



SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

**CORAM: SHRI. RAJEEV BHARDWAJ – HON'BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 10.02.2025 at 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/2295/2024, IA (IBC)/2388/2024 in Company Petition (IB) No. 308/7/HDB/2022
NAME OF THE COMPANY	Gayatri Projects Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Gayatri Projects Ltd
UNDER SECTION	7 OF IBC

ORDER

IA (IBC)/2295/2024

Orders pronounced, vide separate sheets. In the result, this application is allowed with the observations.

IA (IBC)/2388/2024

Orders pronounced, vide separate sheets. In the result, this application is allowed with the observations.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL HYDERABAD
BENCH - II, HYDERABAD**

**I.A (IBC) No. 2295 of 2024 IN C.P (IB) No.308/7/HDB/2022
ALONG WITH**

I.A (IBC) No. 2388 of 2024 IN I.A (IBC) No. 2295 of 2024

[U/s 60(5) of the IBC, 2016 r/w Rule 11 of the NCLT Rules, 2016]

IN THE MATTER OF M/s. GAYATRI PROJECTS PVT. LTD.

BETWEEN:

Mr. Sai Ramesh Kanuparthi,

IP Reg. No. IBBI/IPA-001/IPP00910/2017-2018/11510,

Address: Plot no. 6-B, Beside TDP Office, Road No. 2,

Banjara Hills, Hyderabad-500034.

Resolution Professional of

Gayatri Projects Limited,

TSR Towers, B-16-3-1090,

Raj Bhavan Road, Somajiguda,

Hyderabad, Telangana, India-500082,

Represented by its Resolution Professional.

.....Applicant

A n d

1. Assistant Commissioner of Commercial Taxes,

(Audit)-3, Afzalpur Takke, Vijayapur,

Karnataka, India- 586102.

.....Respondent No. 1/R1

2. Joint Commissioner of Commercial Taxes (Appeals),

Sumoulya Soudha, 5th Floor, Club Road, Belgaum,

Karnataka, India-590001.

.....Respondent No. 2/R2

Date of Order: 10.02.2025

Coram:

Hon'ble Shri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Shri Sanjay Puri, Member (Technical)



Counsels Present

For Applicant

: Mrs. Sarvani Desiraju

For Respondents

: Mr. Sandeep Huilgol and Mr. Sandeepani Neglur

Per: Rajeev Bhardwaj

ORDER

1. Both I.A. No. 2295 of 2024 & I.A No. 2388 of 2024 are filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC) by the Applicant/RP. These have been taken up together for decision as they are interlinked and connected.
2. The RP of M/s. Gayatri Projects Limited (**Corporate Debtor/CD**) filed the I.A. No. 2295 of 2024, seeking the following reliefs:
 - (i) To declare the Order dated 10.04.2024 and the consequent recovery proceedings under section 79(1)(c) of the CGST Act, 2017 issued to the Manager, State Bank of India, Belgaum vide Form GST DRC-13 dated 13.07.2024 by Respondent No. 1 as illegal as the same are in violation of the provisions of IBC and therefore set them aside; and,
 - (ii) To set aside the Order dated 15.10.2024 issued by Respondent No. 2 rejecting the appeal preferred by the Corporate Debtor through its JV by insisting on the pre-deposit as inconsistent with the provisions of IBC and allow for the Corporate Debtor to contest the impugned order dated 10.04.2024 passed by Respondent No. 1.



3. The I.A. No. 2388 of 2024 is also filed by the Resolution Professional with the following prayers:
- (i) To suspend the operation of Letter dated 13.07.2024 (Recovery Notice vide Form GST DRC-13) to the Manager, State Bank of India, Siddeshwara Road, Athani Branch, issued by Respondent No. 1.
 - (ii) To grant an order of injunction against the Respondents not to take any further coercive steps till the disposal of the Interlocutory Application, I.A (IBC) No. 2295 of 2024, which is pending before this Hon'ble Tribunal.
4. The Corporate Debtor was admitted to the Corporate Insolvency Resolution Process (“CIRP”) pursuant to an order dated 15.11.2022, and the RP was appointed on the same date. Since the admission of the CD into the CIRP, the management and administration of the CD have been overseen by the RP.

