IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH (COURT NO- II)

KOLKATA

I.A (IB) No. 490/KB/2025

In

C.P (IB) No. 182/KB/2017

An Application under Section 36(1) (n) and 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016

IN THE MATTER OF:

GUJARAT NRE COKE LIMITED

...Corporate Debtor

-And-

IN THE MATTER OF:

MR. SUMIT BINANI, Liquidator of Gujarat NRE Coke Limited

...Applicant

-Versus-

ASSESSMENT UNIT, INCOME TAX DEPARTMENT, MINISTRY OF FINANCE, GOVERNMENT OF INDIA, having its address at Income Tax Department-CPC, Post Box-1, Electronic City Post Office, Bangalore- 560100, Karnataka, India.

...Respondent

Coram:

Shri. Labh Singh, Member (Judicial)

Ms. Rekha Kantilal Shah, Member (Technical)

Appearances (via Physical/Video Conference):

For the Liquidator:

Mr. Rachit Lakhmani, Adv.

Mr. Roshan Sengputa, Adv.

Mr. Siddharth Makkar, Adv.

Mr. Sumit Binani, Liquidator.

Date of Pronouncement: 16.10.2026

O R D E R

Per: Rekha Kantilal Shah, Member (Technical)

1. The court convened through physical/hybrid mode.

2. The instant Interlocutory Application has been filed by **Mr. Sumit Binani** (herein referred to as 'Applicant') Liquidator of **Gujarat NRE Coke Limited** *inter alia* seeking following reliefs:

a) *Set aside and/or quash the Assessment Order dated 19th February 2025;*

b) *Set aside and/or quash the show cause notice dated 19th February 2025 for institution of proceedings under Section 274 read with Section 270A of the Income Tax Act, 1961;*

c) *Set aside and/or quash the show cause notice dated 19th February 2025 for institution of proceedings under Section 274 read with Section 271ACC (1) of the Income Tax Act, 1961.*

d) *Stay of the operation of the Assessment order dated 19th February 2025 till pendency of the present application;*

e) *Stay of the show cause notice dated 19th February 2025 for institution of proceedings under Section 274 read with Section 270A of the Income Tax Act, 1961 till pendency of the present application;*

f) *Ad-interim order in terms of prayers above;*

g) *Pass further Order(s) and/or directions as this Hon'ble Tribunal may deem fit and proper.*

3. **PLEADINGS AND SUBMISSION OF THE APPLICANT/LIQUIDATOR**

I. The present application has been filed by **Mr. Sumit Binani, Liquidator of M/s. Gujarat NRE Coke Limited**, the Corporate Debtor, under Sections **36(1)(n) and 60(5) of the Insolvency and Bankruptcy Code, 2016** ("the Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking, inter alia, setting aside/quashing of the Assessment Order dated **19.02.2025** passed by the Respondent for Assessment Year 2020-21 and the consequential show cause notices issued under the Income Tax Act, 1961.

II. The Corporate Debtor, **M/s. Gujarat NRE Coke Limited**, is stated to be a public limited company incorporated under the Companies Act, 1956, having its registered office at **22, Camac Street, Block-C, 5th Floor, Kolkata – 700016, West Bengal**. The Applicant was appointed as the Interim Resolution Professional of the Corporate Debtor pursuant to the order dated **07.04.2017**, whereby the Corporate Debtor was admitted into Corporate Insolvency Resolution Process ("CIRP") under Section 10 of the Code.

III. It is stated that the CIRP did not culminate in approval of any resolution plan. Consequently, this Adjudicating Authority, vide order dated **11.01.2018**, directed liquidation of the Corporate Debtor and appointed the Applicant as the Liquidator. The liquidation process of the Corporate Debtor has accordingly been continuing since **11.01.2018**.

IV. The Applicant has stated that, during the course of liquidation, various proceedings were undertaken for revival and/or realisation of the assets of the Corporate Debtor. However, the attempts for revival did not fructify and the operations of the Corporate Debtor were substantially discontinued. It is further stated that, owing to the cessation of business operations and continuing losses, a notice of suspension of work on a "no work no pay basis" was issued on **23.09.2020**, and subsequently all employees were

discharged on **20.04.2021** after the attempts for revival had failed.

V. It is the case of the Applicant that the Corporate Debtor has been incurring substantial losses and has accumulated carried-forward losses of approximately **₹13,000 crores**, as reflected in its last Income Tax Return for AY 2019-20. The Applicant has further stated that, for the relevant financial year 2019-20, the operating loss of the Corporate Debtor was approximately **₹6.10 crores**, which, after taking into consideration the estimated provision for depreciation, resulted in a net loss of approximately **₹56.51 crores** from business operations.

