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(3)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH at AHMEDABAD
COURT 1

Appeal No. 01 in IA 456 of 2018 in CP(IB) 19 of 2017

Coram: Hon'ble Ms. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 20.03.2020

Name of the Company: State Tax Officer
V/s
Abhishek Nagori Liquidator for Asian Natural Resources (India) Ltd. & Anr.

Section: Section 42of insolvency & Bankruptcy Copu

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.

(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)

(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 20th day of March, 2020.

vc

BEFORE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH at AHMEDABAD

Appeal 01 of 2019 in IA 456 OF 2018 IN
CP. (IB) 19/NCLT/AHM/2017

<u>In the matter of:</u>

Abhishek Nagori Liquidator of Asian Natural Resources (India) Ltd. & Anr.

<u>In the matter between:</u>

State Tax Officer (1)

Unit -20 /5th Floor,
Bachat Bhavan,
Relief Road,
Ahmedabad

.... Appellant

Versus

1. **Mr. Abhishek Nagori** –Liquidator for Asian Natural Resources (India) Ltd.
(Former M/s Bhatia International Ltd.)
Having office at:
330/348, 3rd Floor, Tower –A,
Atlantis K-10, Opp. Vadodara Central,
Sarabhai Main Road,
Vadodara-390023

2. **Asian Natural Resources (India) Limited**
(Former M/s Bhatia International Ltd.)
8/5, BCC House,
Navratan Baug Main Road,
Indore-452001

......Respondent

Order Delivered on 20.03.2020

<u>Appearance</u>
Mr. Soham. Joshi, Advocate for Petitioner.
Mr. Nipun Singhvi, Vishal J. Dave, Pragati Tiwari, Advocates for Liquidator(Respondent No. 1)

Coram: Hon'ble Mr.Harihar Prakash Chaturvedi, Member (J)
Hon'ble Mr.Prasanta Kumar Mohanty, Member (T)

[Per: Shri Harihar Prakash Chaturvedi, Member (Judicial)]

ORDER

1. The present appeal is filed by the State Tax Officer under section 42 of the Insolvency and Bankruptcy code, 2016 (I&B Code) challenging the rejection of claim by the Official Liquidator with following prayers.

Relief Clause:

A. "Hon'ble NCLT may set aside the order of Respondent No. 1 dated 26.11.2018, as the impugned order is bad in law and requires to be set aside.

B. Hon'ble National Company Law Tribunal may consider the unpaid dues of the Appellant as secured dues towards Government outstanding and the Appellant as "secured creditor".

C. Hon'ble Tribunal may be pleased to grant such other and further reliefs which may be deemed just, fit and proper in the interest of justice."

2. For the sake of convenience impugned communication dated 16.08.2018 r.w. order dated 26.11.2018 are also reproduced here-in-below.

(a). Abhishek Nagori.
Insolvency Professional
Liquidator for Asian Natural Resources (India) Limited
F.C.A, A.C.S., D.I.S.A, I.P
Regn. No. IBBI/IPA/001/IP-P00020/2016-17/10044
330/348. Third Floor, Tower-A. Atlantis K-10,
Opp. Vadodara Central, Sarabhai Main Road,
Vadodara-390023, Gujarat-India
E-mail: liquidation.anrl@ddip.in;jlnusb@gmail.com

Speed Post

August 16,2018

To,

Shri C A Pateol
State Tax Officer(1),
Assistant Commissioner of State Tax,
Bachat Bhavan, Relief Road,
Ahmedabad-380001
E-mail ID: ac0020-ctgujarat.gov.in

Subject: Regarding claim submitted and accepted- (liquidation proceedings of ANRIL) – The State Tax Officer (1), Unit 20- (Ahmedabad)

Reference: Letter NO. Sr/S.T.O. (1)/Unit-20/Recovery/B.No. 1507 dated 06-08-2018 and E-mail dated 06.08.2018.

Respected Sir,

We have been appointed as liquidator of M/s Asian Natural Resources India Limited (Corporate Debtor) by honorable NCLT-Ahmedabad Bench vide order dated 09.02.2018. We received your claim and subsequent information as sought and the same was analysed and verified.

