

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**I.A. Nos. 313/2020, 1168/2023
In
CP (IB) No. 118/Chd/Pb/2019
(Admitted)**

Under Section 9 & 60(5) IBC 2016 44(2), IBBI

In the matter of:

V.K. Traders

...Operational Creditor

Vs.

Tripurari Agro (Pvt.) Ltd.

...Corporate Debtor

And in the matter of I.A. No. 313 of 2020:-

Canara Bank,
Having its Head office at
112, J.C. Road Bangalore

...Applicant

Vs.

1. Rajesh Kumar Loomba, Liquidator
Having its registered office at
K-208, Kismat Complex Miller Ganj
GT Road Ludhiana

2. Punjab National Bank, Corporate Branch
Bhagwati Tower, R.K. Road,
Cheema Chowk, Ludhiana-141003

...Respondents

I.A. Nos. 313/2020, 1168/2023
In
CP (IB) No. 118/Chd/Pb/2019
(Admitted)

And in the matter of I.A. No.1168 of 2023:-

Rajesh Kumar Loomba, Liquidator
M/s Tripurari Agro Private Limited

...Applicant

Vs.

1. Assistant Commissioner,
Income Tax Department
Circle-1, Aayakar Bhawan Rishi Nagar
Ludhiana, Punjab-141001

2. Principal Commissioner of Income Tax
1, Aayakar Bhawan Rishi Nagar
Ludhiana, Punjab-141001

...Respondents

Order delivered on: 12.01.2024

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

**For the Applicant in I.A. No. 313/2020: Mr. Rakshit Gupta, Advocate
For the Respondent in I.A. No. 313/2020: Mr. Pulkit Goyal, Advocate**

**For the Liquidator in I.A. No. 1168/2023: Dr. Rajansh Thukral, with
Dr. Surekha Thukral and Mr. Sidharth
Thukral**

For the Respondent in I.A. No.1168/2023: None

I.A. Nos. 313/2020, 1168/2023
In
CP (IB) No. 118/Chd/Pb/2019
(Admitted)

Per: Harnam Singh Thakur, Member (Judicial)

Subrata Kumar Dash, Member (Technical)

ORDER

I.A. No. 313 of 2020

The instant application has been filed by the applicant (Canara Bank) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code"), read with Rule 11 of the NCLT Rules, seeking directions to be issued to the Liquidator to restrain from making the plant and machinery part of the liquidation estate, as the same is exclusively charged to the applicant bank, and to accept the exclusive charge of the applicant bank over the plant and machinery of the corporate debtor and to allow the applicant bank to amend/modify the charge over the plant and machinery correctly in terms of the security documents of the applicant bank with the RoC.

2. This adjudicating authority, by order dated 07-06-2019, admitted the application filed by M/s V. K. Traders against the corporate debtor pursuant to Section 9 of the Code.

3. It is stated in the application that the applicant bank filed its claim with respect to its dues from the corporate debtor in Form C. The total facilities sanctioned by the applicant were to the tune of Rs. 12,61,08,000/-, out of which Rs. 10.00 crores were OCC, and Rs. 2,61,08,000/- was the term loan that was taken over

I.A. Nos. 313/2020, 1168/2023

In

CP (IB) No. 118/Chd/Pb/2019

(Admitted)

from the Allahabad Bank for which the plant and machinery embedded in the earth were exclusively mortgaged with the applicant (as the applicant bank has stepped into the shoes of the Allahabad Bank after takeover). The exclusive charge over the applicant's plant and machinery has never been contested by PNB. Since no expression of interest was received, the CoC approved the liquidation of the corporate debtor, and the order for liquidation was passed by this adjudicating authority on 07-02-2020.

3.1. On 06-03-2020, the applicant bank furnished the liquidator with its claim in Form-D. In doing so, the bank exercised its right under Section 52 of the IBC and specified that it would not relinquish its security interest in the corporate debtor's plant and machinery, which is currently under its exclusive charge.

3.1.1. The applicant bank was informed by the liquidator vide email dated 27-06-2020, that the document attached by the applicant bank in their claim Form-D does not substantiate the exclusive charge of the applicant bank over the plant and machinery, and hence the said property will be considered part of the liquidation estate as per Section 52 of the IBC.