VI. It is further stated that the Applicant, during the liquidation proceedings, was approached by the Respondent in relation to the assessment of the Corporate Debtor for **Assessment Year 2020-21**. By notice dated **06.09.2024**, the Respondent sought information from the Applicant in relation to the assessment proceedings. The Applicant submitted its response dated **10.11.2024**, apprising the Respondent of the factual circumstances relating to the Corporate Debtor and its liquidation.

VII. Thereafter, the Respondent issued a **Show Cause Notice dated 31.12.2024**. The Applicant submitted its response dated **07.01.2025**, reiterating its stand regarding the liquidation of the Corporate Debtor and the alleged lack of legal

requirement upon the Liquidator to file an Income Tax Return during the liquidation process. Subsequently, the Respondent re-issued the Show Cause Notice on **22.01.2025** in relation to the Corporate Debtor for AY 2020-21.

VIII. The Applicant states that a personal hearing was conducted on **30.01.2025**, pursuant to which the Applicant submitted its final response dated **07.02.2025**. Notwithstanding the aforesaid submissions, the Respondent proceeded to pass the **Assessment Order dated 19.02.2025** for AY 2020-21 under Section 147 read with Sections 144 and 144B of the Income Tax Act, 1961. On the same date, the Respondent also issued show cause notices for initiation of proceedings under **Section 274 read with Section 270A** and **Section 274 read with Section 271AAC(1)** of the Income Tax Act, 1961.

IX. The Applicant has contended that the aforesaid assessment proceedings were undertaken despite the Respondent being aware that the Corporate Debtor had already been ordered to be liquidated by this Adjudicating Authority vide order dated **11.01.2018**. According to the Applicant, the initiation and continuation of the assessment proceedings and issuance of consequential show cause notices are contrary to the scheme and provisions of the Code governing the liquidation of a Corporate Debtor.

X. In support of its contention, the Applicant has relied upon the judgment of the Hon'ble National Company Law Appellate

Tribunal in **Om Prakash Agrawal, Liquidator of S. Kumars Nationwide Limited v. Chief Commissioner of Income Tax (TDS) & Anr., Company Appeal (AT) (Insolvency) No. 624 of 2020**, and has contended that a Liquidator of a company undergoing liquidation under the Code is not required to file an Income Tax Return in the circumstances pleaded in the present case.

XI. The Applicant has further contended that neither the Code nor the **IBBI (Liquidation Process) Regulations, 2016** casts an obligation upon the Liquidator to prepare financial statements or annual returns of the Corporate Debtor in liquidation in the manner contemplated under the Income Tax Act. It is therefore contended that the Respondent could not have proceeded on the basis that the Applicant was under an obligation to furnish an Income Tax Return in respect of the Corporate Debtor for the relevant assessment year.

XII. The Applicant has also stated that, owing to the truncated operations of the Corporate Debtor, there was no net income or taxable income generated during the relevant period. It is further stated that any income, had there been any, would first have been required to be applied towards the interest obligations of the secured and unsecured creditors, whose aggregate claims are stated to be approximately **₹3,900 crores**.

XIII. In the aforesaid circumstances, the Applicant has approached this Adjudicating Authority seeking, inter alia, **setting**

aside/quashing of the Assessment Order dated 19.02.2025, setting aside/quashing of the consequential show cause notices issued under Sections 274 read with Sections 270A and 271AAC (1) of the Income Tax Act, 1961, and stay of the operation of the Assessment Order and the consequential proceedings during the pendency of the present application.

4. **ANALYSIS AND FINDINGS**

I. We have heard Ld. Counsels for the Liquidator and perused the documents placed on record.

SERVICE OF NOTICE

II. We observe that the Applicant had duly served the notice upon the Respondent through **Speed Post**, bearing Consignment No. **EW184650544IN**, and as per the tracking report annexed to the application, the said notice was delivered to the Respondent on **07.04.2025**.

III. Thereafter, this Adjudicating Authority, vide order dated **11.06.2025**, directed the Registry to issue notice upon the Respondent. Subsequently, vide order dated **30.07.2025**, this Adjudicating Authority recorded that *"Notice was issued upon respondent in this matter. Notice has already been served by way of email and speed post."*

IV. Despite service of notice through the aforesaid modes, the Respondent did not appear before this Adjudicating Authority.

