

Through Videoconference

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT -I, MUMBAI BENCH**

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IA No. 2643/MB/20219  
in  
CP (IB) No. 1687/MB/2018

Ashok Kumar Dewan,  
Resolution Professional for Maxx Mobile Communications Ltd,  
Building No. B-1/D-2, Mohan Co-operative,  
Industrial Estate, New Delhi – 110044. ... Applicant

V/s

1. Assistant Commissioner of Income Tax,  
Circle - 12(3) (2), Room No. 147 B,  
1<sup>st</sup> Floor, Aayakar Bhavan,  
Maharshi Karve Road, Mumbai – 400 020.
2. Axis Bank,  
Through Bank Manager,  
Sanghi Villa, Near Raymond Showroom,  
S.V. Road, Andheri (West), Mumbai – 400 058.
3. Kotak Mahindra Bank  
Through Bank Manager  
Evershine Angan, Gr. Floor,  
Plot No. 4, Jawahar Nagar, S.V. Road,  
Goregaon West, Goregaon, Mumbai – 400 062
4. IndusInd Bank,  
Through Bank Manager,  
03/103, Accord Nidhi,  
Link Road, Malad (West), Mumbai – 400 101. ... Respondents

In the matter of:

Edelweiss Asset Reconstruction Company Ltd. ... Petitioner

V/s

Maxx Mobile Communications Ltd. ... Corporate Debtor

Order Dated: 11.02.2021

Coram:

Janab Mohammed Ajmal, Hon'ble Member (Judicial)

Shri V. Nallasenapathy, Hon'ble Member (Technical)

Appearance:

For the Applicant: Mr. Abhishek Anand with Mr. Viren Sharma,  
Advocates.

For the Respondents: None Present.

*Per: Janab Mohammad Ajmal, Member (Judicial)*

**ORDER**

1. The Applicant through this Application seeks the following reliefs:
  - a. *Allow the present Application;*
  - b. *Direct the Respondent No. 1 to withdraw the Attachment Notices dated 18/01/2017, 20/03/2017 and 20/03/2017 issued to the Corporate Debtor and file its claim with the Applicant in terms of the provisions of the Code; and*
  - c. *Direct the Respondent No. 2 to 4 Banks to remove the attachment from the account of the Company in terms of Attachment Notices dated 18/01/2017, 20/03/201 and 20/03/2017 respectively, issued by Respondent No. 2;*
  - d. *During the pendency of the Application grant ad-interim ex-parte directions to the Respondent No. 2 to 4 not to appropriate or make payment in pursuance to any instructions issued by Respondent No. 1;*
  - e. *Pass such other or further order / order (s) as may be deemed fit and proper in the facts and circumstances of the instant case.”*
2. Heard the Counsel for the Applicant. No representation from the side of the Respondents.
3. The Counsel for the Applicant submits that this Application was filed in July, 2019. Subsequently the Corporate Debtor was ordered to be liquidated by an order dated 21.08.2019 of this Bench. The Respondent No. 1 (R1) has filed claim

before the Liquidator. The Applicant further submits that the Corporate Debtor has been sold as a going concern in liquidation process.

4. The Applicant further submits that R1 vide notice dated 20<sup>th</sup> March, 2017, prior to the commencement of Corporate Insolvency Resolution Process, issued notice under Section 226 (3) of the Income Tax Act, 1961 to R3, directing to mark a lien on the Bank Account No. 801011001735 of the Corporate Debtor, which will have the same effect as an attachment of a debt under Section 222 of the Income Tax Act.
5. The Insolvency and Bankruptcy Code, 2016 (the Code) was enacted with the object of bringing about Resolution to the Corporate Persons who are in dire financial straits. Section 238 of the Code provides that the provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being enforce or any instrument having effect by virtue of any such law.
6. The Hon'ble Supreme Court in the case of *Principal Commissioner of Income Tax V/s Monnet Ispat and Energy Limited: (2018) 18 SCC 786*) held that the Code will override anything inconsistent contained in any other enactment, including the Income Tax Act.
7. Considering the above facts, this Bench is of the view that the order impugned cannot stand anymore. Accordingly, this Application is allowed and the impugned order is set aside. R2 to R4 are directed to lift the attachment marked in their Registers.