3.1.2. The applicant in favour of its exclusive charge has made the following submissions:

- a) PNB, having 1st pari passu charge with the applicant over the immovable assets of the corporate debtor, never disputed the exclusive charge of the applicant bank over the plant and machinery.

- b) The letter of sanction dated 28-03-2017 concerns the Rs. 10.00 crore OCC limit, which the applicant bank holds in first joint pari pasu charge over all other assets of the corporate debtor with the exception of plant and machinery, which Allahabad Bank exclusively charged for the term loan facilities authorized by Allahabad Bank and duly registered with RoC. The applicant stepped into the shoes of Allahabad Bank, having taken over the facilities, and the charge in the name of Allahabad Bank stands transferred in the name of the applicant bank by operation of law.
- c) The application bank and the corporate debtor entered into a Common Hypothecation Agreement on 31-03-2017, which stipulates that the applicant bank is the sole creditor for plant and machinery.
- d) The letter of sanction issued by the PNB on 05-12-2017, which is in accordance with the consortium's sanction, specifies that the applicant bank has sole ownership and control of the plant and machinery.
- e) The Liquidator has not given due consideration to Clause 53(3)(b). Regulation 21 has been erroneously interpreted by the liquidator, and the applicant bank may at any time present any of the admissible documents to support his exclusive charge.

4. The respondent, in its reply dated 21-09-2020, stated that there are two financial creditors, namely the applicant, Canara Bank, and another financial creditor, Punjab National Bank, and as per record, the charge is registered under Section 77(1) of the Companies Act, 2013 with the Registrar of Companies, Chandigarh, and is pari passu between both financial creditors.

According to the respondent, the applicant's assertion that they hold an exclusive charge over the corporate debtor's plant and machinery is inconsistent with the corporate debtor's documented records. In an email dated 20-06-2020, the applicant admittedly stated that the PNB failed to include the factum regarding the applicant's purportedly exclusive charge when registering the charge with the Registrar of Companies. Accordingly, several communications were sent to the applicant by email. The copies of emails sent to the applicant are attached as Annexure R-I.

4.1. It is stated that a company's charge cannot be considered by the liquidator unless it has been duly registered under Section 77(1). Additionally, the extent of security can only be determined based on the charge that the company has registered. Pari-passu, the charge is admittedly registered in the names of two financial creditors, Punjab National Bank and Canara Bank. The applicant has submitted the subsequent documents for the record:

(a) Annexure A-8, Portfolio status report, column 8 corresponding to Charge ID at serial no. 3 having Charge ID 100065138 dated 26-11-2016, created on

21-04-2017, clearly shows Punjab National Bank as First pari passu Charge holder and the applicant as Second pari passu Charge holder;

Regarding credit facilities extended jointly by the applicant bank and Punjab National Bank, the applicant has intentionally omitted the form CHG-I that was filed for creation of charge. A copy of the aforementioned form is appended as Annexure R-2.

4.2. As per the form CHG 1, the charge is pari passu between both the financial creditors. All the documents attached to the charge registration form also clearly indicate the charge to be pari passu, and there is no exclusivity of the applicant with respect to charge of the applicant bank on plant and machinery of the corporate debtor. Therefore, in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 the applicant bank is not entitled to 'not-relinquish' its security interest.

4.3. As per the record, the loan/credit facilities sanctioned by Allahabad Bank were repaid by the corporate debtor, and the charge registered in favour of Allahabad Bank was satisfied and was vacated in accordance with the provisions of the Companies Act, 2013.

4.4. The applicant submitted and relied upon a sanction letter dated 05-12-2017. On page 74 of the letter, it is explicitly stated that "the company will fulfill the ROC charge with Allahabad Bank and State Bank of India (SBoP) prior to the release of the credit facility." As per law, the applicant was responsible for getting the new charge registered in its favour as per its contractual arrangement, which has not

I.A. Nos. 313/2020, 1168/2023

In

CP (IB) No. 118/Chd/Pb/2019

(Admitted)

been done by the applicant. A copy of the said satisfaction of charge is attached as Annexure R-3.