The details of claim accepted in your case are:

Name of Creditor : State Tax Officer(1), Assistant Commissioner of State Tax, Unit-20, Ahmedabad

Date of Receipt of claim in

Prescribed form: 10/07/2018

Amount claimed : Rs. 15,15,78,102/-(revised)

Amount accepted: Rs. 15,15,78,102/-

Type of creditor

Remarks, if any: Statutory Creditor

You are also informed that the list of stakeholders has already been submitted with the honourable NCLT and adding new claim will require the approval of the Honorable NCLT Ahmedabad. We will file application for the same.

Please let us know if you have any objection or query.

Regards.

Your sincerely,

Abnhishek Nagori | Insolvency Professional

Liquidator for Asian Natural Resources (India) Limited

Regn. No. IBBI/IPA-001/IP-P00020/2016-17/10044.

3. ***Abhishek Nagori.
Insolvency Professional
Liquidator for Asian Natural Resources (India) Limited
F.C.A, A.C.S., D.I.S.A, I.P
Regn. No. IBBI/IPA/001/IP-P00020/2016-17/10044
330/348. Third Floor, Tower-A. Atlantis K-10,
Opp. Vadodara Central, Sarabhai Main Road,
Vadodara-390023, Gujarat-India
E-mail: liquidation.anrl@ddip.in;jlnusb@gmail.com***

Speed Post

November 26, 2018

To,

Ms. A. M. Chavda
State Tax Officer (1),
Office of Assistant Commissioner state tax,
Unit 20, 5th floor, Bachat Bhavan,
Relief road, Ahmedabad-380001
E-mail: ac0020-ct@gujarat.gov.in

Reference: letter no. O.W.D. No. STO-1/UNIT-20/RECOVERY/B.No. 2741 dated 06-11-2018

Subject: Regarding your objection for the type of creditor in case of M/s Asian Natural Resources India Limited (formerly known as M/s Bhatia International Ltd.)

Respected madam,

We have been appointed as liquidator of M/s Asian Natural Resources India Limited (Corporate Debtor) by the honoprable NCLT-Ahmedabad Bench vide order dated 09.02.2018. We received your letter no. O.W.D No-STO-1/UNIT-20/RECOVERY/B.NO. 2741 dated 06.11.2018 regarding objection for the type of creditor in case of M/s Asian Natural Resources India Limited (Formerly known as M/s Bhatia International Ltd.).

Regarding captined matter you are informed that as per Section 53 of the Insolvency and Bankruptcy Code, 2016 states that:

"(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, Namely:-

(a) The insolvency resolution process costs and the liquidation costs paid in full; secured creditor in liquidation proceedings. Distribution of assets. SEC 2] THE GAZETTE OF INDIA EXTRAORDINARY 31S
(b) The following debts which shall rank equally between and among the following:-
   (i) Workmen's dues for the period of twenty-four months preceding the liquidation commencement; and
   (ii) Debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;
(c) Wages and any unpaid dues owed to employee other tyhan workmen for the period of twelve months preceding the liquidation commencement date;
(d) Financial debts owed to unsecured creditors;
(e) The following dues shall rank equally between and among the following:-
   (i) any amount due to the Central Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
   (ii) Debts owed to a secured creditor for any amount unpaid following the enforcement security interest;
(f) Any remaining debts and dues;
(g) Preference shareholders, if any, and
(h) Equity shareholders or partners, as the case may be.

(2) Any contractual agreement between recipients under sub-section (1) with equal ranking, if distributing the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipients shall be distributed after such deduction.

Explanation. - for the purpose of this section-

(i) It is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rand equally, each of the debts will either be paid in full or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and.

(iii) The terms "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013."

We as a liquidator are bound by The Insolvency and Bankruptcy Code 2016. The Insolvency and Bankruptcy code 2016 overrides the other laws enacted in the parliament as mentioned above and prevails all over other laws. Hence we cannot consider your claim under the category of secured creditor.
Regards
Your sincerely,

Regards.

Your sincerely,

Abnhishek Nagori | Insolvency Professional

Liquidator for Asian Natural Resources (India) Limited

Regn. No. IBBI/IPA-001/IP-P00020/2016-17/10044.