Sd/-  
V. Nallasenapathy  
Member (Technical)

Sd/-  
Janab Mohammed Ajmal  
Member (Judicial)

Through Videoconference

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, COURT No. -I**

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IA No. 2639/MB/2019  
in  
CP (IB) No. 1687/MB/2018

Ashok Kumar Dewan,  
Resolution Professional for Maxx Mobile Communications Ltd,  
Building No. B-1/D-2, Mohan Co-operative,  
Industrial Estate, New Delhi – 110044. ... Applicant

V/s

Deputy Commissioner of Sales Tax,  
Mum-VAT-E-175,  
Cabin No. H-4, 1<sup>st</sup> Floor, New Building,  
Refund and Refund Audit – 2,  
Noda Division – 8, Mazgaon,  
Mumbai – 400 010 ... Respondent

**In the matter of**

Edelweiss Asset Reconstruction Company Ltd. ... Petitioner

V/s

Maxx Mobile Communications Ltd. ... Corporate Debtor

Order Dated: 11.02.2021

Coram:

Janab Mohammed Ajmal, Hon'ble Member (Judicial)

Shri V. Nallasenapathy, Hon'ble Member (Technical),

Appearance:

For the Applicant: Mr. Abhishek Anand with Mr. Viren Sharma,  
Advocates.

For Respondent: None.

*Per: Janab Mohammad Ajmal, Member (Judicial)*

**ORDER**

1. This is an Application filed by the Applicant for the following reliefs:
  - a. *Allow the present application;*
  - b. *Issue appropriate directions to the Respondent to withdraw the attachment on the property of the Corporate Debtor being Gala No. 106 to 110, Chawda Commercial Centre, 1<sup>st</sup> Floor, Malad (West), Mumbai; and consequentially, an appropriate direction be issued to the Respondent to forthwith handover the custody and control of Gala No. 106 to 110, Chawda Commercial Centre, 1<sup>st</sup> Floor, Malad (West), Mumbai being the asset of the Corporate Debtor to the Applicant.”*
2. Heard the Counsel for the Applicant. There has been no representation from the side of the Respondent.
3. It is submitted that this Application was filed in July, 2019. Subsequently the Corporate Debtor was ordered to be liquidated by an order of this Bench dated 21.08.2019. The Respondent had filed claim before the Liquidator. Meanwhile the Corporate Debtor has been sold as a going concern in liquidation process.
4. The Applicant submits that the impugned attachment was effected by the Respondent under Section 38 B (1) (V) of the Bombay Sales Tax Act, 1956 and Section 9 (2) of the Central Sales Tax Act, 1956 r/w Rule 11 of the Maharashtra Realization of Land Revenue Rules 1967 wherein the property of the Corporate Debtor bearing Gala No. 106 to 110, Chawda Commercial

Centre, First Floor, Malad West, Mumbai for the dues pertaining to the period from 2004 to 2007. The warrant of attachment issued under No. REVST 1176 dated 7<sup>th</sup> December, 2012 is annexed to the Application.

5. The Insolvency and Bankruptcy Code, 2016 was enacted with an object of bringing about Resolution of Corporate Persons who are in dire financial straits. Section 238 of the Code provides that 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.
6. The Hon'ble Supreme Court in the case of *Principal Commissioner of Income Tax...V/s.... Monnet Ispat and Energy Limited: (2018) 18 SCC 786* held that the Code will override anything inconsistent contained in any other enactment, including the Income Tax Act. Accordingly, in the case at hand the provisions of the Code will override the provisions of Bombay Sales Act, 1956 and Central Sales Tax Act, 1956, under which the impugned attachment order was passed against the Corporate Debtor.
7. Considering the above facts, this Bench is of the view that the impugned order cannot stand anymore. Accordingly, this Application is allowed and the impugned order is set aside.

Sd/-

V. Nallasenapathy  
Member (Technical)

Sd/-

Janab Mohammed Ajmal  
Member (Judicial)

Through Videoconference

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT -I, MUMBAI BENCH**

\*\*\*\*\*

IA No. 2641/MB/20219  
in  
CP (IB) No. 1687/MB/2018

Ashok Kumar Dewan,  
Resolution Professional for Maxx Mobile,  
Communications Ltd,  
Building No. B-1/D-2, Mohan Co-operative,  
Industrial Estate, New Delhi – 110044. ... Applicant

V/s  
Office of the Commissioner of Customs (NS-IV),  
Jawaharlal Nehru Custom House,  
Nhava Sheva, Taluka – Uran,  
District – Raigad,  
Maharashtra – 400 707. ... Respondent

**In the matter of:**

Edelweiss Asset Reconstruction Company Ltd. ... Petitioner  
V/s  
Maxx Mobile Communications Ltd. ... Corporate Debtor

Order Dated: 11.02.2021

Coram:

Hon'ble Member (Judicial), Janab Mohammed Ajmal

Hon'ble Member (Technical), Shri V. Nallasenapathy

Appearances:

For the Applicant: Mr. Abhishek Anand, Advocate with Mr. Viren  
Sharma, Advocate.

