issued a demand bill dated 01.04.2021 (PID No. 130463) for the financial year 2021-22 for Rs. 8,71,236/- along with arrears amounting to Rs. 75,04,387/-. Respondent No. 1 issued an attachment order dated 27.04.2021 under Section 138 of the Punjab Municipal Corporation Act, 1976 attaching the property of the Corporate Debtor. Thereafter, Respondent No. 1 issued another attachment order



dated 26.12.2022 directing attachment of the property and disconnection of electricity and water supply.

REJOINDER OF THE APPLICANT :

7. The rejoinder was filed by the applicant, the submissions made thereon, apart from reiterating facts already placed in the petition, are summarized as under:

(i) The Corporate Debtor has throughout the period of CIRP as well during liquidation process duly paid the regular yearly property tax, without any default and thus the objection of the Respondent that allegedly the Corporate Debtor was always aware of the arrears of property tax is without any basis. The Corporate Debtor has been regular in discharge of its liabilities towards yearly property tax, even during CIRP.

(ii) Applicant herein has acquired the Corporate Debtor by making a payment of Rs. 150.05 Crores. Further in addition thereof, a sum of Rs. 100 Crores approx. has been further spent in renovating, refurbishing and bringing the Corporate Debtor back to a viable going concern basis. Corporate Debtor has throughout continued to make the payment of the property tax levied yearly both during CIRP as well as post the sale of the Corporate debtor.

(iii) The Respondent No.1 has categorically admitted that it failed to lodge its claim. It is a settled position in the scheme of Code that a creditor



has to lodge its claim. In the present case, the Respondent No. I expect the Applicant herein to verify and enquire on the potential liabilities of the Corporate Debtor, which is outrightly beyond the scope of Code.

(iv) The Respondent No.1 has also attempted to challenge the jurisdiction by raising the issue that the competent authority to deal with the issue of arrears of property tax would be the appellate authority under the provisions of Punjab Municipal Corporation Act. The Hon'ble Apex Court in the matter of *Civil Appeal Nos. 9170-9172 of 2019 M/s. Embassy Property Developments Pvt. Ltd. v. State of Karnataka & Ors*, has clearly spelt out that under the jurisdiction of Section 60(5), this Tribunal is vested with the power to determine the issues of claims, their admissibility and right of payment, as they related to the time period during which the Corporate Debtor is under CIRP

(v) The Respondent has further attempted to rely on the ratio of *Visisth Services Ltd. v. S. V. Ramani (Liquidator), supra* to make out a case that assets and liabilities both get transferred. In the said case, an application was preferred by the Appellant, being the highest bidder in the auction, seeking direction for approval of sale of the Corporate Debtor as a going concern without transfer of any liabilities and in the alternative, if there exists any impediment to allow the same, then withdrawal from the bid and refund of the amount paid. The judgment of Hon'ble Calcutta High Court in



the matter of *Kashvi Power & Steel Pvt. Ltd. v. West Bengal State Electricity Distribution Co. Ltd. & Ors.*, W.P.A. No. 6327 /2022 clarified the aforementioned impugned judgment of the Hon'ble NCLAT.

(vi) The Hon'ble NCLAT had not referred to its order in *Visisth Services Ltd. v. S. V. Ramani (Liquidator)*, *supra* in its subsequent order in *Shiv Shakti Inter Globe Exports Pvt. Ltd. V. KTC Foods Pvt. Ltd.*, (2022) SCC Online NCLAT 85. In the said case, the NCLAT has observed that while approving a 'Corporate Debtor' sale as a 'going concern' in Liquidation Proceedings, once the sale proceeds are distributed in the manner prescribed under Section 53 of the Code, claims of any other creditors including any Government entity cannot claim its past or outstanding dues. It is pertinent to refer to Regulation 32A of Liquidation Regulations and Regulation 39C(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(vii) Another frivolous objection by the Respondent is that ratio laid down by the Hon'ble High Court in *Palika Towns LLP v. State of UP and 2 others*, *supra* is that the terms of lease deed and transfer memorandum are to be adhered to in case of a going concern sale, irrespective whether the claim was lodged or not during CIRP. The judgment of the Hon'ble High Court is misplaced and wrongly relied both under facts as well as law, for the reason that the Writ Petition was considering the maintainability of claim pursuant to the explicitly agreed contractual obligation as it was primarily