Application:

5. The CD, along with RNS Infrastructure Limited (“RNS”) and Sadguru Infratech Private Limited (“SIPL”), entered into a Joint Venture Agreement dated 29.11.2016, under the name of Gayatri RNS SIPL JV (“JV”). The JV was an unincorporated entity and did not have a distinct legal personality. Pursuant to the agreement, share of work was allocated as follows:
- CD: 70%
 - RNS: 25%



- SIPL: 05%

The CD was designated as the lead partner. Additionally, the members of the JV agreed to joint and several liabilities.

6. The Karnataka Neeravari Nigam Ltd. issued a tender on 18.10.2016 for the execution of a project involving survey, investigation, design, supply, installation, testing, and commissioning of a lift irrigation system, along with the construction of a Canal Distribution System.
7. The JV emerged as the successful bidder and consequently entered into an agreement with Karnataka Neeravari Nigam Ltd. for the execution of the project. A work order dated 06.03.2017 (**Pg No 19** of the Application) was issued to the JV. On the same date, the members executed a Co-operation Agreement (**Pg Nos. 23 to 31** of the application) delineating their respective roles and responsibilities.
8. On 06.03.2017, the members of JV executed a Co-operation Agreement (**Pg Nos. 23 to 31** of the Application) delineating their respective roles and responsibilities. The CD also assumed accountability for all obligations, including regulatory compliances, tax payment & filing, levies, charges, maintenance of book of accounts and records, etc. Consequently, the CD assumed complete liability of JV.
9. It is averred that there has been an express modification to the JV entered on 29.11.2016, by which RNS and SIPL were released from any joint and several liabilities, making the CD solely responsible for all legal and financial obligations.

10. The JV being an unincorporated association of persons, is not a body corporate as defined under the Companies Act 2013 or a "person" under Section 3(23) of the IBC. Except for taxation purposes under Section 2(31) of the Income Tax Act, 1961, an unincorporated Association of Persons is not deemed a separate legal entity, and in the present circumstances, where all rights and liabilities vest with the CD alone (to the exclusion of the other JV partners), the JV cannot be treated as a distinct entity from the CD.
11. The JV has a separate registration bearing GSTIN No. 29AADAG2202N1ZQ under the GST Act, 2017 and Bank Account No. 36900679582 in SBI, Belgavi (Pg Nos. 37 to 40 of the counter). Similarly, the CD registration No. is GSTIN NO. 1069201002371 and Bank Account No. 1069201002371 in Canara Bank, Athani Branch (Pg No. 41 of the counter). Registered offices of both CD and JV are also at different places.
12. The Respondent No. 1 levied a total demand of ₹15,15,72,134/- against the JV vide order dated 10.04.2024 (**Pg. Nos. 57 to 60** of the Application) for the financial year 2018-19, on the premise that the JV is an independent entity separate from the CD. Upon non-payment of the demanded amount, Respondent No. 1 issued a notice dated 13.07.2024 (**Annexure R-13** of the Counter) for the attachment of the amount from the bank account of the JV. Subsequently, on 22.10.2024, another notice (**Annexure R-15** of the Counter) was issued to Karnataka Neeravari Nigam Ltd. for recovery of the said amount.
13. The appeal filed by the Applicant against the demand order dated 10.04.2024, was dismissed by R2 due to non-payment of 10% of the disputed tax, as mandated under Section 107(6) of the GST Act.

**Counter:**

14. The CD is a distinct legal entity separate from the JV, which was constituted through a Joint Venture Agreement and was exclusively formed for the execution of a project in Karnataka. The CIRP was initiated solely against the CD and not the JV. The two entities cannot be treated as identical, particularly for the purposes of the IBC, CGST Act, 2017, and the KGST Act, 2017.
15. The R1 relied on Sections 3(6), 3(7) and 3(23) of the IBC to substantiate the contention that CD doesn't include the JV. The unincorporated JV qualifies as an "Association of Persons" (AOP), which does not fall within the definition of "Person" under Section 3(23) of the IBC and, therefore, cannot be considered part of the CD. The provisions of IBC, 2016 are not applicable to the JV; therefore, the reliefs sought cannot be granted.
16. The R1 has further reiterated the sequence of events and placed reliance on the judgment of the *Hon'ble Supreme Court in Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs [Civil Appeal No. 7667 of 2021]*, affirming that the revenue authorities possess the right to assess and determine tax liabilities, including any penalties and interest on such dues.
17. An assessment order for the year 2022-2023 was issued against the JV, which subsequently filed an appeal before the R2. In response, the R2 issued an endorsement requiring a 10% pre-deposit of Rs. 1.16 crore. The JV complied and made the pre-deposit of Rs. 1,16,83,588/- on 09.12.2024.