Accordingly, vide order dated **10.09.2025**, the matter was directed to proceed **ex-parte** against the Respondent and was thereafter listed for hearing. The relevant extract of the said order is reproduced herein below:

> *"None has appeared for the respondent in the matter. Notice has already been served, as recorded by this Tribunal in its order dated 30th July 2025. It appears that the respondent is not interested in the hearing of this matter.* ***List the matter for ex-parte hearing on 14.11.2025****".*

V. In view of the aforesaid orders and the material available on record evidencing service of notice, we are satisfied that the Respondent has been duly served and afforded sufficient opportunity to appear and make its submissions. The Respondent, however, has chosen not to contest the present application. The matter is, therefore, being considered **ex-parte** on the basis of the pleadings and documents available on record.

VI. In the present case at hand, the Corporate Debtor was ordered to be liquidated by order dated **11.01.2018** and the Income Tax Department passed the assessment order on **19.02.2025** and issued a show cause notice on **19.02.2025**.

VII. For proper adjudicating of the instant matter following issues arises for consideration:

1. *Whether the Liquidator of a Company undergoing liquidation is required to file its Income Tax Return?*
2. *Whether the Income Tax Department's action of initiating assessment proceedings under the Income Tax Act after the initiation of liquidation is in conformity with the provisions of IBC, 2016?*
3. *Whether issuance of show cause notice falls under the institution or initiation of legal proceedings as contemplated under Section 33(6) of the Code?*

ISSUE NO. 1

VIII. To address the question at hand, one must begin by examining section 139 of the Income Tax Act, 1961 (IT Act) the same is extract below:

"139. Return of Income.

(1) Every person,-

(a) being a company [or a firm]; or

(b) being a person other than a company 56[or a firm], if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed."

The above section mandates that every Company or Individual must file a tax return before the specified due date.

IX. It is worth noting that a company in the process of liquidation remains legally recognized as a company until its eventual dissolution and the removal of its name from the companies register. Consequently, a company undergoing dissolution is also obligated to file its tax return, akin to any other functioning company.

X. Section 140(c) of IT Act, specifies by whom the tax return is to be signed and verified-

> **"Return by whom to be verified.**
> *"140. The return under section 115 WD or section 139 shall be verified—*
> *.....*
> *(c) in the case of a company, by the managing director thereof, or where for any unavoidable reason such managing director is not able to verify the return, or where there is no managing director, by any director* ***thereof or any other person, as may be prescribed for this purpose****"*

XI. It is pertinent to note that The Central Board of Direct Taxes in exercise of the powers conferred by clause (c) and clause (cd) of section 140 and clause (viii) of sub-section (2) of section 288 read with section 295 of the Income-tax Act, 1961 (43 of 1961) introduced Rule 12AA into the Income-

tax Rules, 1962, by Notification No. 93/2021 dated 18.08.2021.

XII. Rule 12AA of the Income Tax Rules, 1962 (IT Rules) elaborates the **'Prescribe Person'** to be:

> ***Prescribed person for the purposes of clause (c) and clause (cd) of section 140***
> *"12AA. For the purpose of clause (c) or clause (cd), as the case may be, of section 140, any other person shall be the person, appointed by the Adjudicating Authority for discharging the duties and functions of an interim resolution professional, a resolution professional, or a liquidator, as the case may be, under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) and the rules and regulations made thereunder.*
> *Explanation.—For the purposes of this rule, "Adjudicating Authority" shall have the same meaning as assigned to it in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016)."*

It is clear from the above that the Company ordered for Liquidation by this Adjudicating Authority is also to submit its return of income like any other person. Furthermore, the Liquidator appointed under IBC is competent to verify and sign the said return of income on behalf of the Company in Liquidation.

XIII. Given the specific provisions of the IT Act which govern who should sign the tax return for companies undergoing liquidation under IBC, the general provisions applicable to

other companies in liquidation, as indicated by the second proviso under section 140(c), is irrelevant in this context. Therefore, any reference to section 178, as mentioned in the aforementioned proviso below section 140(c), is unnecessary. Moreover, it's important to note that section 178 places certain requirements on the Liquidator that are not applicable under IBC, such as informing the Assessing Officer of their appointment, allocating specific funds for potential taxes, and obtaining approval from Income Tax Authorities before disposing of any company assets, which are also irrelevant in this particular case.