dealing with the writ of certiorari relating to refund of payments made. In the relied judgment, the terms of Transfer Memorandum dated 24.12.2020 providing for assurances to make good the arrears of lease rentals and interest thereon became part and parcel of the sale certificate dated 30.07.2021 whereas the present case is factually as well as in terms of the provisions of law involved, very distinguishable in nature, and thus the reliance by Respondent No. 1 is misplaced.

(viii) Lastly, the Respondent No. I have relied on the dictum of the Hon'ble Apex Court in the matter of *Telangana State Southern Power vs M/S Srigdhaa Beverages, supra*. The said judgment arises out of the proceedings under SARFAESI Act and the rules thereunder and does not in any manner relate to the provisions of Code. It is a settled position that Code is a special law which has an overriding effect on all other laws, and thus the reliance on the said judgment is misplaced.

(ix) The judgment in *State Tax Officer v. Rainbow Papers Ltd. (2022) ibclaw.in 107 SC* is distinguishable from the facts of the present case, inasmuch as the said decision pertains to the stage of approval of a resolution plan, whereas the present case arises in the context of sale of the Corporate Debtor as a going concern during liquidation.

(x) Mere issuance of demand notices or correspondence by Respondent No. 1 cannot be treated as submission of a claim in accordance with the



Code and the applicable regulations, which require filing of claims in the prescribed form within stipulated timelines.

(xi) Even statutory dues are required to be lodged through the claim mechanism provided under the Code, and the nature of the dues as statutory does not dispense with compliance of the prescribed procedure.

(xii) Upon sale of the Corporate Debtor as a going concern, the successful bidder acquires the Corporate Debtor on a “clean slate” basis, and liabilities pertaining to the period prior to commencement of CIRP cannot be enforced against the purchaser if such claims were not admitted in the insolvency process.

(xiii) The post-sale attachment and recovery actions initiated by Respondent No. 1, based on alleged pre-CIRP dues, are not sustainable in view of the completion of liquidation process and transfer of control of the Corporate Debtor.

(xiv) On a bare perusal of the Clause 9 of the E-auction Notice dated 17.12.2019 and 28.12.2019, it is evident that the same is a general stipulation for the Successful Bidder to discharge obligations of payment of transfer charges or any tax obligations arising out of sale of corporate debtor as a going concern. The said clause ought to be read in consonance with other terms and conditions of the E-auction Notice.



(xv) The E-Auction Notice expressly states that the asset which is envisaged to be sold is the Company as a whole as a going concern. Relevant excerpt is as follows: “Sale/Transfer of Corporate Debtor as a going concern along with all its assets including leasehold land ad-measuring 9602 sq. yards, having 138 rooms, plant & Machinery & Other current assets including fixed deposit (lien free) worth Rs. 11 crores (approx..).”

(xvi) So far as liabilities are concerned, the E-Auction Notice solely provides for current liabilities, which are necessary for running the Corporate debtor as a going concern. The Applicant has been discharging current liabilities of the Corporate debtor, including payment of property tax for the current year. As per Clause 10 – “As the corporate debtor is being managed as a going concern basis, the successful bidder has to honor and execute all commercial commitments, day to day business expenses and other liabilities relating to the corporate debtor which the liquidator/ hotel team has made till the completion of bid or the date of handover as fixed by the liquidator whichever is later”.