However, it is noteworthy that the JV failed to make the required pre-deposit for the assessment year 2018-2019.

18. The R1 initiated recovery proceedings against the JV under Section 79(1)(c) of the CGST Act, 2017. It issued a recovery notice to the Manager, State Bank of India, Athani Branch, vide Form DRC-13 dated 13.07.2024 in relation to the JV. The Applicant has entirely failed to provide adequate evidence or reasoning to demonstrate how the attachment of the JV's bank account in the State of Karnataka impacts the operations of the CD, which is registered in the State of Telangana.
19. The Respondents in I.A. No. 2388 of 2024 have invoked Sections 408, 233, 262, and 280 of the Companies Act 2013 to argue that this Tribunal lacks the jurisdiction to entertain the present application.
20. On 16.12.2024, the Applicant filed an Interim Stay Order dated 29.05.2024 issued in WP No. 102561 of 2024 (T-RES) by the Hon'ble High Court of Karnataka, Dharwad Bench. In that order, the High Court stayed the intimation issued by the Central Tax Authority for the assessment years 2019-20 and 2020-21, citing the moratorium imposed on the CD by this Tribunal. However, the Stay Order is not pertinent to the current applications, as the Writ Petition was filed not only on the grounds of the moratorium but also due to the failure of Neeravari Nigam Limited to pay the differential GST amounts to the JV, which led to the JV's inability to settle the tax. The Stay Order was issued on multiple grounds, and therefore, it is not relevant to the present matter.
21. The independent existence of the JV is further demonstrated by the amendment dated 04.03.2017, wherein the JVA was extended by 96

months. It is a well-settled position of law that the tax liability cannot be assigned by way of a contract, and the statutory provision prevails over contractual agreements. In the present case, the provisions of the IBC & GST Acts take precedence over agreements referred to by the Applicant.

Rejoinder

22. The Applicant reiterated the averments relying on the provisions of Section 3(23) of the IBC & Section 2(31) of the Income Tax Act, 1961. Further, the Applicant relied on the Judgement of the Hon'ble Supreme Court in *P. Mohanraj and Others v. Shah Brothers Ispat Private Limited [Civil Appeal No. 10355 of 2018]* ("Mohanraj Case") to emphasize that the moratorium acts as a shield to protect the CD from pecuniary attacks.
23. Reliance has also been put on Clause 2.21 of the Cooperation Agreement, asserting that under the terms of the Agreement, RNS and SIPL were released from liabilities. As the CD assumed the complete responsibilities and liabilities, the proceedings against JV are affecting the CD.
24. The Applicant asserts that the CD did not make a payment of ₹4,37,11,184/- through the JV in May 2019. To support this, the Applicant placed on record copies of GSTR-1 and GSTR-3B as Annexures 1 and 2 of the Rejoinder. Furthermore, the Applicant reaffirms the details of the appeal filed and cites the judgment of the Hon'ble Supreme Court in *Sundresh Bhatt, Liquidator of ABD Shipyard v. Central Board of Indirect Taxes and Customs [Civil Appeal No. 7667 of 2021]*, to substantiate its position.



25. GST dues incurred before the CIRP are considered as operational debts, as per Section 14 of the IBC and Circular No. 134/04/2020-GST. When CD is undergoing the CIRP moratorium prevents any legal proceedings. There is a distinction between the amounts due for Assessment Years 2018-2019 (pre-CIRP) and 2022-2023 (during CIRP).
26. Under the Cooperation Agreement, the CD is responsible for the levies on the JV, and any related claims against the CD must be enforced under the IBC.

Written Submissions by Applicant

27. The Applicant referred to Clauses IV and VI of the Cooperation Agreement. Clause IV outlined the responsibility of CD, RNS & Sadguru with respect to the scope of work, and the latter has designated the CD as the leader of the JV.
28. Additionally, the Applicant relied on Clause 2 of the Cooperation Agreement dated 06.03.2017, which places full responsibility on the CD for the completion of work and also the liabilities related to legal compliances, maintenance of books of accounts and records, filing of requisite returns and statements, payment of taxes, etc.
29. The averments in Applications were reiterated, stating that the JV is an unincorporated entity having no distinct existence apart from the CD except for the purpose of taxation under Section 2(31) of the Income Tax Act, 1961.



