



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.107

IA/541(AHM)2021 in CP(IB) 207 of 2017

Proceedings under Section 60(5) IBC,2016

IN THE MATTER OF:

Amit Gupta Liquidator of Forever Precious Jewellery &
Diamonds Ltd.

.....Applicant

V/s

.....Respondent

Madras Export Processing Zone-SEZ & Ors

Order delivered on: 08/02/2023

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)

Mr.Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

**IA/541(AHM)/2021
IN
CP (IB) 207/NCLT/AHM/2017**

IA/541(AHM)/2022

(An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

Mr. Amit Gupta

A Liquidator of Forever Precious Jewellery
and Diamonds Limited
Having Office at 702, Janki Centre,
Dattaji Salvi Road, Off. Veera Desai Road,
Andheri (W), Mumbai – 400 053

..... Applicant/Liquidator

Versus

1. Madras Export Processing Zone - Sez

Rep. by its Development Commissioner SEZ
O/o Development Commissioner
MEPZ Special Economic Zone & HEOUs in
Tamil Nadu, Administrative Office Building,
National Highway – 45, Tambaram, Chennai,
Tamil Nadu – 600 045

.....Respondent No. 1

2. Cochin Special Economic Zone

Rep. by its Development Commissioner SEZ,
O/o Development Commissioner,
Kakkanad, Cochin, Kerala – 682 037

.....Respondent No. 2

3. Commissionerate of Customs, Chennai Zone

Rep. by its Jt. Commissioner of Customs
Customs House,
33, Rajaji Salai, Chennai – 600 001

.....Respondent No. 3



4. Commissionerate of Customs, Cochin Zone

Rep. by its Jt. Commissioner of Customs
Customs House,
Willingdon Island, Cochin – 682 009

.....Respondent No. 4

5. Union of India

Ministry of Commerce and Industry,
Rep. by its Addl. Secretary (SEZ),
Udyog Bhawan, New Delhi – 110 107

.....Respondent No. 5

In the matter of:

CP (IB) 207 of 2017

(An application under Section 9 of the Insolvency and Bankruptcy Code, 2016)

Ramesh T. Mehta

....Operational Creditor

Versus

M/s. Forever Precious Jewellery and Diamonds Limited

....Corporate Debtor

Order delivered on 08.02.2023

**Coram: Dr. Madan B. Gosavi, Member (Judicial)
Kaushalendra Kumar Singh, Member (Technical)**

Appearance:

Mr. Navin Pahwa, Ld. Sr. Adv. a.w. Mr. Nipun Singhvi, Ld. Adv. for the Operational Creditor.

Mr. Jaimin Dave, Ld. Adv. a.w. Ms. Hirva Dave, Ld. Adv. for the Corporate Debtor.



ORDER

1. The instant application has been filed by Mr. Amit Gupta-liquidator of Forever Precious Jewellery and Diamond Ltd., under section 60(5) of the Insolvency and Bankruptcy Code, 2016 [**“IB Code”**] for the direction(s) to the respondents to grant all necessary permission and assistance to the Successful Bidder for clearance of assets i.e., gold, silver, plant and machinery and other metals to home consumption i.e., Domestic Terrife Area [**“DTA”**]. The applicant further prayed for the direction to respondent no. 1 to allow the applicant to remove the documents/papers of the corporate debtor lying in the premises of the corporate debtor which is under the authority of respondent no. 1.

2. The averments made by the applicant and as argued/presented by the learned counsels for the applicant are summarised as under:

(i) The liquidation process was initiated against Forever Precious Jewellery and Diamond Ltd-Corporate Debtor vide order dated 01.09.2020 passed by this Adjudicating Authority and Mr. Amit Gupta was appointed as a Liquidator, the applicant herein for conducting the liquidation process. The applicant published Form-A under Regulation 12 of the IBBI (Liquidation Process) Regulations, 2017 [**“Liquidation Regulations”**] inviting the claims of the stakeholders. Respondent no. 1 has filed its claim in Form-C and the same has been acknowledged by the applicant.

(ii) The applicant and his team visited the unit of the Corporate Debtor on 29.10.2020 and 04.12.2020 for the valuation of plant and machinery with the prior permission of respondent no. 1 and on 16.12.2020 and 17.12.2020 for the valuation of jewellery (Gold and Silver). The applicant on 04.02.2021 and 16.02.2021 intimated to respondent no. 1 regarding the public document for e-auction of plant and machinery and jewellery respectively.