4.5. As stated in paragraph 6 of the application, the applicant acknowledges that he is not entitled to exclusive charge under the registered charge. Consequently, the applicant is obligated to transfer his security interest to the liquidator. At this late stage, the applicant can not use any supposed mistake on the part of the Punjab National bank to their advantage.

4.6. No affidavit from Punjab National Bank has been submitted in support of this claim by the applicant. Unregistered documents cannot be accepted by the liquidator in order to assess the applicant's rights pertaining to relinquishment or the realization of a security interest.

4.7. The applicant's exclusive charge on the basis of certain unregistered documents is replied to as under:

- a) In the event that Punjab National Bank has not challenged the applicant's exclusive charge, the applicant can approach the bank to exercise a joint right under Section 52(1)(b). After that, the bank can comply with the law and transfer all proceeds from the plant and machinery to the applicant, taking into consideration the security interest that is registered with the Registrar of Companies according to Annexure R-4.
- b) Firstly, the sanction letter does not constitute a document of creation of charge, and secondly, it does not appear on the Form CHG-1 of the documents filed with the Registrar of Companies. Thirdly, the corporate

debtor was required to settle the ROC's charge with Allahabad Bank prior to the issuance of credit facilities, in accordance with additional terms and conditions. In addition, on page 75, it is explicitly mentioned that the security referred to as "facility 1" is the initial pari passu charge established with the Punjab National Bank. However, the sanction letter contains an internal condition on page 78 of the paper book, labeled "SECURITY," which states that "Canara Bank has an exclusive charge on the plant and machinery of the unit/financed by them." However, this is not formally registered with the ROC. As the aforementioned charge had already been vacated and a new charge was required to be generated, which was duly generated on 21-04-2017, the exclusivity of charge with Allahabad bank is irrelevant to the applicant.

- c) The common hypothecation agreement dated 31-03-2017 is an unregistered document and cannot be relied upon.
- d) Section 52(3)(b) lays down that the secured creditor can prove that existence of security interest, "by such other means as may be specified by the Board".
- e) The applicant has not mentioned what means have been specified by the Board. In this regard, the Ld. IBBI has specified the following means under Regulation 21 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, which reads as follows:

"21. Proving security interest.

The existence of a security interest may be proved by a secured creditor on the basis of-

(a) the records available in an information utility, if any;

(b) certificate of registration of charge issued by the Registrar of Companies; or

(c) proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India."

However, the applicant has not placed on record any of the above said three documents to demonstrate his exclusive security interest.

5. It has been stated in the applicant's rejoinder that the corporate debtor has been provided with facilities through consortium financing, with Punjab National Bank serving as the lead bank. The charge over the entire consortium's secured assets has been registered with the ROC by the lead bank, PNB.

5.1. PNB does not dispute the exclusive charge that Canara Bank has over its plant and machinery, as is further established by PNB's sanction letter and the applicant bank's common hypothecation.

5.2. It is stated that the liquidator has erred in his interpretation of subsection (3) of Section 77 of the Companies Act. It is applicable when the charge is not officially registered, as is the case here, where the exclusive charge of the applicant bank has not been specified in a clear manner. The applicant bank believed that its exclusive charge over the corporate debtor's plant and

I.A. Nos. 313/2020, 1168/2023

In

CP (IB) No. 118/Chd/Pb/2019

(Admitted)

machinery had been registered with the ROC, ever since the lead bank registered the charge with the ROC.

5.2.1. It is further stated that the liquidator has not only erroneously interpreted the provision of the Companies Act but has also misapplied its reliance on CHG-1, which in no way indicates that the corporate debtor's plant and machinery have been modified. Indeed, the aforementioned charge must be examined in conjunction with the prior charge of Allahabad Bank and the documents cited by the applicant bank from Punjab National Bank, which unequivocally establish the applicant bank's exclusive lien over the corporate debtor's plant and machinery. However, the applicant has not placed on record any of the above said three documents to demonstrate his exclusive security interest.

5.2.2. In the absence of clear evidence of a charge over the corporate debtor's plant and machinery, the liquidator cannot rely on such documents; therefore, the liquidator's verification of charge is not limited to ROC documents alone. There is no explicit provision in the code that prohibits the liquidator from examining additional documents submitted by the applicant bank in order to verify the charge.