Enclosed:

(i) Letter No. O.W.D No-STO-1/UNIT-20/RECOVERY/B.NO.2741 dated 06-11-2018

4. Since, the appellant State Tax Officer (1) Ahmedabad, State of Gujarat feels aggrieved with the aforesaid communication and decision of the Liquidator for treating the appellant only as a **statutory creditor and not as secured creditor**. Therefore, the present appeal moved before us under the relevant provisions of Section 42 of IBC Code, the same are being reproduced here-in-below:

"Appeal against the decision of liquidator:- A creditor may appeal to the Adjudicating Authority against the decision of the liquidator [accepting or] rejecting the claims within fourteen days of the receipt of such decision".

5. The present appeal is filed by the State Tax Officer, State of Gujarat (previously known as the Commercial Tax Department) challenging the order /communication of the liquidator for **Asian Natural Resources (India) Ltd. (Former M/s Bhatia International Ltd.)** dated 26.11.2018

whereby, the appellant's claim under the category of "Secured Creditor" has been not considered under the very said category and rejected

6. The appellant further submits that the rejection of the claim under the category of "secured Creditors" by the liquidator for Asian Natural Resource (India) Ltd. (Former M/s Bhatia International Ltd.) is completely *de hors* the provisions of section 48 of the Gujarat Value Added Tax Act, 2003 which recognizes the doctrine of the first charge on the property of a corporate debtor or from any other persons from whom any amount of tax, interest or penalty is recoverable. While considering section 48 of the Gujarat Value Added Tax, 2003 read with Section 3(31) of the Insolvency and Bankruptcy Code 2016 which pertains to "security interest", would bring the Tax dues of the appellant within the purview of "secured Creditor." For the sake of the convenience Section 3(31) of the Insolvency and Bankruptcy Code, 2016 and section 48 of the Gujarat Value Added Tax.

7. The appellant further submits that considering the provisions of both the Insolvency and Bankruptcy Code, 2016 and the Gujarat Value Added Tax, 2003, it is amply clear that the appellant has a first charge over the property of the corporate debtor which falls within the scope of **"Security Interest",** being an obligation for payment of dues arising under the Gujarat Value Added Tax, 2003.

8. The appellant has further contended that while duly considering the above mentioned two provisions this Court may also consider the provisions of section 3(30) of the Insolvency and Bankruptcy Code 2016. The aforesaid section pertains to "secured creditor", to mean a creditor in favour of whom security interest is created. Thus, it is a clear from aforesaid section that the liquidator without duly considering the said legal

proposition has rejected the claim of the appellant falling within the category of "secured creditor"

9. The appellant in support of its contention duly submitted the factual matric which constrain to the present appellant to file present appeal.

a. The respondent No.2 previously known as **M/s Bhatia International Limited** was Registered with the commercial Tax Department, Gujarat State, Ahmedabad as Non- Localised dealer at Unit-20 since 01.07.2002.

b. The respondent No. 2 got cancelled his VAT and CST registration from Ahmedabad Office with effect from 31.03.2013. Further, the Respondent No.2 Registered himself at Surat in the name of **M/s. Asian Natural Resources (India) Limited (Former M/s Bhatia International Ltd.)** On 01.04.2013.

c. The Appellant states that the assessments under respective Acts for the years 2006-07, 2010-11,2011-12 and 2012-13 were completed in the case of Corporate Debtor on various dates. The Respondent has gross outstanding Assessment dues for the years 2006-07, 2010-11, 2011-12, 2012-13 for value Added Tax -2003and/or Central Sales Tax Act-1970 to the tune of approximately Rs.15.16 cores along with applicable interest @18% as per the provisions of the Gujarat Value Added Tax Act.

10. The Appellant further submits that recovery proceedings were initiated by Authorises of Commercial Tax Department against the Respondent No.1 on 06.08.2018 as "Financial Creditor."

11. Subsequently, Respondent No.1 vide his reply dated 26.11.2018 communicated his decision of denial to consider the Appellant's claim under the category of "Secured Creditors " by citing Section 53 of the I&B Code, 2016. The Ground taken for this decision is that the said Act overrides the other laws.