30. The Applicant placed reliance on the decisions in *JC Flowers Asset Reconstruction Private Limited v. Mr. Anil Mehta and FEMC-Pratibha Joint Venture (2024) ibclaw.in 318 NCLAT* (Para 6 to 15) to put forth that the JV is not a separate legal entity as per the terms of the JV Agreement and its amendments.
31. Further, the Applicant referred to Writ Petition No. 102561 of 2021, a petition against the same Respondents with similar facts but a different Assessment Year.
32. The Applicant has also referred to the Bankruptcy Law Reforms Committee Report, emphasizing the need for a “calm period” and a moratorium on all manners of recovery actions.

Written Submissions by Respondents

33. The Respondents, referring to the cases of *Umang Realtech Pvt. Ltd. v. Daphne Reita Rajan Sharma and Anr* {(2024) ibclaw.in 1418 HC}, *Aggcon International Equipment v. ICLEA* {(2017) ibclaw.in 227 NCLAT}, *Gammon India Ltd. v. CCE* {(2011) 12 SCC 499}, *Aanchal Mittal v. Ankur S.* (SCC Online Del 633), and *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta* { (2021) ibclaw.in 44 SC}, have emphasized that the Joint Venture (JV) is a distinct legal entity, separate from the Corporate Debtor (CD).
34. In *Aggcon International Equipment v. ICLEA*, the Hon’ble NCLAT upheld the Tribunal’s decision that refused to admit a Section 9 petition based on the fact that the debt was owed by the JV and not the Corporate Debtor. Similarly, in *Gammon India Ltd. v. CCE*, the Supreme Court



recognized the JV as a separate entity distinct from the companies involved in the partnership.

35. Furthermore, in *Aanchal Mittal v. Ankur S.*, the Delhi High Court clarified that agreements between parties cannot bestow jurisdiction on any particular court, reinforcing that the scope of jurisdiction is not dictated solely by contractual agreements. This principle is aligned with the cautionary advice issued in *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta*, where the Supreme Court stressed that the jurisdiction of the National Company Law Tribunal (NCLT) is confined to matters related to the insolvency of a Corporate Debtor, and not to other legal disputes or contractual disagreements.
36. Thus, these decisions collectively underline that the JV, as a separate and distinct entity, cannot be conflated with the Corporate Debtor, and the NCLT cannot assume jurisdiction over matters unrelated to the insolvency process, such as those concerning GST assessments or appeals.
37. We have heard from both parties and perused the records.

Findings

38. Thus, the primary issue for determination is whether the income of a joint venture, wherein a Corporate Debtor undergoing CIRP is a participant, constitutes the income of the CD, thereby making it subject to the moratorium under Section 14 of the IBC.
39. As per Section 14(1)(a) of the IBC, the moratorium applies to all proceedings of civil nature that seek to enforce a civil remedy. The intent of the moratorium is to safeguard the Corporate Debtor's assets and ensure



its viability as a going concern. Reference may be made to the Hon'ble Supreme Court rulings in:

- i. *Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors. (2019) ibclaw.in 03 SC*
- ii. *Sundaresh Bhatt, Liquidator of ABG Shipyard vs. Central Board of Indirect Taxes and Customs (2022) ibclaw.in 103 SC*

40. It is by way of moratorium that the assets of the CD can be put together and further also ensure that there are no parallel proceedings and reduce the possibility of conflicting outcomes in the process. Accordingly, if the income from the JV is found to be that of the CD, the parallel proceedings before the Respondents cannot be continued. Such proceedings automatically stop. In the matter of *Haravtar Singh Arora vs. Punjab National Bank & Ors. [2018] ibclaw.in 83*, it was held by the Hon'ble NCLAT that all the proceedings pending before all court/tribunal against the Corporate Debtor automatically comes to halt and for this the Resolution Professional is not required to take any further step. Hon'ble Supreme Court in Pr. Commissioner of *Income Tax vs. Monnet Ispat and Energy Ltd. [2018] ibclaw.in 30 SC* upheld a Delhi High Court ruling that had held that a moratorium under the IBC will apply to the order of the Income-Tax Appellate Tribunal and Section 238 of IBC over-rides anything inconsistent contained in any other enactment including Income Tax Act, 1961.