(iii) On 25.02.2021, the applicant sent a separate e-mail to respondent no. 1 regarding the e-auction of assets of the Corporate Debtor along with the details of the assets put for the auction which was to be conducted on 26.02.2021 and 08.03.2021 and the applicant also requested to provide the procedure which required to be followed by the Successful Bidder for clearance of goods (gold and silver) to the Domestic Tariff Area along with the import duty, charges, rates if any, to be paid for clearance of goods outside SEZ for home consumption.

(iv) The e-auction was conducted on 26.02.2021 for the plant and machinery and on 08.03.2021 for jewellery. The applicant also shared copies of the notice of sale with respondent no. 1. The applicant conducted the sale of Silver on 22.03.2021. The aforesaid auction was conducted by the applicant on *as is where is basis, as is whatever there is and no recourse basis* with prior intimation of respondent no. 1 in accordance with the regulation 32 r.w. regulation 33 of Liquidation Regulations. The details of the auctioned goods (jewellery) and plant machinery lying in the premises of the Corporate Debtor under the authority of respondent no. 1 on 26.02.2021, 08.03.2021 and 22.03.2021 are as under;

S. No.	Asset	Weight	Location	Successful	Highest Bid Value (INR)
1.	Gold	95.600 gms	MEPZ-SEZ	Star Brillian	3,57,600/-
2.	Silver	1037.200 gms	Chennai-SEZ	Ganeshguru Jewellers LLP	53,000/-
3.	Plant and Machinery	--	MEPZ-SEZ	M/s Unity Enterprises	2,06,000/-
4.	Other metals	..	MEPZ-SEZ	Noori Metal Corporation	20,000/-

(v) The applicant through an e-mail dated 09.03.2021 and again on 15.03.2021 informed respondent no. 1 about the sold assets and



also gave the details of successful bidders i.e., sale of gold to M/s. Star Brillian. The applicant in addition to that, requested respondent no. 1 for providing information about the procedure to be followed by the Successful Bidder for clearance of goods along with the applicable import duty, fee, charge and compliance, if any, to be paid or complied with for clearance of goods for the outside SEZ. The applicant in the said email also mentioned the mandate of section 238 of the IB Code. Despite the e-mail and communication to respondent no. 1, the applicant has not received any clear communication from respondent no. 1 regarding the procedure which is to be followed by the Successful Bidder for clearance of goods for DTA.

(vi) The authorised officer of respondent no. 1 vide e-mail dated 22.03.2021 replied in response to aforesaid e-mails of the applicant wherein e respondent No.1 has mentioned that the DGFT vide notification bearing no. 36/2015-2020 dated 18.12.2019 restricted the import of gold in India and the gold is allowed to be imported only through nominated agencies notified by RBI or DGFT. The applicant vide e-mail dated 23.03.2021 replied to the said e-mail of respondent No.1 and stated that the Successful Bidder is responsible for undertaking necessary permission/clearance, hence, the successful bidder be allowed to take the required action, make due payments, obtain necessary permissions and file bill of entry for clearance of goods to the DTA.

(vii) The applicant vide letter dated 26.03.2021 requested respondent no. 1 to allow the applicant to remove documents/papers of the Corporate Debtor lying in the premises of the Corporate Debtor at respondent no. 1 SEZ. As per regulation 6(2) of liquidation Regulations, the liquidator is required to maintain all registers, and books relating to the Corporate Debtor for a period of eight years. However, the applicant has not received any permission from respondent no. 1 for the removal of such documents/papers. The



applicant further vide letters dated 05.04.2021 and 14.04.2021 requested respondent no. 1 to expedite the clearance of goods to the Successful Bidder to enable the applicant to carry out his duty under the IB Code in the interest of all the stakeholders. The applicant also requested the DGFT, Chennai vide letter dated 14.04.2021 for granting the necessary permission for the removal of goods to DTA. However, till date, no communication has been received by the applicant from the DGFT, Chennai.

(viii) Respondent no. 1 vide letter dated 20.04.2021 replied to the letter dated 15.03.2021, 23.03.2021, 05.04.2021 and 14.04.2021 of the applicant wherein the respondent has stated that this kind of case is a first case for the respondent no. 1 where the goods lying within the SEZ are to be cleared in DTA under the liquidation process. There is no precedent in respondent No.1 SEZ where the duty-free goods have been allowed to be cleared in DTA without following the procedures prescribed in SEZ law. Therefore, the liquidator is required to take clarification from DGFT as to whether the restricted goods in SEZ can be allowed to be cleared in DTA without complying with the restrictions imposed by DGFT on such removal as such removal from SEZ to DTA is treated at par with the import of goods into the country. Respondent no. 1 further mentioned in its letter that there is an ongoing investigation initiated by CBI, and BSFB Mumbai therefore clarification must be sought from the said Investigating Agencies as to whether such goods are permissible to be released. Hence the request of the applicant for filing a manual bill of entry for clearance of subject goods into DTA cannot be considered.