12. In the case of **Central Bank of India v/s State of Kerala and Ors.,** in Civil Appeal No.95 /2005, reported at (2009) 4 SCC 94, the Hon'ble Supreme Court by citing various judgements, clearly held that, statutory first charge created in favour of the state has primacy over the right of the bank to recover it's dues and further settled the controversy about priority of claim on assets of debtor by the state and other secured creditors like banks and others.

13. The Hon'ble High Court of Gujarat in SCA/3372/2012, in the matter of Cosmos Co. Op. Bank Ltd vide order dated 23.7.2012 has taken such view that the first charge over the property shall be of the department u/s 48 of the Gujarat Value Added Tax, 2003.

14. It is submitted that the provision of Section 48 of The Gujarat VAT Act regarding first charge of Government dues is reproduced earlier. As there is no corresponding provision regarding defining secured creditor in the Gujarat Added Tax Act-2003, the question of conflicting provisions does not arise and the overriding effect of the VAT Act shall always prevail.

15. We duly considered the rival submissions made by the learned counsel for the appellant as well as for the respondent-liquidator in respect his decision/communication which is subject matter of the present appeal. The State Tax Department of Gujarat has submitted that its claim to be treated as secured creditor under the provisions of Gujarat Value Tax Act, 2003 and also in view of the definition provided for secured creditor in Section 3(30) of the IB Code reads as under:

Section 3
(30) "Secured creditor" means a creditor in favour of whom security interest is created.

(31) "security interest" means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person:

Provided that security interest shall not include a performance guarantee.

16. It is pertinent to note here that the learned liquidator while considering the claim submitted by the appellant – State Tax Department coming to such conclusion that the appellant falls within the category of statutory creditor as followed under Section 53 of IBC Code, which reads as under:

> ***(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely :—***
>
> ***(a) the insolvency resolution process costs and the liquidation costs paid in full;***
>
> ***(b) the following debts which shall rank equally between and among the following :—***
>
> ***(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and***
>
> ***(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;***
>
> ***(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;***
>
> ***(d) financial debts owed to unsecured creditors;***
>
> ***(e) the following dues shall rank equally between and among the following:—***
>
> ***(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;***
>
> ***(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;***
>
> ***(f) any remaining debts and dues;***
>
> ***(g) preference shareholders, if any; and***
>
> ***(h) equity shareholders or partners, as the case may be.***
>
> ***(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.***
>
> ***(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.***

Explanation_ For the purpose of this section—

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and

(iii) the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013.

17. In view of the above, the respondent-liquidator has submitted that he is duty bound to follow the provisions of IB Code because the provision of IBC, 2016 has been given overriding effect over the statutory provisions containing in other law made by the parliament or by the State law. Hence, the claim of the Appellant-State Tax Department can be considered in the category of **statutory creditor**. During the course of arguments the learned counsel appearing for the State of Gujarat, placed a reliance on a decision in Civil Application No. 2325 of 2019 in the matter of State of Gujarat Vs. Sanjay Kumar Agarwal. Whereby the Hon'ble Gujarat High Court by passing oral order has pleased to stay the impugned order passed by NCLT, Mumbai wherein similar issues were agitated and Hon'ble High Court of Gujarat was pleased to issue notice to the respondent and also to stay the proceeding.

18. Thus, it may be seen that the legal issue arises for our consideration that whether the statutory provision specifically made under Section 53(1)(b) (2) or under Section 53 would have an override effect over the provision of Section 48 of the Gujarat Value Added Tax Act, 2003 or otherwise. As such legal issue seems to have been seized off by the Hon'ble Gujarat High Court and the such legal position in this respect is yet to be clarified and legally settled by the Hon'ble Gujarat High Court, hence, stay order passed by the Hon'ble High Court would obviously be applicable to the concern matter until and unless the same is not stayed by the Hon'le Supreme Court or any other Higher Forum but may not be applicable to the present liquidation proceedings as the present liquidator is not a party in above stated case.

19. Since the stay has been granted by the Hon'ble Gujarat High Court in the above mentioned proceeding in Civil Application No. 23256 of 2019 in the

State of Gujarat Vs. Sanjay Kumar Agrawal. Therefore, in our humble opinion, it cannot be made squarely applicable to the present liquidation proceedings till the ratio *de condi* involved in that petition is not finally decided by the Hon'ble Gujarat High Court.

