

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
COURT II, MUMBAI BENCH  
INTERLOCUTORY APPLICATION NO. 3925 OF 2022**

**IN  
CP(IB) NO. 2985 (MB)/2018**

*Application u/s 60(5) of the Insolvency and  
Bankruptcy Code, 2016*

In the matter of:

**M/s. IMEC Services Limited  
(Formerly Ruchi Strips and Alloys Ltd)**

Having its office address at:

501/B, Mahakosh House, 7/5,  
South Tukoganj, Nath Mandir Road,  
Indore, Madhya Pradesh-452 001.

**...Applicant**

Versus

**Office of the Assistant Commissioner of  
Customs, Inland Container Depot-MMLP,  
Tihi, Tehsil-Mhow, District: Indore,  
Madhya Pradesh-453331.**

**...Respondent**

**In the matter between:**

**Bank of Baroda (Erstwhile Dena Bank)**

**...Financial Creditor**

**v/s.**

**RSAL Steel Private Ltd. ...Corporate Debtor**

**Order pronounced on 13.08.2024.**

**Coram:**

**Shri. Kuldip Kumar Kareer : Member Judicial.**

**Shri. Anil Raj Chellan : Member Technical.**

**Appearances (Hearing in physical mode)**

**For the Applicant:** Adv. Rhea Prakash.

**For the Respondent:** Adv. Abdullah Qureshi a/w Shraddha Patil appeared for the Resolution Professional.

**ORDER**

***Per: Coram.***

1. This is an application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IB Code') by the Applicant seeking the following reliefs:

(a) This Tribunal be pleased to direct and declare that by virtue of the Slump Sale Agreement dated 30th March 2011, all responsibilities, obligations and/or liabilities relating to the Steel Division, including the export obligations vest with and shall be complied by the Corporate Debtor;

(b) This Tribunal be pleased to direct the Resolution Professional of the Corporate Debtor to acknowledge its obligations and/or liabilities under the said Show Cause Notice dated 01st December 2021;

(c) This Tribunal be pleased to direct the Resolution Professional of the Corporate Debtor to comply with the demands of Customs Authorities arising out of Advance License bearing number 1110022706 dated 30th June 2010 and Advance License bearing number 1110022950 dated 16th August 2010;

(d) This Tribunal be pleased to direct the Resolution Professional to ensure the reflection of the amounts owed to the Customs Authorities and/or any obligations/liabilities transferred through the Slump Sale Agreement dated 30<sup>th</sup> March 2011 in the subsequent Resolution Plan proposed and finalized before this Tribunal.

**2. Facts of the case as pleaded by the Applicant:**

- i. The Applicant is a public limited company, which is listed on BSE Limited, Mumbai, and incorporated on 18th June 1987 under the provisions of the Companies Act 1956. The Applicant is currently in the business of Management & Consultancy Business including trading of various commodities. Until the year 2011, the Applicant was engaged, *inter-alia*, in the business of manufacture of cold rolled steel coils and sheets at Village: Sejawaya, Tehsil & Dist. Dhar, Madhya Pradesh. The Corporate Debtor is a subsidiary of the Applicant, which was incorporated to take over the steel business of the Applicant. Accordingly, the Applicant entered into a Slump Sale Agreement dated 30<sup>th</sup> March 2011 with the Corporate Debtor ('Slump Sale Agreement'), in pursuance whereof, the Applicant transferred its entire rights, title, and interest in its steel division on a slump sale basis as a going concern to the Corporate Debtor for a total consideration of Rs. 47,51,00,000/-. That, upon the execution of the Slump Sale Agreement, the entire steel division of the Applicant stood transferred to the Corporate Debtor, following which the Corporate Debtor would have the responsibility and obligation to comply with any license, contract or otherwise subsisting in the name of the Applicant with respect to its steel division.