41. Putting reliance by the Respondents on the decision of the Hon'ble Supreme Court in *Sundaresh Bhatt, Liquidator of ABG Shipyard vs*



Central Board of Indirect Taxes and Customs (2023) 1 SCC 472 is misplaced as the Income Tax Authorities may determine tax dues but are barred from executing recovery or levying interest during the moratorium period. The Hon'ble NCLAT reaffirmed this in *Avil Menezes (Liquidator) v. Principal Chief Commissioner of Income Tax, Mumbai Company Appeal (AT) (Insolvency) No. 258 of 2024, decided on 12.07.2024*, by extending the ratio of judgement of the Hon'ble Supreme Court in *Sundaresh Bhatt supra* that the Income Tax Authority enjoys limited jurisdiction of continuing with assessment proceedings and in determining the quantum of income tax dues but does not enjoy the jurisdiction and power to suo motu initiate recovery of dues or execute their claim unilaterally by adjusting the ITR amount with past tax dues.

42. Therefore, tax authorities may assess liabilities, but their actions must align with IBC procedures. The Respondents' reliance on *Gujarat Urja Vikas Nigam Ltd. vs. Amit Gupta (2021) 7 SCC 2019* and *Deputy Commissioner (Works Contract) vs. NCLT, WP (C) No. 39185 of 2022* is inapplicable since those cases do not address restrictions on tax recovery during CIRP.
43. Accordingly, any pre-CIRP tax liabilities qualify as 'operational debt' under the IBC and the GST Authorities cannot execute any recovery actions, if the tax demand relates to the Corporate Debtor.
44. For coming to the conclusion whether demands raised pertains to the CD, it is relevant to know that there is different tax treatment based on the structure of the JV:



- a. If the JV is an incorporated entity (company, LLP, etc.), it would be a separate taxable entity, and its income would not belong to the CD.
 - b. A subsidiary of a CD under CIRP also remains a distinct legal entity, unaffected by Section 14(1)(a), as ruled in *Axis Bank Limited vs. Alok Infrastructure Limited (2018) ibclaw.in 22*.
 - c. As unincorporated JV (e.g., partnership or consortium) does not have separate legal identity; its income is distributed among participants, making the CD's share subject to CIRP protections.
45. Some of the important clauses of Co-operation Agreement (**Pg Nos. 23 to 31** of the Application), which have bearing to know the real nature of the JV are reproduced as below:
- 1.2** Joint Venture (JV) shall mean the Association of Persons comprising Gayatri and RNS and SIPL set up under the Joint Venture Agreement.
 - 2.13** Gayatri shall be solely responsible for compliance of all the applicable central and/or state legislation including the rules, regulations, notifications, circulars, directions made or issued there under related to the Contract, the JV and the Work.
 - 2.20** Gayatri shall be responsible for any loss or damage, which may arise in relation to the Work of the Contract due to absence of or insufficiency of the insurance cover.
 - 2.21** Gayatri hereby absolutely, unconditionally and irrevocably releases RNS and SIPL from any and/or all responsibilities and liabilities arising out of joint and several responsibilities and liabilities in relation to the Work enumerated upon RNS and SIPL by virtue of the Joint Venture Agreement and/or the Contract with the Employer or otherwise.
 - 3.1** JV shall be pay 1.50% on total awarded Amount to RNS and SIPL as royalty fee._ JV shall raise work bills on the Employer for the said Work and all payments received from the Employer and/or from third parties in relation to the



Contract shall be credited to the JV Account. JV shall pay to RNS and SIPL 1.00% (One point Zero percent only) of the total awarded amount on receipt of first installment of mobilization advance from the Employer. The remaining 0.50% (Zero Point Five percentage only) of the total awarded amount shall be payable on receipt of running work bills on all Gross Bills Amount for the work done all from the Employer under the contract towards performing the function as the Partner.

3.2 (a) The remaining amounts in the JV account, after releasing payments due to RNS and SIPL as per Article 3.1 above, shall be paid to Gayatri towards advances and works payments as the case may be RNS and SIPL shall, however, always have the first right to receive its payments from the JV as per schedule specified in Article 3.1 above before any payments are released in favour of Gayatri.

(b) All advances paid by the Employer to JV and recovery thereof from the JV shall be to the account of Gayatri irrespective of the payments released from the JV account to RNS and SIPL.

(c) All amounts deducted, recovered, retained by the Employer from the payments due to the JV for any reason, including but not limited to, Retention Money, Security, Income Tax, Works Contract Tax, Service Tax, Sales Tax, Royalty, Penalty, Liquidated Damages etc. and release of all or any part of such amounts by the Employer to the JV shall be solely to the account of Gayatri and accordingly RNS will not be liable or responsible for the same in any manner and payments to RNS and SIPL in accordance with Article 3.1 above will not be affected under any circumstances.