(xvii) However, insofar as pre-existing dues are concerned, the E-Auction Notice provides that the “sale shall be subject to provisions & regulations of IBC under the jurisdiction of the NCLT, Chandigarh Bench.” It is trite law, that all pre-existing, past dues of the Corporate debtor are extinguished in terms of Section 53 read with Section 238 of the Code in sale of Corporate



debtor as a going concern, in terms of Regulation 32 of Liquidation Regulations (as applicable on 17.10.2018 (Liquidation commencement date)). Reliance is again placed on *M/s Shiv Shakti Inter Globe Exports Pvt. Ltd. v. M/s KTC Foods Limited & Anr (CA (AT) (Ins.) 650 of 2020) (Para 21-23)*, *Anuj Bajpai v. Inderdeep Construction Company & Anr. (CA(AT)(INS) 1698 of 2024) (Para 18-20, 26)*, *M/s Levcon Valves Private Limited v. M/s Energo Engineering Projects Limited (IA No. 2819 of 2022) in CP(IB) 160/2017 [Para 12, 14 and 15]*, *Chandrashekhar NagaraI, Proprietor of CS Construction and Ors. Vs. Vikas Prakash Gupta , Liquidator of Gupta Energy Private Limited and Ors. C.P.(IB) No. 43/MB/2017 (Para 30-32)*, *Gaurav Jainv. Sanjay Gupta (Topworth Pipe) 2021 SCC Online NCLT 489 (Para 24,25,28,30,31,32,34(c))* wherein it has been clearly discussed that under sale of corporate debtor as a going concern, only assets are transferred to the successful bidder whereas, the liabilities are extinguished in terms of Section 53 of the Code.

(xviii) The sale confirmation letter awarded to the Applicant herein pursuant to deposit of entire bid amount of Rs. 150.05 crores by the Applicant herein is for takeover of the CD as a going concern. Relevant excerpt of the said Sale Confirmation Letter reads: “All claims/liabilities up to the commencement of liquidation or any claim/liabilities received after that date except for operational business liabilities would be paid and discharged in the manner as stated in section 53 of the Insolvency and



Bankruptcy Code, 2016. “All existing litigations or disputes against the Corporate Debtor shall be dealt in accordance with applicable provisions of IBC and rules thereunder and shall be paid out of the proceeds of liquidation in consultation with the financial creditors/ stakeholders in terms of Section 53 of the Code.”

(xix) The above stipulation is in line with the judgement discussed above and also the ratio of *M/s Pooran Trading Pvt. Ltd. v. M/s Apple Industries Ltd.* (IA No. 5137/2023 in CP(IBC) No. 204/ND/2019) (Para 23 to 26) and *Soumitra Lahiri, Liquidator of SKP Steel Industries Private Limited* in IA No. 1096/KB/2022 in CP IB No. 2171/KB/2019 decided on 25.07.2023 (Para 6-8), where it has been stated that sale of corporate debtor is akin to approval of a resolution plan where past liabilities are extinguished and not fastened on the Successful Bidder.

8. During the course of hearing, it was noted vide order dated 02.12.2024 that the land was allotted to the corporate debtor in the year 1986 for 99 years of lease and in the year 2003 there was change in the policy and then the self-assessment of the property tax was permitted. However, Respondent No. 1 was directed to submit the following facts along with relevant policy and relevant judgments of the Superior Court:

(a) The category under which the land was allotted to the corporate debtor in the 1986 i.e. commercial or institutional;



- (b) Whether there was any change in the category of land subsequent to the allotment along with the details of the same;
 - (c) When the self-assessment was allowed in 2023, what was the need of the demand notice;
 - (d) How the lease rent prior to the CIRP period can be claimed by the Municipal Corporation under the Insolvency & Bankruptcy Code.
- Compliance of this order was made vide affidavit dated 05.02.2025.

9. It is further stated that Respondent No. 2 filed an affidavit in compliance of order dated 21.07.2025 placing on record details of payments of property tax for subsequent years and reiterating that no claim was filed by Respondent No. 1 during CIRP or liquidation proceedings although demands were raised by Municipal Corporation Chandigarh during CIRP and liquidation process.