5.3. The applicant bank has its independent exclusive charge over the plant and machinery of the corporate debtor, which is evident from the common hypothecation agreement executed between the parties.

5.4. In its written submissions, the applicant has placed reliance on the judgment in the case of ***Luxmi Fiber Limited vs. Andhra Pradesh Industrial Development Corporation Ltd.***, reported as 2015 SCC page 464, in which it was held that the Liquidator has no right to ascertain the claims and rights of the secured creditor who chose to stand outside the liquidation process.

5.5. In its written submissions, the respondent asserted that the Punjab National Bank and the applicant's registered "security interest" in the ROC is pari passu, but that the applicant's assertion of "exclusive charge" over the corporate debtor's plant and machinery as "security interest" rests on unregistered documents.

5.5.1. It is further submitted that the existence of "security interest" can be proved only in the manner provided in Regulation 21 of IBBI (Liquidation Process) Regulations, 2016.

5.5.2. It is also submitted that any claim beyond "security interest," for which a charge is registered, will be treated as an unregistered charge within the meaning of Section 77(1) of the Companies Act, 2013.

6. This Adjudicating Authority, vide order dated 05-01-2023, directed the applicant to implead PNB as respondent no. 2. An amended memo of parties was filed by the applicant vide diary no. 00561/10 dated 13-01-2023. Respondent no. 2, PNB, has declared its acceptance of the response submitted by the respondent liquidator.

7. The respondent placed on record an additional affidavit vide diary no. 00561/8 dated 08-02-2022, stating that the plant and machinery have already been sold off

I.A. Nos. 313/2020, 1168/2023

In

CP (IB) No. 118/Chd/Pb/2019

(Admitted)

with the consent of the applicant bank, as agreed to in the Stakeholders Consultation Committee held on 27-11-2020. The said sale was subject to the condition that the proceeds of realization may be kept by the liquidator in the liquidation account, which shall not be distributed among the financial creditors till the order of this Bench is received in respect of the present application.

7.1. The auction in respect of the plant and machinery was successfully concluded on 12-05-2021, for an amount of Rs. 2,43,00,000/- in favour of M/s Delhi Pasand Agro Private Limited, and the letter of intent dated 14-05-2021 was issued to the successful bidder, and the auction amount was duly received by the liquidator.

7.1.1. The financial creditors agreed to the distribution of sale proceeds in accordance with Section 53 of IBC, 2016 in the meeting held on 27-10-2021 and accordingly, out of the sale proceeds, an amount of Rs. 92,56,453/- was transferred to the account of Canara Bank on 30-10-2021.

8. We have heard the Ld. counsels and carefully gone through the records.

9. The following documents have been specifically noticed by this Bench:

- I. The sanction of credit facility issued by Punjab National Bank dated 05.12.2017, giving sanction of FBWC limit of Rs. 15 crores with total assessed PBF of Rs. 30 crores in consortium with Canara Bank. In the said letter, under the heading "Other terms and conditions," it is mentioned: "company will certify the the ROC charge with

Allahabad Bank and State Bank of India before giving of credit facility”.

- II. The Form CHG-1 filed for the corporate debtor which attaches the working capital consortium agreement to the joint date of hypothecation, mentions Punjab National Bank as the charge holder and also mentions that both Punjab National Bank and Canara Bank are pari passu charge holders over the assets of the Company. It also mentions that Punjab National Bank is the lead Banker.
- III. The Form-8 filed by Canara Bank giving particulars for the creation or modification of charge in terms of SARFAESI mentions Allahabad Bank as the charge holder.
- IV. In the email dated 20.06.2020, which is the internal email of the Canara Bank, it is suggested that “as per the interse agreement and consortium sanction letter, it is clearly mentioned and agreeable by both banks that Canara Bank has the executive charge over the Plant and Machinery financed by the Canara Bank.”
- V. The minutes of the meeting of the Stakeholders Consolidation Committee of the Corporate Debtor held on 27.11.2020, and having representation of both Canara Bank and Punjab National Bank besides Liquidator, mentioned the following:

“The Liquidator explained the meeting the sale process for the sale of assets of Corporate Debtor. He stated that the sale of assets shall be in accordance with Regulation 32 of the IBBI (Liquidation Process) Regulations 2016 and briefly explained the process of sale to the meeting. He further stated that Canara Bank (Secured Financial Creditor) had provided Term Loans to Corporate Debtor and was claiming exclusive charge on the Plant and machinery of Corporate Debtor and was not relinquishing its claim in favour of Liquidator. The Liquidator , from the record of Corporate Debtor and documents filed by Corporate Debtor on MCA site found that as per Charge document uploaded on MCA site in this regard was pari passu charge along with Punjab National Bank and no such document was filed with Registrar of Companies showing exclusive charge in favour of Canara Bank. Accordingly the Liquidator did not admit the claim of Canara Bankas having exclusive charge. The Canara bank moved an application before the NCLT Chandigarh Bench (Adjudicating Authority) to direct the Liquidator not to make Plant and Machinery of Corporate Debtor as a part of Liquidation estate. The application is yet to be decided by the NCLT (Adjudicating Authority) and the Liquidator did not started e auction process for the sale of properties of Corporate Debtor in view of pendency of this application. Mr Vinod Kumar Chief Manager

Canara Bank informed the meeting that the Financial Creditors have agreed among themselves that the Liquidator may go ahead with the Liquidation Process and sell all the assets of the Corporate Debtor through e-auction Process. He further stated that the proceeds of realization may be kept by the liquidator in the Liquidation Account, and the proceeds of sale shall not be distributed by the Liquidator among the Financial creditors till the order of NCLT is received in respect of application moved by the Canara Bank. Both representatives of Punjab National Bank and representative of Canara bank confirmed the liquidator that such agreement has been reached between the Financial Creditors.”

- VI. The minutes of the meeting of the Stakeholders Consolidation Committee of the corporate debtor held on 27.10.2020, states under the heading '**4. Discuss the distribution of sale Proceeds among stakeholders' that:**

“The Liquidator explained that in the last meeting of the stakeholders' consultation committee it was decided that the liquidator shall keep the Sale proceeds in the fixed deposit so that it may earn some return on it and accordingly the liquidator kept some part of the sale proceed i.e. Rs. 2,30,00,000/- in Fixed Deposit.

The Liquidator further informed the meeting that in view of regulation 42(2) of IBBI (Liquidation Process) Regulation 2016 the Liquidator has to mandatorily distribute the proceeds from realization within 90 days from the receipt of the amount to the stakeholders. In view of this regulation, the Liquidator has no option but to distribute the proceeds from realization within the prescribed time.

In a reply to the query raised by the Canara bank as to how the money will be distributed, the Liquidator stated that the proceeds from the sale of Liquidation assets shall be distributed in accordance with the provisions contained in section 53 of Insolvency and Bankruptcy code 2016.

The Liquidator further stated Canara Bank (Financial Creditor) time & again claiming to be exclusive charge holder of Plant and Machinery of the Corporate debtor and asking for the whole amount of sale proceeds from plant and Machinery. The Liquidator explained that the charge registered with the Registrar of companies in this regard is a Pari passu charge with Punjab National Bank and the Canara Bank is claiming exclusive charge on the basis of unregistered documents. Accordingly, the Canara Bank cannot get anything more than the security interest held by the Bank. Any claim beyond security interest

for which charge is registered will be treated as unregistered within the meaning of section 77 of the Companies Act 2013) and the liquidator does not have the power to take cognizance of any unregistered documents. So the proceeds from the sale of liquidation assets shall be distributed in accordance with the provisions contained in section 53 of the Insolvency and Bankruptcy Code 2016.

He further stated that if later on it is found that if a stakeholder was not entitled to any money received by him in distribution, there is a provision under Regulation 43 of IBBI (Liquidation Process) Regulations 2016.”

10. We have heard the Ld. counsels and have carefully gone through the records.

11. It is noticed that the common hypothecation agreement between Canara Bank and the corporate debtor was dated 31.03.2017, whereas the date of instrument creating or modifying the charge is given as 21.04.2017 in Form no. CHG-1, which was uploaded in the MCA portal.