(ix) The applicant vide letter dated 26.04.2021 replied to the letter dated 20.04.2021 of the respondent wherein the applicant categorically listed the events in the instant case and clarified the aspect that the terms and conditions of the e-auction process of the Corporate Debtor have already indicated that obligation for obtaining requisite



permission of paying necessary duties for clearance of the goods in terms of the auction is lying with the Successful Bidder. The applicant also intimated respondent no. 1 regarding the public announcement of the assets of the corporate debtor and also shared a copy of the notice of sale.

(x) Respondent no. 1 vide letter dated 05.05.2021 replied to the letter dated 26.04.2021 of the applicant and stated that the bidder shall fill the bill of entry of home consumption as per SEZ rule and in the case of gold and silver, notification bearing no. 36/2015-2020-DGFT and notification no. 36/2001-Customs(N.T) shall be applicable as per rule 74 of SEZ rule r.w. section 30 of the SEZ Act. As per the aforesaid notification, the sale of gold and silver from the unit in SEZ amounts to import into DTA which is governed by an import policy which allows such sale only through a nominated agency as notified by RBI or DGFT. Respondent no. 1 further reiterated the same statement as mentioned in the letter dated 20.04.2021 of the respondent no. 1 regarding the investigation e going on against the Corporate Debtor and till date, no comments have been received from the investigating agencies i.e., CBI and BSFB, Mumbai to release the documents/ goods to the DTA. Moreover, respondent no. 1 has categorically mentioned in its letter dated 05.05.2021 that the removal of goods into DTA only after obtaining the approval from investigating agencies and specific order is required from this Adjudicating Authority for exemption from the applicable provisions of DGF notification and SEZ Act and rule framed thereunder.

(xi) The auction for gold and silver lying at the premises of Respondent no.2 was conducted on 08.03.2021 and auctioned on “As is Where is Bais, As is What is, Whatever there is and No Recourse Basis” as per Regulation 32 and Regulation 33 of the Liquidation Regulations. The details of the e-auctions along with the details of the Successful Bidder have been intimated by the applicant to Respondent no. 2 vide



e-mail dated 15.03.2021. The details of the e-auction dated 08.03.2021 are as under:

<i>S. No.</i>	<i>Asset</i>	<i>Weight</i>	<i>Successful Bidder</i>	<i>Highest Bid Value (INR)</i>
1.	Gold	1304.000 gms	M/s Ganeshguru Jewellers LLP	50,97,000/-
2.	Silver	54730.000 gms		30,10,200/-

(xii) Respondent no. 2 vide its letter dated 24.03.2021 replied to the letter dated 15.03.2021 of the applicant wherein respondent no. 2 has stated that the buyer shall file the bill of entry for home consumption as per rule 48 of SEZ rules, and in case of gold and silver, Notification No. 36/2015-2020 of DGFT and Notification No. 36/2001-Customs (N.T.) shall be applicable as per rule 47 of SEZ rules and section 30 of the SEZ Act. Respondent no. 2 also reiterated the averments as made by respondent no. 1 with the communication with the applicant regarding the applicability of import policy in view of the aforesaid notification of the DGFT and the applicant may approach the DGFT in case of seeking an exemption of the condition and clarification is required from the investigating agencies i.e., CBI, BSFB Mumbai for releasing goods to the Successful Bidder.

(xiii) The applicant vide its letter dated 25.03.2021 replied to the letter dated 24.03.2021 of respondent no. 2 wherein the applicant has stated that the provisional attachment was made by the Enforcement Directorate vide order dated 31.05.2016 on the assets of the Corporate Debtor and the same was confirmed by the Adjudicating Authority under PML Act on 16.11.2016. However, the Appellate Tribunal under PMLA vide order dated 02.08.2018 set aside the attachment made 16.11.2018 now the attachment of assets of the Corporate Debtor does not survive.



(xiv) The applicant vide letter dated 14.04.2021 intimated the DGFT, Cochin for the sale of assets i.e., jewellery which was conducted on 08.03.2021 along with the details of successful bidders and further seeking permission and assistance to the successful bidder for clearance of assets to home consumption i.e., Domestic Tariff Area mentioning that liquidation is a time-bound process and closely monitored process by the Adjudicating Authority.