XIV. We are, however, conscious of the fact that Rule 12AA was introduced with effect from 18.08.2021, whereas the Liquidator in the present case was appointed on 11.01.2018. Further, the assessment in question pertains to Assessment Year 2020–21, corresponding to Financial Year 2019–20. Thus, both the appointment of the Liquidator and the financial year under consideration precede the introduction of the aforesaid Rule.

XV. In this regard, we find it necessary to distinguish between the substantive obligation to furnish a return of income and the procedural mechanism prescribed for its verification. Rule 12AA does not independently create the liability of a company to furnish a return of income; rather, it identifies the person competent to verify such return on behalf of the

company undergoing liquidation proceedings under the Code. Therefore, the introduction of Rule 12AA cannot, by itself, be construed as creating a retrospective statutory default on the part of a Liquidator for the non-filing of a return whose original statutory due date had expired prior to the commencement of the said Rule. At the same time, the mere fact that the Liquidator was appointed prior to 18.08.2021 does not necessarily exclude the operation of Rule 12AA in relation to returns required to be verified after its commencement.

XVI. We have persuaded the order relied upon by the applicant in the matter of ***Om Prakash Agrawal v. Chief Commissioner of Income Tax***[1], dated **08.02.2021.** We observe that the aforesaid decision was rendered prior to the introduction of Rule 12AA and in the particular context of deduction of tax at source from the proceeds realised through the sale of liquidation assets. The principal controversy before the Hon'ble Appellate Tribunal concerned the effect of such deduction upon the distribution mechanism prescribed under Section 53 of the Code. The observations regarding *"the Liquidator of a Company in liquidation under the Code is not required to file Income Tax Return",* therefore, be appreciated in the context in which they were rendered. Nevertheless, the said pronouncement constitutes an important judicial exposition of

[1] (2021) ibclaw.in 54 NCLAT

the legal position prevailing prior to the amendment and cannot be disregarded while examining the obligations of a Liquidator in respect of an earlier assessment year.

XVII. Accordingly, we hold that, prior to the insertion of Rule 12AA in the IT Rules, 1962, the Liquidator was not required to file the Income-tax Return of the Corporate Debtor undergoing liquidation. The issue shall accordingly be governed by the principle laid down in ***Om Prakash Agrawal*** (supra).

ISSUE NO. 2

XVIII. In ***Employees' Provident Fund v. Jaykumar Pesumal Arlani (RP)***[2] the Hon'ble NCLAT held that **after an order of liquidation is passed, section 33(5) does not prohibit initiation or continuation of assessment proceedings**. Relevant para of the order is reproduced herein below:

> *"23. In the present case, admittedly assessment has been completed after initiation of the moratorium. We, thus, are of the view that once order of liquidation is passed, moratorium under Section 14 comes to an end and moratorium under Section 33(5), which is differently worded, comes into play. Under Section 33(5), the expression used are "suit or other legal proceeding", which occurs in Section 446 of sub-section (1) noticed above.* ***Thus, bar is only against suit or legal proceeding and there is no bar against assessment proceeding to be conducted by statutory***

[2] (2025) ibclaw.in 10 NCLAT

Authorities, *including the EPFO. Thus, after the liquidation, it is open for EPFO to carry on the assessment.* ***Section 33(5), cannot be held to apply on assessment proceedings***. *However, while looking to the expression used in Section 14(1), assessment proceedings before the EPFO, cannot be continued after initiation of CIRP.”*

(Emphasis Added)

XIX. In view of the foregoing discussion and the judicial pronouncement referred to hereinabove, we are of the considered view that the initiation and continuation of assessment proceedings by the Income Tax Department, for the purpose of determining the tax liability of the Corporate Debtor, cannot be said to be prohibited merely on account of the liquidation of the Corporate Debtor under the provisions of the Code. Section 33(5) of the Code does not operate as an embargo upon the statutory authority from undertaking assessment proceedings for determination of the tax liability.

XX. In the present case, the grievance of the Applicant is founded upon the initiation of the assessment proceedings after commencement of liquidation. In view of the settled judicial position discussed hereinabove, the mere fact that the assessment order was passed subsequent to the liquidation order does not render the assessment proceedings illegal or without jurisdiction. The Applicant has, therefore, failed to

establish any ground warranting interference by this Adjudicating Authority with the assessment proceedings on the ground urged in the present application.