- ii. That, prior to the parties entering into the Slump Sale Agreement, the Applicant was granted Advance License bearing number 1110022706 dated 30th June 2010 and Advance License bearing number 1110022950 dated 16th August 2010 (together referred to as 'Advance Licenses'), basis which the Applicant imported duty-free goods, against which, the Applicant was obligated to export goods within the stipulated time limit and submit proof of fulfillment of export obligation to the Customs Authority. The Applicant had also executed bonds in its own name against the said Advance Licenses.
- iii. The Applicant states that the Slump Sale Agreement covers the said Advance Licenses and that pursuant to its execution, the Corporate Debtor would be accountable for any existing and/or future responsibilities, obligations and/or liabilities that may arise in respect thereof.
- iv. Since the entire steel division of the Applicant stood transferred to the Corporate Debtor under the Slump Sale Agreement, the Advance Licenses also automatically stood transferred to the Corporate Debtor. The Applicant was neither possessed of any documents pertaining to the said Advance Licenses nor was the Applicant required to fulfill any export obligations. Moreover, the obligation to fulfill all export obligations was vested with the Corporate Debtor. Specifically, the definition of "Steel Division" in clause 1.1 of the said Slump Sale Agreement makes it clear that the same includes all debts, liabilities, duties, and obligations of the Applicant relating to its steel manufacturing business and affairs. The definition of "Steel Division" as incorporated under the Slump Sale Agreement provides that it would be the

duty/responsibility of the Corporate Debtor to comply with the export obligations.

- v. It is in this background that after a period of over a decade, the Applicant received a Show Cause Notice dated 01st December 2021 from the Office of the Assistant Commissioner of Customs, Inland Container Depot - MMLP, Tihi, Indore, Madhya Pradesh, demanding documents with respect to unfulfilled export obligations pertaining to Advance License bearing number 1110022950 dated 16th August 2010 which was transferred to the Corporate Debtor.
- vi. Accordingly, the Applicant addressed a letter dated 21st October 2022 to the Resolution Professional of the Corporate Debtor, bringing the Show Cause Notice dated 01st December 2021 to his notice and informing him that basis the Slump Sale Agreement dated 30th March 2011, all of the responsibilities, obligations and/or liabilities pertaining to the said steel business, including the demands made under the Show Cause Notice dated 01st December, 2021 would vest with the Corporate Debtor and must be taken into consideration by the Resolution Professional, with a request that the Resolution Professional forwards the relevant documents in order to enable the Applicant to respond to the said Show Cause Notice dated 01st December 2021. Under the said letter dated 21st October 2022, the Applicant also clarified that the said Show Cause Notice dated 01st December 2021 had been issued upon the Applicant only because the bonds against the said Advance Licenses had been issued in the name of the Applicant and while the steel division of the Applicant stood already transferred to the Corporate Debtor under the Slump Sale Agreement, the Applicant had inadvertently failed to substitute the bonds provided to the Customs with bonds in the name of the Corporate Debtor.

- vii. In response to the Applicant's letter dated 21st October, 2022, the Resolution Professional of the Corporate Debtor addressed a reply dated 5th November 2022, whereunder the Resolution Professional has sought to distance the Corporate Debtor from its obligations under the said Advance Licenses and more particularly the said Show Cause Notice dated 01st December 2021. Under the said letter dated 5th November 2022, the Resolution Professional has disclaimed any liability on the part of the Corporate Debtor with respect to the said Show Cause Notice dated 01st December 2021 and stated that the liability for fulfilment of export obligations in the said Advance Licenses is the sole responsibility of the Applicant.
- viii. In response to the said letter dated 5th November 2022, the Applicant addressed the Letter dated 9th November 2022 to the Resolution Professional of the Corporate Debtor, re-iterating the contents of its letter dated 21st October 2022 and requesting the Resolution Professional to, in compliance with the terms of the said Slump Sale Agreement dated 31st March 2011, provide copies of the relevant documents in order to enable the Applicant to appropriately respond to the said Show Cause Notice dated 01st December 2021.
- ix. In addition to the aforesaid, the Applicant submits that the liability towards the unfulfilled export obligations forming part of the said Show Cause Notice dated 1st December 2021 forms part of the financial statements of the Corporate Debtor, which have been drawn up after the execution of the Slump Sale Agreement. Further, the raw material imported under the said Advance Licenses were also taken over by the Corporate Debtor under the Slump Sale Agreement. Even otherwise, during the financial year 2013-14, the Corporate Debtor exported some