11.1. We have also noted that only the form CHG-1 has been uploaded in the ROC portal, and none of the documents relied upon by the applicant has been similarly uploaded on ROC portal. Canara Bank has also submitted that its claim for exclusive charge should be examined in conjunction with the prior charge of Allahabad Bank. We, however, are not persuaded by these arguments because the charge registered in favour of Allahabad Bank was fully satisfied and vacated

I.A. Nos. 313/2020, 1168/2023

In

CP (IB) No. 118/Chd/Pb/2019

(Admitted)

before the parties to the present application placed in. The applicant itself has relied upon the sanction letter dated 05.12.2017, which explicitly states that the company will fulfill the RoC with Allahabad Bank, State Bank of India (SBOP) before the release of credit facility.

11.2. We further note that Regulation 21 of the IBC (Liquidation Process Regulation, 2016) lays down three ways of proving the security interest, but the applicant has not been able to place any such record before the Liquidator as stipulated in Regulation 21. The other documents relied upon by the applicant are only their internal communication, which has limited evidentiary value in the context of the issue at hand. Thus, we agree with the Ld. Liquidator that only registered documents can be taken cognizance by him as stipulated in the Regulation 21, while deciding the issue of charge over the impugned property.

12. We, therefore, find no acceptable evidence on record to support the claim of exclusive charge claimed by the applicant.

13. Thus, I.A. No. 313 of 2020 stands dismissed and is disposed of accordingly.

I.A. No. 1168/2023

1. The present application has been filed under Section 60(5) of the IBC 2016 read with Rule 11 of the NCLT Rules, 2016 by Mr. Rajesh Kumar Loomba, the Liquidator for M/S Tripurari Agro Private Limited, against Assistant Commissioner of Income Tax at Circle-1, Ludhiana (respondent

no. 1), and Principal Commissioner of Income Tax at Aayakar Bhawan, Ludhiana (respondent no. 2), seeking directions for setting aside the impugned order dated 31-03-2023, passed under Clause (D) of Section 148A of the Income Tax Act, 1961, along with the impugned notice dated March 31, 2023.

2. The brief facts of the application are stated below:

2.1. In response to an application filed by its operational creditor M/s V.K. Traders under Section 9 of the IBC, 2016, the corporate debtor, M/s Tripurari Agro Private Limited (henceforth referred to as the "CD" or the "Corporate Debtor"), this Tribunal issued an order dated 7-06-2019 subjecting the corporate debtor to CIRP. Mr. Suresh Kumar Bansal was appointed as the IRP, and a moratorium under Section 14 was imposed.

2.1.2. On 7-02-2020, this adjudicating authority passed an order for liquidation wherein the applicant, Mr. Rajesh Kumar Loomba, was appointed as the liquidator, and a moratorium in terms of Section 33(5) of the IBC was imposed in the same order.

2.1.3. The applicant, in adherence to the liquidation order, sold every tangible asset of the corporate debtor throughout the liquidation process. The applicant asserts that the proceeds from the sale have been disbursed to different stakeholders in accordance with the provisions of the IBC. Furthermore, the applicant has reached the concluding phase of its

application to dissolve the corporate debtor in accordance with Section 54 of the IBC, 2016.

2.1.4. Respondent no. 1, Assistant Commissioner of Income Tax, served the applicant with a show cause notice pursuant to Section 148A of the Income Tax Act, 1961 (henceforth referred to as the IT Act) on 07-03-2023. The applicant asserts that on 13-03-2023, they provided a response to the above said notice that detailed the corporate debtor's liquidation, including the sale of all assets and the distribution of the proceeds to the stakeholders.

2.1.5. Respondent No. 1, Assistant Commissioner of Income Tax, with the approval of respondent No. 2, Principal Commissioner of Income Tax, passed an impugned order dated 31-03-2023, along with an impugned notice under Section 148 of the IT Act, and held that the reply of the applicant liquidator was not acceptable to them. The relevant para of the impugned order dated 31-03-2023 has been reproduced below;

“ The reply of the Liquidator Sh. Rakesh Kumar Loomba was considered but not found acceptable. The company has clearly made sale of stock which has collateral against the loan of 14.85 Cr. This sale has not been routed through the bank account as is clear from the information. In the absence of any substantive reply and documentary evidence, the issue requires further scrutiny of all the documents which are not made available

by the assessee arrive at a definitive conclusion. Such scrutiny can be made at the stage of assessment only.