ISSUES NO. 3

XXI. The liquidation order in respect of the Corporate Debtor was passed on 11.01.2018. During the liquidation process, the Respondent issued a notice dated 06.09.2024 seeking information for Assessment Year 2020–21, to which the Applicant replied on 10.11.2024, informing the Respondent of the ongoing liquidation. Thereafter, the Respondent issued a show-cause notice dated 31.12.2024, followed by a reply dated 07.01.2025 from the Applicant reiterating its objections. The Respondent subsequently re-issued the show-cause notice on 22.01.2025, pursuant to which a hearing was conducted on 30.01.2025. On 19.02.2025, the Respondent passed an assessment order under Section 147 read with Sections 144 and 144B of the Income-tax Act, 1961, and, on the same date, issued two show-cause notices proposing penalty proceedings under Section 274 read with Section 270A and Section 272 read with Section 271AAC (1) of the said Act.

XXII. The question arises for our consideration is whether the issuance of a show-cause notice proposing the initiation of penalty proceedings under the IT Act constitutes the

institution or initiation of a legal proceeding within the meaning of Section 33(6) of the Code.

XXIII. In order to adjudicate the issue at hand, it is necessary to examine the relevant provision of the Code governing legal proceedings during liquidation. In this regard, **Section 33 (6)** of the Code, as inserted by the Insolvency and Bankruptcy Code (Amendment) Act, 2026, with effect from 26.05.2026, provides as follows:

> ***(6) Where a liquidation order has been passed, no suit or other legal proceeding shall be commenced**, or if pending at the date of the liquidation order, shall be proceeded with by the liquidator, on behalf of the corporate debtor, except with the leave of the Adjudicating Authority and subject to such terms as the Adjudicating Authority may impose."*

A plain reading of the aforesaid provision makes it clear that, upon the passing of a liquidation order, the institution of a suit or other legal proceeding by or against the Corporate Debtor is barred, subject to the exceptions expressly provided therein.

XXIV. Now it is necessary to examine the meaning and scope of the expression **"Legal Proceedings"**.

- **Black's Law Dictionary**[3] defines a **"Legal Proceeding"** as "any proceedings in court of justice, whether law or equity, interlocutory or final, by which property of

[3] Black's Law Dictionary, Fourth Edition, p. 1041

debtor is seized and diverted from his general creditors." The definition goes on to state that "this term includes all proceedings authorized or sanctioned by law and brought or instituted in a court of justice or legal tribunal, for the acquiring of a right or the enforcement of a remedy."

- **As per P. Ramanatha Aiyar, Concise Law Dictionary**[4]

  "Legal Proceedings" means-

  (i) Any proceedings or inquiry in which evidence is or may be given.

  (ii) An arbitration;

  (iii) And any investigation or inquiry under the CrPC, 1973 (2 of 1974), or under any other law for the time being in force for the collection of evidence, conducted by a police officer or by any other person (not being a magistrate) authorised in this behalf by a magistrate or by any law for the time being in force. [Banker's Books Evidence Act (18 of 1891), S. 2(4)]

- The expression **"legal proceeding"** has also been defined in different statutory enactments for instance, the Explanation to **Section 4(1)(b)** of the **Rajasthan Relief Undertaking (Special Provisions) Act, 1961**, defines the

[4] P. Ramanatha Aiyar Concise Law Dictionary, Third Edition Reprint 2006 Wadhwa Nagpur, p. 677

expression to include *"any proceeding under any law before any court, tribunal, officer, authority or arbitrator, started on a plaint, petition of appeal, application, reference: or otherwise."*

XXV. According to above discussion 'Legal proceedings' ordinarily involves issuance of a show-cause notice, thereafter, affording the person concerned an opportunity to submit an explanation, adduce evidence in support of their case, and advance submissions on the questions of fact and law arising therein. The process culminates in an adjudication by the competent authority, which may result in the determination of rights and liabilities, including the quantification of amounts payable or the imposition of a penalty or fine.

XXVI. Now it is relevant to refer to **Section 136** of the IT Act, 1961, which provides that proceedings before income-tax authorities shall be deemed to be judicial proceedings for the purposes specified therein. The relevant provision reads as follows:

"Proceedings before income-tax authorities to be judicial proceedings.

136. Any proceeding under this Act before an income-tax authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code (45 of 1860) [and every income-tax authority shall be deemed to be a Civil Court for the purposes of section 195, but

not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)].”

The aforesaid provision recognises the judicial character attributed by law to proceedings before income-tax authorities for the specified statutory purposes. While Section 136, by itself, does not conclusively determine the scope of “other legal proceedings” under the Code, it is a relevant consideration in examining the nature of the proceedings contemplated under the Income-tax Act.