goods under the said Advance Licenses, which clearly establishes that the Corporate Debtor acknowledged its responsibilities and/or obligations under the said Advance Licenses. The aforesaid facts and circumstances were also brought to the attention of the Resolution Professional of the Corporate Debtor under the letters dated 21st October 2022 and 9th November 2022 addressed by the Applicant.

- x. The Applicant submits that by virtue of the Slump Sale Agreement and subsequent actions on the part of the Corporate Debtor and various benefits derived thereunder, the export obligations towards the Advance Licenses stood vested with the Corporate Debtor and therefore must be complied with by the Corporate Debtor. That, in the event that the Resolution Professional of the Corporate Debtor continues to deny the obligations and/or liabilities of the Corporate Debtor under the said Slump Sale Agreement, heavy customs duty charges would be levied upon the Applicant, which would cause grave injustice and hardship to the Applicant.
- xi. Hence this application.

**3. Reply filed by the Resolution Professional of the Corporate Debtor:**

Though not a formal party to the above-captioned application, the Resolution Professional on behalf of the Corporate Debtor has filed his Affidavit-in-Reply dated 06<sup>th</sup> January 2023. The pleadings and submissions of the Respondent in the aforesaid reply are briefly reproduced hereunder:

- i. The Corporate Debtor is a subsidiary of the Applicant, incorporated on 29-12-2010 under relevant provisions of the Companies Act, 1956, with a view to transfer the Steel Division of the Applicant. Accordingly, to formalize the

said transfer, the Applicant and the Corporate Debtor entered into a Slump Sale Agreement dated 30.03.2011.

- ii. The Applicant has sought reliefs pertaining to export obligation arising out of Advance Licenses bearing number 1110022706 dated 30.06.2010 and 1110022950 dated 16.08.2010 ('Advance Licenses') in the present Application. By virtue of the said licenses, the Applicant was permitted to import duty-free goods against which the Applicant was obligated to export goods within the stipulated time period and thereafter, submit Export Obligation Discharge Certificate ('EODC') as proof of fulfillment of the export obligation to the Customs Department. Further, the Applicant had also executed certain bonds in favour of the Customs Department against the said Advance Licenses.
- iii. The Applicant has failed to approach this Tribunal with clean hands and has suppressed the material fact that the said Advance licenses are "Non-Transferable" in nature as is categorically mentioned on the face of the Advance licenses.
- iv. Para 2 of Grant of Authorisation letter dated 16.08.2010 issued in respect of Advance License-1110022950, a copy of which was annexed to the letter dated 21.10.2022 addressed to the Resolution Professional, states as under:  

*"... 2. In case for any reason, you are not in a position to utilise the authorisation, the same may' please be surrendered to this office for cancellation....."*

Hence, the Resolution Professional submits that there was only an option to surrender the said Advance licenses in the event the Applicant did not intend to use the same any further and question of transferability of Advance Licenses in any manner whatsoever does not arise.
- v. It is pertinent to note that by virtue of Clause 3.4 of the Slump Sale Agreement, the Applicant undertook to make necessary applications to the

relevant authorities to procure approvals with respect to the transfer of licenses. However, the Applicant has failed to produce any such Application or document submitted in pursuance of effectuating the transfer of Advance licenses that has been produced by the Applicant before this Hon'ble Tribunal. Further, the name of the Applicant reflects in the books of the Customs Department as the license holder till date as no transfer was ever effectuated and no notice was ever given to the Customs Department. As such, the contention of the Applicant that the Advance Licenses automatically stood transferred under the Slump Sale Agreement is baseless and misconceived.