(xv) Respondent no. 1 its letter dated 05.05.2021 has categorically emphasized that the applicant must approach this Adjudicating Authority for seeking specific order to allow the removal of goods without the occurrence of investigating agencies.

(xvi) The coordinating NCLT Chennai Bench in the matter of “**C Ramasubramaniam, the liquidator of Surana Corporation Ltd. (MA 645 of 2019 in MA 142 of 2019 in CP 550/IB/2018)**” has made the following observation relating to the same case.

“ ...that when the Corporate Debtor is under Liquidation, any claims of statutory dues from Corporate Debtor, have to be filed before the Liquidator, and for any violation of the FTDR Act, 1992 the statutory authorities are at liberty to proceed against suspended directors and for recovering penalty due thereto.

...that “the assets of the Corporate Debtor form a part of the Liquidator estate. Since the liquidation is under process, the MEPZ cannot hold back the liquidation estate asset of the Corporate Debtor which has to be distributed to the stakeholders of the Corporate Debtor as envisaged in the Act”

...That MEPZ cannot hold back the asset, the proceeds of which has to be distributed to various stakeholders of the company as envisaged under the Insolvency and Bankruptcy Code.”



3. Respondent no. 1 filed its reply on 23.09.2021 wherein the following averments/submissions have been made:

(i) It is wrong to say that no written communication has been made by respondent No.1 regarding the procedure which is required to be followed by the Successful Bidder for the clearance of goods (Silver or Gold) to DTA. Respondent no. 1 vide e-mail dated 22.03.2021 has replied to the various e-mails of the applicant and stated that as per the notification bearing No. 36/2015-2020 dated 18.12.2019 of DGFT, the import of gold is restricted and clearance of Goods to DTA from SEZ is amounts to import under section 30 of the SEZ Act, 2005. Hence, clearance of the Gold to DTA can only be possible through the nominated agency by RBI (for banks) or DGFT (for other agencies). The Applicant was also reminded through its letter dated 07.04.2021 by the Deputy Commissioner (Customs), MEPZ (R-1) wherein it was categorically mentioned the rule regarding filing the annual bill of entry for home consumption i.e., DTA and valuation and assessment of goods which is to be cleared into DTA. The issue relating to classification, valuation and custom duty to be paid will arise only after the aforesaid issue is sorted out. The valuation and customs duty will be determined on the date of removal of goods based on the extended provision of customs law.

(ii) Another letter was sent to the applicant on 24.03.2021 wherein the aforesaid points were reiterated by respondent no. 2, in response to the provision quoted by the liquidator regarding section 238 of the IB Code and stated the provisions of the IB Code have an over-riding effect on the provisions of any other law in case any inconsistency. The liquidator was informed that there is no inconsistency between the SEZ law and IBC, 2016. Both laws are separate and independent and can not be watered down. The provisions of SEZ Act are a procedural requirement for the clearance of said goods for Home Consumption i.e. DTA.



(iii) The applicant was informed vide letter dated 20.04.2021 that the investigation is going on against the Corporate Debtor & M/s Winsome Diamonds and Jewellery Limited by the Bank Security and Fraud Cell, CBI, Mumbai and the office of respondent no. 1 regularly requesting import/ export documents relating to the Corporate Debtor from CBI, Mumbai. Moreover, the Officer of the Respondent No. 1 requested the liquidator to kindly clarify whether the documents/ papers/ goods which are under investigation by CBI, Mumbai can be allowed to be removed without the liquidator/ bidder obtaining approval from CBI, Mumbai. Further, this office has asked the liquidator to kindly clarify whether Liquidator will take the responsibility for any quarries if made later on from the CBI, Mumbai on the removal of these goods for the purpose of liquidation.

(iv) As per the terms and conditions of the e-auction process Memorandum, the obligation for obtaining requisite permission or for paying the necessary duty for clearance of goods in terms of auction under the IB Code lies with the Successful Bidder. It is also not in dispute that the Successful Bidder would undertake to comply with the necessary procedures and pay the necessary customs duty for the removal of goods from SEZ to DTA. Unless the said procedure is followed, the SEZ would not be in a position to accede possession of goods to the Successful Bidder.

