

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

ITEM No.140- IA 453 of 2019 and  
ITEM No. 141- IA/773(AHM)2021  
in **CP(IB) 89 of 2017**

**Order under Section 60(5) IBC,2016 in IA 453 of 2019**

**IN THE MATTER OF:**

Dushyant Dave(Liquidator) For Siddhi Vinayak Logistic Ltd .....**Applicant**  
V/s  
Siddhi Vinayak Logistic Ltd .....**Respondent**

**AND**

**Order under Section 60(5) IBC,2016 in IA/773(AHM)2021**

**IN THE MATTER OF:**

Dushyant Dave Liquidator of Siddhi Vinayak Logistics Ltd .....**Applicant**  
V/s  
The Deputy Director Derectorate of Enforcement & Ors .....**Respondent**

**Order delivered on ..19/07/2022**

**Coram:**

Madan B. Gosavi, Hon'ble Member(J)  
Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

**IA 453 of 2019 and IA/773(AHM)2021 in CP(IB) 89 of 2017**

Both cases are fixed for pronouncement of the order. The order is pronounced in open court vide separate sheet.

-SD-

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

-SD-

**MADAN B GOSAVI**  
**MEMBER (JUDICIAL)**

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

**IA/773(AHM)2021**

**AND**

**IA No. 453 of 2019**

**IN**

**CP(IB) No. 89/NCLT/AHM/2017**

**IA/773(AHM)2021**

[An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016]

**Siddhi Vinayak Logistics Limited**

**Through its Liquidator**

**Mr. Dushyant Dave**

Having its address at:

101, Dalamal Tower, 'B' Wing,

Free Press Journal Marg,

Nariman Point, Mumbai-400021

**....Applicant/Liquidator**

**Versus**

**1. The Deputy Director**

**Directorate of Enforcement**

Prevention of Money Laundering Act, 2002

Having its address at:

Ground Floor, Kaiser-i-Hind Building,

Bollard Estate, Mumbai-400001

**2. Ashok Leyland Ltd.**

175, Hosur SIPCOT Industrial Complex,  
Rajaji Nagar, Hosur,  
Karnataka-635126

**3. Haldia Petrochemicals Ltd.**

Having its address at:  
Tower 1, Bengal Eco Intelligent Park (Techna)  
Block EM, Plot No. 3, Sector V,  
Salt Lake, Kolkata North 24 Parganas,  
West Bengal-700091

**4. Sonalika International Tractors Ltd.**

Having its address at:  
Pankaj Plaza-1, Plot No. 2,  
Commercial Complex, Karkardooma,  
Delhi-110092.

**5. Hindustan Coca Cola Beverage Pvt. Ltd.**

Having its address at:  
Opp. Hotel Sanmati,  
Near Goblej Police Station,  
Gobjel, District- Kheda,  
Kheda, Gujarat-387550

**AND**

**IA No. 453 of 2019**

[An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016]

**Mr. Dushyant Dave,**

**Liquidator for Siddhi Vinayak Logistic Limited**

Having its address at:

101, Dalamal Tower, 'B' Wing,  
Free Press Journal Marg,  
Nariman Point, Mumbai-400021

**Versus**

**Enforcement Directorate,**

Through the Deputy Director,

Director of Encorcement,

Having address at:

Mumbai Zonal Office-II,  
Kaisar-I, Hind, Fourth Floor, Currimbhoy Road,  
Ballard Estate, Mumbai-400001.

**IN THE MATTER OF:**

**CP(IB) No. 89/NCLT/AHM/2019**

[An application under section 7 of the Insolvency and Bankruptcy Code, 2016]

**Punjab National Bank**

Having address at:

7, Bhikhaiji Cama Place,  
Africa Venue, New Delhi-110607

Inter alia Branch at:

12/14, Brady House,  
V.N. Road, Fort, Mumbai-400023

**....Financial Creditor**

**Versus**

**Siddhi Vinayak Logistics Limited**

Having its address at:

Plot No. 14/15, Bhatpore, GIDC,

Opposite-ONGC Gate No. 2, Hazira, Surat

**....Corporate Debtor**

**Order reserved on: 22.06.2022**

**Order pronounced on: 19.07.2022**

**Coram: MADAN B. GOSAVI (MEMBER JUDICIAL)**

**KAUSHALENDRA KUMAR SINGH (MEMBER TECHNICAL)**

**Appearance:**

For the Applicant : Ld. Adv. Ms. Prachiti Shah along with Ld.  
Adv. Mr. Urjit Dave

For the Respondent : None

**ORDER**

**[PER: MADAN. B. GOSAVI, MEMBER (J)]**

1. IA/773(AHM)2021 and IA No. 453 of 2019 both applications are filed by the Liquidator challenging the action of the Enforcement Directorate taken during the investigation of the case registered against the Corporate Debtor and its Director.