20. Therefore, in view of the above the liquidator is found to have followed the provisions of Section 53 of the I&B Code, hence, no legal infirmity can be found in its decision to treat the claim of the present appellant as a **statutory creditor and not necessarily as secured creditor.**

21. Moreover, the legal position in this respect appears to have been settled by the Hon'ble Supreme Court while examining the constitutional validity of the IBC, 2016 in its land mark decision in ***Swiss Ribbons Pvt. Ltd. vs Union Of India*** and other subsequent decisions, i.e., ***Arcelormittal India Vs. Satish Kumar, Innovative Industries Vs. ICICI Bank and Another*** and in ***Committee of Creditors of Essar Steel India Limited Vs Satish Kumar Gupta & Ors.*** Wherein the provisions of I&B Code has been found as *intra-virus* (constitutionally valid).

22. That apart it has also been held that the dues of Financial Creditor must prevail over the other dues including the statutory dues or government dues. A plain reading of the Section 53(1)(e) speaks as under:

(e) the following dues shall rank equally between and among the following:-

(i) ***any amount due to the Central Government and the State Government including the amount to be received on account of the consolidated fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;***

23. A C.P plain reading of the above stated statutory provisions gives such impression that as per the wisdom of the Legislature (Parliament) is that Government dues has not been given priority over the workers dues or the dues of the Financial Creditor but are given dues weightage and priority **as per Waterfall Mechanism** described under the provision of Section 53 of the IB Code. Therefore, in our humbly view, the liquidator has properly considered the claim of the State Tax Department as a statutory creditors and no legal infirmity seems in its decision and not treating the government claim as a secured creditor in the light of Section 238 of IB Code which gives an overriding effect to the provisions of I&B Code over the other act of the parliament or the state legislature

24. In addition to the above the above this Bench in its earlier decision in the matter of ***Mr. Sundaresh Bhatt Vs. Central Board of Indirect Taxes and Customs in [IA No. 474 of 2019 in CP (IB) No. 53/NCLT/AHM/2017]*** decided on 25th February, 2020, has taken such view **that the provisions of Insolvency and Bankruptcy Code, 2016 would have overriding effect over the Central Excise Act on the subject even both the statutes are having status of special law and contains non obstante clause under Section 142A of the Customs Act, 1962, as well as Section 11E of the Central Excise Act,. 1994** and thus will have priority for distribution of proceeds including the liquidation of assets. As the legal position in this respect has been settled by the **Hon'ble Supreme Court in its land mark decision in *Solidaire India Pvt. Ltd. Vs. Fairgrowth Financial Services Ltd. & Ors. [(2001) 3 SCC 71] and Maruti Udyog Ltd. Vs. Ram***

Lal & Ors. [(2005) 2 SCC 638. Wherein it has pleased to rule that if there are two special statutes contain non obstante provision then the later statute must prevail. Therefore, the Section 238 of I&B Code, 2016 being subsequent law to the Gujarat Value Added Tax, 2003 shall have overriding effect on it like other proceedings under the Custom Act and Central Excise Act. For the sake of convenience the relevant portion of the aforesaid decision are being reproduced herein below.

1) *We heard the counsel for both the parties at length and also perused the material available on record and judicial precedents, i.e., both the Acts, Insolvency and Bankruptcy Code, 2016 as well as Central Excise Act, on the subject, as both the statutes are having status of special law and contains non obstante clause under Section 142A of the Customs Act, 1962, as well as Section 11E of the Central Excise Act, 1994, and, thus, having priority for distribution of proceeds including the liquidation of assets.*

2) *Notwithstanding the above, the I & B Code, 2016, is also a special law and make provision for non obstante clause under Section 238 of the Code, which is having overriding effect over other prevailing law and statue, time being in force. Section 238 of the Code speaks as under;*

> *"238. Provisions of this Code to override other laws*
>
> ***The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law".***

3) *Further Section 53 of the Code provides a Waterfall Mechanism, as under*

> ***Section 53: Distribution of Assets***
>
> *(1)* ***Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely :—***
>
> ***(a) the insolvency resolution process costs and the liquidation costs paid in full;***
> ***(b) the following debts which shall rank equally between and among the following :—***
> ***workmen's dues for the period of twenty-four months preceding***

the liquidation commencement date; and
debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors;

(e) the following dues shall rank equally between and among the following:—
any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and
(h) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

Explanation: For the purpose of this section—

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and

(ii) the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013.