Analysis and findings

10. We have heard the learned counsel for the parties and perused the pleadings, documents placed on record and the submissions made by the parties.

11. The principal contention advanced by the Applicant is that Respondent No.1 admittedly did not lodge its claim either during the Corporate Insolvency Resolution Process or during liquidation and, consequently, the property tax dues pertaining to the period prior to the sale of the Corporate Debtor stood extinguished under the settled "clean slate" principle recognised under the Code. It is further contended that after acquiring the Corporate Debtor as a going concern,



the Applicant has regularly discharged the current property tax liabilities and that the present dispute is confined only to the property tax demands relating to the period prior to the auction sale.

12. At the outset, it is an admitted position that no Resolution Plan was approved during the Corporate Insolvency Resolution Process and the Corporate Debtor consequently entered liquidation, whereafter it was sold as a going concern under the Liquidation Process Regulations. In this regard it may be stated that a sale of the Corporate Debtor as a going concern seeks to preserve the business as a functional unit and shares certain common objectives with a Resolution Plan. In that sense, a going concern sale may be regarded as akin to a Resolution Plan, inasmuch as the Corporate Debtor continues as a running and operational enterprise, thereby preserving the business as a whole. However, it cannot be overlooked that the present transaction is not the result of an approved Resolution Plan under Section 31 of the Code. Rather, it is a sale conducted during liquidation in terms of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Consequently, while the objectives underlying such a sale may be comparable to those of a Resolution Plan, the rights and obligations of the Successful Bidder necessarily remain subject to the terms and conditions governing the liquidation sale and the auction documents forming part thereof.

13. From the material placed on record it is noted that the Applicant participated in the e-auction process after accepting the Sale Process



Memorandum and the conditions governing the sale. The auction documents specifically afforded every intending bidder an opportunity to undertake its own due diligence in respect of the assets, liabilities and statutory obligations of the Corporate Debtor and to seek such clarifications from the Liquidator as were considered necessary before submission of bids. The Sale Confirmation Letter itself records that the sale was subject to the terms and conditions contained in the Sale Notice. Thus, the rights and obligations flowing from the transaction are required to be examined in the light of the entire auction framework accepted by the Successful Bidder.

14. Upon examination of the auction documents, it is noticed that Clause 9 of the Liquidation Notice (E-Auction) dated 17.12.2019, which also formed part of the abridged E-Auction Notice dated 28.12.2019, provides that the Successful Bidder shall bear the applicable charges, transfer fees, statutory/non-statutory dues, taxes, rates and assessment charges in respect of the assets put to auction. The Sale Confirmation Letter, under which the Corporate Debtor ultimately came to be transferred, expressly made the sale subject to the terms and conditions contained in the Sale Notice. Consequently, Clause 9 of the Liquidation Notice forms an integral part of the contractual arrangement governing the present sale.

15. The Applicant nevertheless contends that Clause 9 of the Liquidation Notice should be understood as referring only to future taxes and not to the arrears which were subsequently demanded by Respondent No.1. We are unable to accept



the said submission. The auction documents, when read as a whole, do not expressly distinguish between pre-existing and future statutory dues, nor do they restrict the operation of the said Clause 9 to liabilities arising after the sale. In such circumstances, the contractual stipulation must be construed according to its plain and ordinary meaning.

16. Thus, through the auction document, the liability to pay taxes, if any, such as property tax related to auctioned property (hotel property) of the corporate debtor would lie upon the successful bidder. However, the remaining liabilities, upon payment of the sale proceeds in accordance to section 53 of the code to the other stakeholders, would definitely get extinguished. We also note that the liability to pay the arrears of the property tax had arisen due to the fact that in earlier demand notices issued in the year 2004 till 2018, the computation was done assuming the property as 'institutional property' whereas the same was to be computed considering the hotel property as 'commercial property' at higher rate.