(v) The matter in the case of *M/s Surana Corporation Limited* as referred by the applicant in his application is not applicable in the present case. In the aforesaid case, the goods were already lying in the DTA and the Customs Department was claiming possession of the goods due to not claiming by the applicant for a longer period. However, in the present case, respondent no. 1 is ready to release the goods provided the due process of law for clearance of goods from SEZ to DTA is followed by the Successful Bidder/ Liquidator. Therefore, the ratio referred to in the aforesaid case can not be attributed in any manner in



the present case. Moreover, there is no precedent in MEPZ where duty-free goods have been allowed to be cleared in DTA without following the procedures prescribed in the SEZ law.

(vi) Punjab National Bank has created a lien/ charge over the assets of the Units of the Corporate Debtor and it is not known whether the liquidator has placed these facts before this Adjudicating Authority or not. In addition to this, recently this office received requests from the Enforcement Directorate for furnishing import/ export data of the units of the Corporate Debtor. This office has already sought the comments of CBI, Mumbai for releasing the goods of the Units. This office is yet to receive a reply from them. Moreover, respondent no.1 has no objection in case the applicant removes the documents lying on the premises of the Corporate Debtor subject to the liquidator producing a No Objection Certificate from the CBI and also putting the ED on notice. In fact, the applicant ought to have added the CBI and the ED as necessary parties in the instant application.

4. Heard the Ld. Counsel of the parties and considered the reply of respondent no. 1. It is noted that liquidation against the Corporate Debtor was initiated vide order dated 01.09.2020 passed by this Adjudicating Authority. The goods (Gold, Silver and precious metals) and plant and machinery were auctioned by the liquidator as per the terms and conditions of the Bid Process Documents. The details of the auctioned goods and plant and machinery along with the details of the Successful Bidder are as under;

S. No	Location	Assets	Successful Bidder (s)	Highest bid value (INR)	Auction date
1.	MEPZ- SEZ (R-1)	Gold	Star Brilliant	3,57,600/-	08.03.2021
2.	MEPZ- SEZ (R-1)	Silver	Ganeshguru Jewellers LLP	53,000/-	22.03.2021



3.	MEPZ- SEZ (R-1)	Plant and Machinery	M/s Unit Enterprises	2,06,000/-	23.04.2021
4.	MEPZ- SEZ (R-1)	Other metals	Noori Metal Corporation	20,000/-	23.04.2021
5.	Cochin SEZ (R-2)	Gold	Ganeshguru Jewellers LLP	50,97,000/-	08.03.2021
6.	Cochin SEZ (R-2)	Silver	Ganeshguru Jewellers LLP	30,10,200/-	08.03.2021

5. It is not in dispute that aforesaid mentioned goods have been auctioned under the liquidation process. The contention of respondent no. 1 that clearing the goods to the DTA amounts to import under section 30 of Special Economic Zone, 2005, and in view of the notification bearing No. 36/2015-2020 dated 18.12.2019 of DGFT gold is restricted in any form other than monetary gold except nominated agencies as notified by the RBI (in the case of the Bank) or DGFT (for other agencies) does not sustain. On perusing section 30 of the SEZ Act, 2005, clearly shows that removing goods from SEZ to Domestic Tariff Area shall be chargeable to a duty of customs. Provisions of section 30 of SEZ Act, 2005 is a deeming provision, which has been given for a particular object to imposing customs on the goods released to the Domestic Tariff Area. As section 2 (23) & (25) of the customs Act, 1962 defines “import” and “Imported Goods” means any goods which bring into India from a place outside India. For ready reference we reproduce sections 2 (23) & (25) of the Customs Act, 1962 hereunder ;

“Section 2

*“**Sub-section 23** “import”, with its grammatical variations and cognate expressions, means bringing into India from a place outside India;”*



“Sub-Section 25 *“imported goods” means any goods brought into India from a place **outside** India but does not include goods which have been cleared for home consumption”*

However, the definition of import and Export under the Special Economic Zone, 2005 are as under

“Section 2

*(m) “**export**” means –*

“(i) taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or

(ii) supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or

(iii) supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone;”

*“(o) “**import**” means-*

(i) bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or

(ii) receiving goods, or services by, Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;”

Section 30 of the Special Economic Zone talks about charging a duty of customs on the goods removed from the Special Economic Zone to the Domestic Tariff Area. For ready reference, we reproduce section 30 of the SEZ Act, 2005 as under:

“30. Subject to the conditions specified in the rules made by the Central Government in this behalf:-



- (a) *any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported; and*
- (b) *the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.”*