For the Respondent: None.

Per: V. Nallasenapathy, Member (Technical)

**ORDER**

1. This is an Application filed by the Applicant with the following reliefs:
  - a. *Allow the present Application;*
  - b. *Issue appropriate direction to the Respondent to withdraw the attachment on the assets of the Corporate Debtor being 414 No. of capital goods/machinery of the Corporate Debtor having value of Rs. 2,91,66,51,526/- imported by the Corporate Debtor under 6 EPCG License Nos. 6130000298, 6130000299, 6130000300 and 6130000301 all dated 27/10/2011 and 6130000302, 6130000303 both dated 28/10/2011 and consequently, an appropriate direction to the Respondent to forthwith handover the custody and control of the said assets to the Applicant; and*
  - c. *Pass such other or further order / order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.”*
2. Heard the Counsel for the Applicant. No representation from the side of the Respondent.
3. The Counsel for the Applicant submits that this Application was filed in July, 2019. Subsequently the Corporate Debtor was ordered to be liquidated by an order of this Bench dated 21.08.2019. Further, the Respondent had filed claim before the Liquidator. The Applicant further submits that the Corporate Debtor has been sold as a going concern in liquidation process.
4. We have gone through the impugned order passed by the Commissioner of Customs Nava-Seva IV, wherein certain goods were confiscated under

Section 111 (o) of the customs Act, 1962 read with condition of bond executed in terms of Section 143 of the Customs Act, read with notification No. 102/2009-customs dated 11.09.2009.

5. The Insolvency and Bankruptcy Code, 2016 was enacted with an object of bringing about Resolution of Corporate Persons who are in dire financial status. Section 238 of the Code provides that the Provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained any other law for the time being enforce or any instrument having effect by virtue of any such law.
6. The Hon'ble Supreme Court in the case of *Principal Commissioner of Income Tax...V/s.... Monnet Ispat and Energy Limited* (2018) 18 SCC 786 held that the Code will override anything inconsistent contained in any other enactment, including the Income Tax Act.
7. Accordingly, in the case at hand the provisions of the Code would override the provisions of Customs Act, under which the impugned notices were issued by the Respondent. Considering the above facts, this Bench is of the view that the order impugned cannot stand anymore.
8. Accordingly, this Application is allowed and the impugned order is set aside. The Respondent is directed to handover the assets to the Applicant/ Liquidator.

Sd/-

V. Nallasenapathy  
Member (Technical)

Sd/-

Janab Mohammed Ajmal  
Member (Judicial)

**NATIONAL COMPANY LAW TRIBUNAL  
COURT No. – I, MUMBAI BENCH**

**\*\*\* \*\***

**IA No. 2639/2019,**

**IA No. 2641/2019**

**IA No. 2642/2019,**

**IA No. 2643/2019**

**IA No. 2648/2019,**

**IA No. 2216/2020**

**in**

**C.P.(IB)- No. 1687(MB)/2018**

**Edelweiss Asset Reconstruction Company Limited**

**V/s.**

**Maxx Mobile Communications Limited**

**\*\*\* \*\***

**Dated 11<sup>th</sup> February, 2021**

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**ORDER**

**Sr. No. 8**

The matter is taken up on VC.

**IA No. 2639 of 2019-** Heard the Counsel for the Applicant. No representation on the side of the Respondents. Application allowed, vide separate orders.

**IA No. 2641 of 2019-** Heard the Counsel for the Applicant. No representation on the side of the Respondents. Application allowed, vide separate orders.

**IA No. 2643 of 2019-** Heard the Counsel for the Applicant. No representation on the side of the Respondents. Application allowed, vide separate orders.

**IA No. 2642 of 2019-** Counsel for both the sides are present. Heard. Reserved for Orders.

**IA No. 2648 of 2019-** Counsel for the Applicant is present. The Counsel for the Applicant submits that this Application was disposed on 13.03.2020.

**IA No. 2216 of 2020- Wrongly on Board.**

**Sd/-**  
**V. NALLASENAPATHY**  
**Member (Technical)**

**Sd/-**  
**JANAB MOHAMMED AJMAL**  
**Member (Judicial)**