2. In IA/773(AHM)2021 following prayers are made:

(a) Quash/Set aside the impugned letter reference No. ECIR/MBZO/10/2016/735 and similar other letters all dated 24.04.2017 issued by the Respondent No. 1 to the

debtors of the Corporate Debtor including Respondents No. 2 to 5;

- (b) Issue appropriate directions to Respondent No. 2 to 5 to pay/clear the admitted outstanding amount/debt to the Corporate Debtor in a time bound manner;

3. In IA No. 453 of 2019 following prayers are made:

- (i) Withdraw the provisional attachment order with immediate effect for the sake of continuing the liquidation process which shall benefit the creditors as well as other stakeholders of the Corporate Debtor;
- (ii) Remit the amount of Rs. 2,29,10,131.06 which was withdrawn/transferred from the account of the Corporate Debtor to the Enforcement Directorate on 2nd August 2018 into the Liquidation Account of the Corporate Debtor;

4. We issued notices to Respondents. They appeared and filed their replies.

5. We heard Learned Counsel for the Liquidator. No one appeared for the Respondents including Enforcement Directorate when the matter was heard.

6. The Liquidator made payer to quash and set-aside certain summons/orders of attachment by the Enforcement Directorate during the investigation of the PMLA case registered against the Corporate Debtor and its officers. Learned Counsel for the Liquidator brought to our notice certain orders passed by the Adjudicating Authority under the PMLA Act and Appellate Authority under that Act. The real question is “whether we can enter into this arena while invoking our residuary jurisdiction under section 60(5)(c) of the IBC, 2016?”. The legal position

thereto is no more in res-integra. The Hon'ble Supreme Court in the case of Embassy Property Developments Pvt. Ltd. Vs. State of Karnata and Others reported in (2020) 13 Supreme Court Cases 308 has explained the scope of jurisdiction of this Adjudicating Authority under section 60(5)(c) of the IBC, 2016 in the following words:

“...37. From a combined reading of sub-section (4) and sub-section (2) of [Section 60](#) with [Section 179](#), it is clear that none of them hold the key to the question as to whether NCLT would have jurisdiction over a decision taken by the government under the provisions of [MMDR Act](#), 1957 and the Rules issued thereunder. The only provision which can probably throw light on this question would be sub-section (5) of [Section 60](#), as it speaks about the jurisdiction of the NCLT. Clause (c) of sub-section (5) of [Section 60](#) is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase “*arising out of or in relation to the insolvency resolution*” appearing in Clause (c) of sub-section (5). Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of IBC is interpreted to include all questions of law or facts under the sky, an Interim Resolution Professional/Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal under [Section 260-A](#) of the Income Tax Act, 1961. Therefore the jurisdiction of the NCLT delineated in [Section 60\(5\)](#) cannot be stretched so far as to bring absurd results. [It will be a different matter, if proceedings under statutes like [Income Tax Act](#) had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression “*operational debt*” under [Section 5\(21\)](#), making the Government an “*operational creditor*” in terms of [Section 5\(20\)](#). The moment the dues to the Government are crystallised and what remains is only payment, the claim of the Government will have to be adjudicated and

paid only in a manner prescribed in the resolution plan as approved by the Adjudicating Authority, namely, the NCLT.]...”.

7. The scope of jurisdiction of this Adjudicating Authority under section 60(5)(c) of the IBC, 2016 has been further explained by the Hon'ble Supreme Court in the case of Gujarat Urja Vikas Nigam Limited Vs. Amit Gupta and Others reported in (2021) 7 SCC 209 at para 173 in the following words:

“...173. Although various provisions of the IBC indicate that the objective of the statute is to ensure that the corporate debtor remains a “going concern”, there must be a specific textual hook for the NCLT to exercise its jurisdiction. NCLT cannot derive its powers from the “spirit” or “object” of the IBC. Section 60(5)(c) of the IBC vests the NCLT with wide powers since it can entertain and dispose of any question of fact or law arising out or in relation to the insolvency resolution process. We hasten to add, however, that the NCLT’s residuary jurisdiction, though wide, is nonetheless defined by the text of the IBC. Specifically, the NCLT cannot do what the IBC consciously did not provide it the power to do....”

8. The summons/orders issued by the Enforcement Directorate/Adjudicating Authority /Appellate Authority under that law are related to some investigation about the affairs of the Corporate Debtor and its officers prior to the CIRP. It has no relation of whatsoever nature about the insolvency of the Corporate Debtor or its liquidation process. The prayers as made therein are not maintainable before this Adjudicating Authority invoking provisions under section 60(5)(c) of the IBC, 2016. Hence, applications to that extent need to be rejected.

9. The second prayer in IA No. 453 of 2019 is to direct the Enforcement Directorate to return a sum of Rs. 2,29,10,131.06, the same prayer also stands rejected for the above reasons.

10. The second prayer made in IA/773(AHM)2021 by the Liquidator is to issue appropriate directions to Respondents No. 2 to 5 herein to pay/clear admitted outstanding (in prayer, the exact amount is not quantified). This prayer does not fall within the ambit of sections 43 and 66 of the IBC, 2016. The amount claimed herein by the Liquidator was to be recovered by the Corporate Debtor from its debtor even prior to the CIRP. Section 35(1)(k) of the IBC, 2016 states that “subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: - to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor;...”

11. Invoking that provision, the Liquidator may file recovery suits against Respondents No. 2 to 5. We permit him to do so. Both applications, being not maintainable, stands rejected and disposed of.

12. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-SD-

**KAUSHALENDRA KUMAR SINGH  
MEMBER (TECHNICAL)**

-SD-

**MADAN B. GOSAVI  
MEMBER (JUDICIAL)**

Rajeev Kr. Sen/Stenographer