6. In view of the above provisions, the clearing of goods (gold) to the DTA from SEZ cannot be read as an import in a literal sense in view of notification bearing No. 36/2015-2020 dated 18.12.2019 read with section 30 of the SEZ Act, 2015. Though provisions of Section 30 of the SEZ Act, 2005 have been incorporated to impose customs duty on considering the goods to be imported in India, in case goods clear to DTA. But, clearing the goods to DTA cannot be equated with goods imported outside India in a literal sense. Though the Successful Bidder is liable to pay the customs duty on the goods clear to DTA but such release of goods cannot be read with provisions of said notification of DGFT. Hence, clearing the goods (gold) from SEZ to DTA does not violets the notifications bearing NO. 36/2015-2020 dated 18.12.2019 of the DGFT. Moreover, the Hon 'ble Supreme Court in the matter of "**Sundresh Bhatt, Liquidator of ABG Shipyard Versus Central Board of Direct Taxes and Customs**" **Civil Appeal No. 7667 of 2021** has held that if there is any inconsistency between the IB Code and any other provisions of law, the provisions of the IB Code would prevail in view of section 238 of the I Code. The relevant para (s) of the aforesaid judgment of the Hon'ble Supreme Court are as under:

"38. We may note that the IBC, being the more recent statute, clearly overrides the Customs Act. This is clearly made out by a reading of section 142A of the Customs Act. The aforesaid provisions note that Customs Authorities would have the first charge on the assets of an assessee



under the Customs Act, except with respect to a case under Section 529A of Companies Act, 1956, recover of Debt Due to Bank and Financial Institutions Act 1993, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the IBC, 2016. Accordingly, such an exception created under the Customs Act is duly acknowledged under section 238 of the IBC as well. Accordingly, we may note that section 238 of the IBC clearly overrides any provision of law which is inconsistent with IBC.

7. The contention of respondent no. 1 that as per rule 74 (3) of SEZ Rules 2006, in view of the above notification of the DGFT, in the event of the gems and jewellery unit ceasing its operation, golds and other precious metals, alloys, gem and other materials available for the manufacture of jewellery shall be handed over to an agency nominated by the Central Government at a price to be determined by the agency is not well founded. The said provisions are applicable only in case a unit ceases its operation from the SEZ, but in the present matter, the Corporate Debtor is under liquidation by the order of this Adjudicating Authority and the goods and plant and machinery have been auctioned by the applicant during the liquidation process. Though, if any charge is required to be paid for removing goods from the SEZ that has to be paid by the Successful Bidder. But, the issue cannot be left pending or prolonged on technical grounds.

8. The contention of respondent no. 1 that the Corporate Debtor is under investigation by Bank Security and Fraud Cell and CBI Mumbai and the documents/ papers/ goods cannot be allowed to be removed from the premises of the Corporate Debtor which is in the authority of the respondent No. 1 without obtaining the approval from the said investigation agencies is also not well founded. Till date, nothing on record to suggest that there are any orders or directions have been passed by the investigating authority either to prevent handing over the documents/ goods to the Corporate Debtor or prevented the Liquidator to do so. Moreover, the provisional



attachment made by the Enforcement Directorate on 31.05.2016 read which was confirmed by the Adjudicating Authority (PMLA) vide order dated 16.11.2016 has been set aside by the Hon'ble Appellate Tribunal (PMLA) vide order dated 02.08.2018. In addition to that, if any documents remove from the premises of the Corporate Debtor, the liquidator is duty bound to protect the same till the specified time period as per applicable provision of law. Hence, we are of the considered view that the matter relating to the release of documents/ goods of the Corporate Debtor auctioned under the liquidation process cannot be left prolonged for an indefinite period of time which ultimately will defeat the interest of stakeholders and object of IB Code.

9. In view of the above, we are of the considered view that a successful Bidder is not required to obtain approval from the DGFT to release the goods for DTA and approval from the Investigating agency to take remove the goods/ paper/ documents from the premises of the Corporate Debtor which is the authorities of respondent No. 1 & 2. Hence, we allow the present application and direct respondents no. 1 & 2 to release the goods on payment of applicable charges or taxes by the Successful Bidder(s).

10. It is also directed to the liquidator to provide the necessary available documents to the investigation authorities if asked for.

11. This order will not come in the way of proceedings initiated by the Government Authorities against the previous Directors/ Management of the Company.

12. Accordingly, we allow this application and dispose of it.

-Sd-
Kaushalendra Kumar Singh
Member (Technical)

-Sd-
Dr. Madan B. Gosavi
Member (Judicial)

Ramashish