XXVII. We find it relevant to refer to the Master Circular dated 10.03.2017 issued by the Central Board of Excise and Customs, bearing Circular No. 1053/02/2017-CX. Paragraph 2.1 of the said Circular describes a show-cause notice as the starting point of legal proceedings and the foundational document setting out the allegations and the proposed action against the noticee. The relevant extract reads as follows:

“2.1 Show Cause notice (SCN): *Show Cause Notice (SCN) is the starting point of any legal proceedings against the party. It lays down the entire framework for the proceedings that are intended to be undertaken and therefore it should be drafted with utmost care. Issuance of SCN is a statutory requirement and it is the basic document for settlement of any dispute relating to tax liability or any punitive action to be undertaken for contravention of provisions of Central Excise Act and the rules made thereunder. A SCN offers the noticee an opportunity to submit his oral or written submission*



before the Adjudicating Authority on the charges alleged in the SCN. The issuance of show cause notice is a mandatory requirement according to the principles of natural justice which are commonly known as audi alteram partem *which means that no one should be condemned unheard.”*

Although the aforesaid Circular was issued in the context of the Central Excise legislation, it provides useful guidance in understanding the procedural significance of a show-cause notice. However, the applicability of Section 33(6) of the Code must ultimately be determined in accordance with the provisions of the Code and the judicial pronouncements governing the same.

XXVIII. We further consider it necessary to examine the relevant provisions of the IT Act under which the impugned notices have been issued. **Section 270A** of the IT Act provides for the imposition of a penalty in cases involving under-reported or misreporting income, subject to the conditions prescribed therein. **Section 271AAC (1)**, on the other hand, provides for the imposition of a penalty in cases unexplained or undisclosed income, subject to the statutory conditions applicable thereto. These provisions contemplate penal consequences upon the determination of the requisite statutory conditions. Accordingly, a show-cause notice issued proposing the imposition of such a penalty is not, in

substance, a mere request for information; rather, it calls upon the noticee to respond to the allegations forming the basis of the proposed penal action.

XXIX. In the present case, the assessment order dated 19.02.2025 expressly records the initiation of penalty proceedings. The relevant portion of the assessment order reads as follows:

> *"Assessed under section 147 r.w.s. 144B at an income of Rs. 25,66,76,874/-. The tax on total income, interest u/s 234A, 234B, 234C, 234D and fee u/s 234F is determined as per the computation sheet forming part of assessment order. Credit of tax(s) paid by the assessee, if any, is allowed. Computation of income and demand notice u/s 156 of the Act is attached.* ***Penalty proceedings under section 270A, 271AAC, of the Income Tax Act, 1961 have been initiated through notices issued separately****."*

The aforesaid recital is material because the Respondent has expressly recorded that the penalty proceedings have been initiated through separate notices. Thus, the notices dated 19.02.2025 cannot be viewed in isolation from the assessment order, which specifically identifies them as the instruments through which the penalty proceedings were set in motion.

XXX. Now we place our reliance in the case of ***Sundaresh Bhatt Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs***[5]**,** wherein the Hon'ble Supreme Court was of clear opinion that a demand notices under the Customs Act, 1962, to

[5] (2022) SCC OnLine SCC 1101

seek enforcement of custom dues during the moratorium period would clearly violate the provisions of Sections 14 or 33(5) of the IBC and further held that such demand notice are an initiation of legal proceedings against the Corporate Debtor.

XXXI. Accordingly, we hold that the show-cause notices dated 19.02.2025, insofar as they propose the initiation of penalty proceedings against the Corporate Debtor under Sections 270A and 271AAC(1) of the IT Act, are contrary to the Section 33(6) of the Code. The said notices, to that extent, cannot be proceeded with and are liable to be set aside.

5. Accordingly, **Prayer Nos. (B) And (C)**, seeking the setting aside of the two show-cause notices dated 19.02.2025 issued by the Respondent Department, are allowed. All other prayers sought by the Applicant stand declined.

6. Accordingly, **I.A. (IBC) No. 490 of 2025** is **partly allowed** in terms of above findings and **disposed of**.

7. The Registry is directed to send copies of the Order forthwith to all the parties and their representative.

8. Certified Copies of this order may be issued, if applied for, upon compliance of all requisite formalities.

(Rekha Kantilal Shah)
Member (Technical)

(Labh Singh)
Member (Judicial)

Order signed on the 16th day of October, 2026

S.T. (LRA)