17. In 2018, when the Municipal Corporation had noticed their mistake, they had sent a communication to the RP by recomputing the property tax for the entire period. The liquidator also paid the property tax under the category of 'commercial property' for the period covered in CIRP and liquidation. Thereafter, the successful bidder after taking over the management of the corporate debtor, also paid the property tax on the hotel property at applicable rate as commercial property. Thus, it is not a case that prior to the liquidation process, the liquidator was not made



aware of the revised applicable rates. The condition as per the Clause 9 has to be considered as a conscious decision of the liquidator for excluding the property tax and a like liability upon the successful bidder only.

18. The Applicant has also emphasised that Respondent No.1 did not lodge any claim before either the Resolution Professional or the Liquidator. This factual position is not disputed. Equally, the significance of such omission under the scheme of the Code cannot be understated. At the same time, the present transaction is also governed by the contractual terms voluntarily accepted by the Successful Bidder. The issue, therefore, is not whether one principle excludes the other, but whether the consequences flowing from non-filing of the claim can be reconciled with the contractual allocation of obligations contained in the auction documents. This Adjudicating Authority has therefore harmoniously construed the provisions of the Code with the contractual framework under which the Corporate Debtor was transferred as a going concern, rather than reading one in exclusion of the other.

19. The Applicant has placed considerable reliance upon the judgment of the Hon'ble NCLAT in *Shiv Shakti Inter Globe Exports Pvt. Ltd. v. K.T.C. Foods Pvt. Ltd.*, wherein it was held that after the sale of a Corporate Debtor as a going concern and distribution of the sale proceeds in accordance with Section 53 of the Code, undisclosed pre-existing liabilities cannot subsequently be fastened upon the successful purchaser. There can be no dispute with the principle laid down



therein. The factual backdrop of the said decision also bears similarity to the present case inasmuch as the Corporate Debtor therein was sold as a going concern during liquidation and the statutory authority had not lodged its claim during the insolvency proceedings. However, what assumes significance in the present matter is that the effect of Clause 9 of the auction conditions, which specifically allocates responsibility regarding statutory/non-statutory dues, taxes and assessment charges to the Successful Bidder, falls for consideration. No similar contractual stipulation has been brought to our notice as having been considered in the *Shiv Shakti* case. The present matter, therefore, requires an independent examination of the contractual obligations voluntarily accepted by the Applicant under the auction documents.

20. In these circumstances, the matter cannot be decided solely on the basis that Respondent No.1 did not lodge its claim during the insolvency process. Equally, the contractual conditions accepted by the Successful Bidder cannot be ignored or treated as having no effect. The auction documents constitute an integral part of the transaction through which the Corporate Debtor was acquired and are required to be given their due effect. The rights of the parties must therefore be determined upon a harmonious reading of the provisions of the Code together with the contractual terms governing the auction sale.

21. Accordingly, we are of the considered view that the Applicant cannot avoid liability by placing exclusive reliance upon the failure of Respondent No.1 to lodge



its claim during the insolvency process. The terms governing the sale required the Successful Bidder to bear the applicable statutory/non-statutory dues, taxes, rates and assessment charges in respect of the assets put to auction and having accepted those conditions after being afforded adequate opportunity to conduct due diligence, the Applicant cannot now seek to disown the consequences thereof. Further, we cannot disregard an express contractual term voluntarily accepted by the Successful Bidder unless such stipulation is shown to be contrary to any mandatory provision of the Code or the Regulations.

22. In view of the foregoing discussion and findings, **IA(IBC)/89(CH)2023 and IA(IBC)/90(CH)2023** stands **dismissed and disposed of**.

Sd/-
(Khetrabasi Biswal)
Member (Judicial)

Sd/-
(Kaushalendra Kumar Singh)
Member (Technical)

Jashan