4) *In addition to the above, Hon'ble Supreme Court came to an occasion to examine similar legal position in its landmark decision in* **Solidaire India Pvt. Ltd. v. Fairgrowth Financial Services Ltd. & Ors. [(2001) 3 SCC 71] and Maruti Udyog Ltd. v. Ram Lal & Ors. [(2005) 2 SCC 638]**, *wherein Their Lordships have pleased to observe and rule that if there are there are two special statues, which contain non obstante provisions, the later statute must prevail. Therefore, by virtue of Section 238 of the Code being the later statute, the Applicant submits that Section 238 of the Insolvency and Bankruptcy Code, 2016, being a subsequent law, the proceedings contained therein shall have overriding effect on the other proceedings of Custom Act and Central Excise Act. Therefore, by following the above stated ruling, in our humble view, the provisions of Section 53* *described about the Insolvency and Bankruptcy Code, which provides manner for priority to be given for making distribution of proceedings from sale of liquidation assets shall prevail over the provisions of Section 11(e) of the Central Excise Act and other provisions of Customs Act. Hence, the Respondents' Department cannot legally withhold the releasing of the material/goods, which the property of the Corporate Debtor company (in liquidation) as pre-requisite condition for making the Customs duty by the Liquidator of Corporate Debtor company (in liquidation), because the claims of the respondents' departments have to be treated as Government dues and needs to be dealt with under the Waterfall Mechanism of Section 53 of Insolvency and Bankruptcy Code. Further, the adequate interest of the respondents/Central Excise Department to be taken care of by the Liquidator while disposing of the assets and it will get proportionate amount as per its admissibility and preference. Therefore, the respondents' department are legally expected to release the goods/material without further delay, which are lying in Customs Bonded Warehouses (Exhibit-A) unconditionally. Otherwise, it may tantamount to the violation of Section 238A read with Section 53 of the Insolvency and Bankruptcy Code, 2016. Moreover, such position has further been settled by the Hon'ble National Company Law Appellate Tribunal in the matter of* ***Pr. Director General of Income Tax v. M/s. Synergies Dooray Automobiles Ltd. & Ors. [Company Appeal (AT) (Insolvency) No.205 of 2017], whereby Their Lordship have held as such:***

> ***"the Income Tax Department, Sales Tax Department and other legal authorities having a statutory claims come with the meaning of the term 'Operational Creditor' thereby clarifying that the statutory authorities are not to get priority in payments as compared to the workmen and employees or the secured financial creditors of a corporate debtor. However, since the present case is that of liquidation, section 53 of the Code provides for the mechanism and the order of priority for distribution of proceeds from the sale of assets of the corporate debtor. Dues payable to the Central or State Governments, as the case may be, are included under section 53(e) (i) of the Code".***

5) By this decision, the Hon'ble National Company Law Appellate Tribunal has pleased to direct to the Income Tax Department to lift its attachment order so as to facilitate the Corporate Insolvency Resolution Process (CIRP) proceedings being conducted under the Insolvency and Bankruptcy Code, 2016.

25. Moreover, in the light of the recent decision of Hon'ble Supreme Court in the matter of ***Committee of Creditors of Essar Steel India Limited Vs Satish Kumar Gupta & Ors.,*** wherein their lordships have held that even in the resolution plan the distribution of assets

among creditors the Financial Creditor ought to be given priority over the dues of the Operational Creditor and other government duesand in this respect the decision of the CoC would be conclusive and cannot be interfered with.In the light of the above decision, in our view,the present appeal is not legally sustainable and accordingly dismissed with such observations.

26. With the aforesaid observations the present Appeal is disposed of accordingly.

(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (T)

(HariharPrakashChaturvedi)
Adjudicating Authority &
Member (J)

SEN