



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
SPECIAL BENCH, BENGALURU**  
**(Exercising powers of Adjudicating Authority under  
The Insolvency and Bankruptcy Code, 2016)**  
**(Through Web-Based Video Conferencing)**

**IA No. 192 of 2023 &  
IA No. 193 of 2023**

C.P. (IB)No.324/BB/2019  
U/s.43 & 60 of the IBC, 2016  
R/w Rule 11 of NCLT Rules, 2016

**In the matter of:**

**I.A 192 of 2023 and I.A 193 of 2023**

**Commissioner of Customs Import- I**

Zone- I, New Customs House,  
Ballard Estate, Fort,  
Mumbai- 400 001.

Applicant

**Versus**

**Mr. Ritesh Prakash Adatiya**

B- 401, The First, B/h ITC Hotel,  
B/s Keshavbaugh Party Plot, Vastrapur,  
Ahmadabad,  
Gujarat 380 015.

Respondent

**Order Delivered on: 15<sup>th</sup> September, 2023**

**Coram:** 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)  
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**Parties/Counsels Present:**

The RP : Shri Abhijit Atur  
For the Applicant : Shri Subir Kumar

Page 1 of 5

IA NO 192 OF 2023&  
I.A No. 193 OF 2023 in  
CP (IB) No. 324/BB/2019



## **ORDER**

**Per: T. Krishnavalli, Member (Judicial)**

### **I.A 192 of 2023**

1. The present petition is filed on 01.03.2023 by Commissioner of Customs Import- I seeking for directions against the respondent, Resolution Professional for Non-Consideration of claims under section 60(5) of IBC, 2016.
2. The facts of the case are mentioned below:
  - a) It is submitted that the Resolution Professional has not assisted and considered the claims of the Applicant to the tune of Rs. 22,32,860/- which is liable to be recovered under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962 and applicable penalty under Section 114AA of the Customs Act, 1962, on the ground that:
    - (i) The Applicant issued the Show Cause Notice dated 21.08.2020 under Section 124 read with Section 28(4) of Customs Act, 1962 after the admission of the Corporate Debtor to the CIRP
    - (ii) The Process of adjudication/assessment of Customs Duty payable by the Corporate Debtor is not crystallized/concluded before the initiation of CIRP.
  - b) The applicant submits that, Regulation 14(1) of the IBBI Regulations, 2016 allows a Resolution Professional to estimate the claim amount in cases where the final crystallization of claims is indeterminate and/or is pending adjudication.
  - c) Further, the law with respect to the powers and duties of the Customs Department it is settled by the Apex Court in "*Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of*



*Indirect Taxes and Customs, (2022 SCC Online SC 1101) that even if the provisions of moratorium is imposed in terms of Sections 14 or 33 (5) of the Code, the Applicant authority has a limited jurisdiction to assess/determine the quantum of customs duty and other levies.*

- d) Hence the applicant filed the instant application for this Tribunal for directing the respondent to consider the claim of the Applicant.
3. On 20.06.2023, this Tribunal directed the parties to file brief notes and the compliance of the same is filed vide diary Nos. 3522 and 3685 dated 04.07.2023 and 12.07.2023.
  4. The Learned Counsel for the Respondent, in its written submissions submits that the purported claim of the Applicant is based merely on the show cause notice issued before confiscation of goods, under Section 124 of the Customs Act. Further, the applicant issued the Show Cause Notice after initiation of CIRP and continued to hold proceedings while there was moratorium imposed.
  5. Moreover in the judgment cited supra the Apex Court also held that *the demand notices to seek enforcement of custom dues during the moratorium period would clearly violate the provisions of Section 14 or 33% of the IBC, as the case may be*".
  6. It is further submitted that the claim was made by the Applicant at a stage where period of submission of claims had expired. Hence it is that the instant application may be dismissed.
  7. Heard both the parties and perused the records available.
  8. It is seen that the Show Cause Notice issued by the Applicant falls within the restriction imposed by Section 14 of the IBC as they were issued after the initiation of the CIRP proceedings. Moratorium under section 14 of the IBC was imposed when CIRP was initiated



on 29.05.2020, while the notice was sent by the applicant authority on 21.08.2020.

9. Therefore, we are of the considered opinion that the Show Cause Notices issued during the moratorium period would clearly violate the provisions of Section 14 or 33(5) of the IBC.
10. Hence **I.A 192 of 2023 is dismissed.**

### **I.A No. 193 of 2023**

1. The Present application is filed by the Applicant, Commissioner of Customs Import- I with a prayer to direct the respondent, Resolution Professional to furnish a copy of the I.A No. 297 of 2021 in C.P 324 of 2019 to the Applicant and allow the Applicant to intervene in I.A No. 297 of 2021 in C.P No. 324 of 2019.
2. The main contention raised by the applicant is the claim of the applicant has not been considered by the Respondent, Resolution Professional. And further the respondent, RP has filed I.A 297 of 2021 under Regulation 39 (4) of the IBBI Regulations, 2016 of the Code seeking approval of the Resolution Plan and the statutory dues of the applicant has not been considered in the plan. Hence the applicant is seeking for intervening in I.A 297 of 2021.
3. The Learned Counsel for the Respondent filed his objection and the same is taken on record.
4. However, it is observed by this Tribunal that I.A No. 192 of 2023 filed by the Applicant, in the present application, seeking for direction to the Resolution Professional to consider the claim of the Applicant and we have dismissed the said I.A vide order passed today.



5. Hence the present I.A bearing I.A No. 193 of 2023 for intervening in I.A 297 of 2021 as the resolution plan does not consider the claim of the applicant is liable to be dismissed in view of dismissal of I.A No. 192 of 2023.

6. Hence I.A No. **193 of 2023 is dismissed.**

**-Sd-**

**(MANOJ KUMAR DUBEY)  
MEMBER (TECHNICAL)**

**-Sd-**

**(T. KRISHNAVALLI)  
MEMBER (JUDICIAL)**