Moreover, the Hon'ble High Court of Madras in its decision in the case of Dishnet Wireless Ltd., has clearly stated that proceedings u/s IBC- 2016, cannot dilute the right of the Income Tax Department to reopen assessment u/s 148 of the Income Tax Act. Therefore, it is a fit case for the issuance of notice u/s 148 of the Income Tax Act, 1961 as there is escapement of income of Rs 14,85,00,000/-.

As such, it is a fit case for issuance of notice under section 148 to bring that escaped income and any other income which comes to the notice subsequently during the course of assessment proceedings to tax. This order is passed with the prior approval of the Pr. Commissioner of Income Tax-1, Ludhiana.

As required u/s 148 of the IT Act, 1961, this order is attached with the notice u/s 148 of the IT Act, 1961 which is being issued separately."

2.16. The applicant claims that it is a settled law that any dues of the Income Tax Department under the Income Tax Act, 1961, are considered "operational debts." The applicant further states that even if it is assumed that the respondent determined the escaped income, even then the respondent, being an operational creditor, can at the very least file the claim before the applicant, and in the present case, the time for filing the claim is already over.

2.1.7. The applicant asserts that in the event that the Hon'ble Tribunal issues an order imposing a moratorium pursuant to Section 33(5) of the IBC, 2016, the corporate debtor shall not initiate any legal proceedings, including suits or other litigation. The applicant further stated that the provisions of the IBC prevail over the general statutory provisions of the Income Tax Act, 1961, being a special law.

2.1.8. With regards to the above contentions raised regarding the moratorium period, the applicant relies on the judicial decisions of the Hon'ble Bombay High Court in the cases of ***Murli Industries Ltd. v. ACIT (TS-1155-HC-2021(BOM))***, which in turn relied upon the Hon'ble Supreme Court's ruling in the case of ***Ghanashaym Mishra***, which held that the Revenue ought to have been diligent to verify the previous years' assessment of the corporate debtor as permissible under the law and to raise the claim, if any, before the Resolution Professional in the prescribed form within time limits prescribed under the IBC. Since the Revenue has failed to do so, the claim stood extinguished after the approval of the Resolution Plan. Reliance was also placed on *The Liquidator of the Corporate Debtor, Viz., Orion Kuries and Loans Private Limited vs The State of Kerala And Ors. MANU/KE/1245/2022*, *Haravtar Singh Arora Vs. Punjab National Bank & Ors. (2018) ibclaw.in 83 NCLAT*, *Mr. Atul Rajwadkar Vs. HDFC Bank Limited & Ors (2021) ibclaw.in 55 NCLT*, *Ms. Anju Agarwal Vs. Bombay Stock Exchange & Ors (2019) ibclaw.in 123*

*NCLAT, Union of India & Anr. Vs. Videocon Industries Ltd. & Ors. (2019)
ibclaw.in 473 NCLAT.*

3. A notice was issued to the respondent, and an affidavit of service of the same has been filed by the applicant vide diary no. 01522/1 dated 20-06-2023. Despite being given two opportunities vide orders dated 14-09-2023 and 30-10-2023, none has appeared on behalf of the respondent.
4. We have heard the Ld. counsels and carefully gone through the case records.
5. It is noted that none appeared on behalf of the respondent, Income Tax Department. As there is no effective response from the respondent, it is not possible to ascertain whether the demand is likely to arise from the issuance of notice and also the period to which the alleged concealment of income pertains. The applicant has rightly argued that the claim on behalf of the Respondent Income Tax Department was to be filed before the Liquidator within the time limit specified for the same under the Code. We presume that the demand has not yet crystallised though in the absence of any representation, it is difficult to ascertain the present status of the demand.
6. In view of such facts, we are constrained to uphold the prayer by the applicant, keeping In view of the basic principle of the IBC that the claims have to be filed before the liquidator within the time specified under the Code. We note with regret that the Income Tax Department has not taken due care to present its case, especially when such a high demand is involved. A copy

of this order be marked to the Principal Chief Commissioner of Income Tax,
NWR Region, Chandigarh, for information.

7. In the result, the application is allowed and disposed of accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

January 12 , 2023
ASG