46. Based on the agreements dated 29.11.2016 (Joint Venture Agreement) and 06.03.2017 (Co-operation Agreement), the following facts are clear:

(a) The CD is solely responsible for execution and legal compliance.

(b) RNS and SIPL have no operational role and are exempt from liabilities.

(c) Payments to RNS and SIPL are structured as royalty, not profit-sharing.



47. It is explicit that the CD is exclusively responsible for the operations and liabilities of the JV. The other JV members do not manage operations; instead, they receive only royalty payments from the JV.
48. Upon examining the agreements, we concur with the Respondents' position that the JV does not fall within the definition of the Corporate Debtor or Corporate Person because the JV is an unincorporated body. However, the key issue is whether the JV's property forms part of the CD's assets, which also has implications on the tax demand raised by the Respondents.
49. It is already discussed that the CD is responsible for the JV's liabilities and operations and holds a defined share in the JV's property. This interest constitutes the CD's property and falls within the scope of 'property' under Section 3(27) of the Insolvency and Bankruptcy Code, 2016 (IBC), which includes all assets, rights, and interests belonging to or held by the CD, including its stake in a JV. It is this property which the Resolution Professional is mandated under Section 18 of the IBC to take control and custody. Consequently, the CD's share in the JV's property forms part of its insolvency estate, subject to applicable legal and contractual considerations. Therefore, imposition of any tax liability on the assets of the Corporate Debtor will affect its liquidity.
50. Coming to the tax demand raised by the Respondents on the JV having separate GST and bank account of the JV, it will not make any impact on the status of the CD vis-à-vis JV. The GST law requires a separate registration for entities that conduct business under a distinct name or with independent taxable supplies. Under Section 24 of the CGST Act 2017, specific categories of persons must register for GST compulsorily,



regardless of whether their aggregate turnover falls below the exemption threshold outlined in Section 22(1). This requirement applies even if they are otherwise exempt from GST registration under the provisions of both the CGST and SGST Act. Thus, every person who is liable to take a registration will have to get registered separately for each of the States where he has a business operation and is liable to pay GST in terms of Section 22(1) of the CGST Act. The CD is a registered company at Hyderabad and for carrying out business in Karnataka, it needs a separate registration number and accordingly, the JV was separately registered under the GST Act in Karnataka.

51. Therefore, a JV may register separately under GST for compliance and operational ease, but this should not breach the provisions of the IBC. The mere fact that the JV has a separate GST registration does not make it an Association of Persons (AOP). Even for classifying the JV as an AOP for income tax purposes there is a requirement to prove common intention to generate and share profits. Section 2(31) of the Income Tax Act, 1961 defines "person" to include an AOP but does not define AOP explicitly. Here, we may profitably refer to the decision of the Hon'ble Supreme Court in *CIT vs. Indira Balkrishna [(1960) 39 ITR 546 (SC)]*. The CBDT vide Circular No. 07/2016 dated 7 March 2016 has also clarified that not all JVs are AOPs for tax purposes, and taxability depends on the facts of each case.
52. Consequently, the demand raised by the Respondents for the financial year 2018-19 (pre-CIRP) cannot be enforced against the assets of the CD in the JV, as such enforcement would have an indirect impact on the CD, thereby



violating the moratorium imposed under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC).

53. As per the terms of the agreements governing the JV, the other two members of the JV are not liable for any financial obligations beyond their entitlement to receive royalties. Accordingly, their liability is limited solely to the extent of the royalty they are entitled to receive.
54. In view of aforesaid discussion, both the IAs are disposed of with the following directions:
- a) The tax demand raised for the financial year 2018-19 against the JV is unenforceable during the Corporate Insolvency Resolution Process (CIRP) as it would impact the assets of the Corporate Debtor, which are protected under the IBC moratorium provisions.
 - b) The proceedings initiated by Respondent No. 1 against the JV are non-executable during the subsistence of the moratorium under Section 14 of the IBC. Consequently, the Recovery Notice dated 13.07.2024, issued in Form GST DRC-13 to the Manager, State Bank of India, Siddeshwara Road, Athani Branch, is suspended with immediate effect.

Sd/-

(SANJAY PURI)
MEMBER(TECHNICAL)

Sd/-

(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)