- vi. Further, the Applicant has failed to produce any material to establish that there was an arrangement between the Applicant and the Corporate Debtor whereby the Corporate Debtor was to discharge the export obligation and submit EODC directly to the Customs Department. In the absence of any such arrangement, the Applicant was solely liable to discharge export obligations and submit EODC to the Customs Department.
- vii. The correct course of action on the part of the Applicant was to address the dues of the Customs Department since it is the named license holder and subsequently upon crystallization of the Corporate Debtor's liability, if any, claim the amount paid to the Customs Department from the Resolution Professional in a time bound manner instead of burdening this Hon'ble Tribunal with such frivolous applications. Further, since the Applicant has failed to discharge its own liability, its claim is not due and payable as on date and the liability of the Corporate Debtor does not accrue in any manner.
- viii. The Resolution Professional states that the Customs Department filed their claim before him in respect of outstanding dues and liabilities of the Corporate Debtor and the Resolution Professional has admitted the said

claim filed by Customs Department. The said claims do not mention any liability on the part of the Corporate Debtor in respect of Advance Licenses bearing numbers 1110022706 and 1110022950.

- ix. The Respondent states that no claims in any regard can be entertained by the Resolution Professional at this belated and advanced stage when the resolution plan duly approved by the CoC has been submitted to the Adjudicating Authority, and is pending for approval, and the claims are time-barred.
- x. It is, therefore, most respectfully submitted that this Hon'ble Tribunal may be pleased to dismiss the present Interlocutory Application filed by the Applicant with appropriate directions in the best interest of justice and equity.

#### **4. Rejoinder of the Applicant**

- i. The Advance Licenses formed an integral part of the steel business which was transferred to the Corporate Debtor under the Slump Sale Agreement. It follows that while there was no formal transfer of the Advance Licenses in the name of the Corporate Debtor pursuant to the Slump Sale Agreement, the Corporate Debtor continued to utilize the Advance Licenses for the purpose of importing and/or exporting goods for the purpose of carrying on the steel business. The Applicant has already produced evidence in the application supporting the fact that the Corporate Debtor made exports under Advance License No. 1110022706 and by way of this rejoinder, the Applicant has produced documents establishing that exports were made under Advance License No. 1110022950. Even otherwise, there was a mutual understanding between the parties that the Corporate Debtor could

continue to utilize the Advance Licenses until the same could be obtained in its own name.

- ii. On account of the Advance Licenses being non-transferable in nature, it was mutually agreed upon between the parties to the Slump Sale Agreement that the rights, liabilities, and obligations accruing from the said licenses would be taken over by the Corporate Debtor even if it stands in the name of the Applicant. The Corporate Debtor may not, on one hand, take benefit of such an understanding under the said Advance Licenses and thereafter, on the other hand, seek to dispense with the obligations arising out of their actions. The Corporate Debtor has sought to utilize the fruits of the Advance Licenses but is now shying away from complying with the obligations arising out of the same.

### **FINDINGS**

5. We have heard the learned Counsels for the Applicant and the Respondent and we have carefully gone through the pleadings and the documents and materials placed on record.
6. In the present case, the Applicant received a Show Cause Notice dated 01<sup>st</sup> December 2021 issued by the Assistant Commissioner (Customs) whereby the Applicant was called upon to pay customs duty amounting to INR 1,16,85,519/-, which *inter-alia* includes a liability of INR 61,58,500/- arising out of Advance License No. 1110022950. It is the case of the Applicant that the aforesaid advance license was used by the Corporate Debtor under the Slump

Sale Agreement dated 30.03.2011 and therefore, the Applicant has, *inter-alia*, prayed before this Tribunal to declare that by virtue of the aforesaid slump sale agreement, all liabilities and obligations relating to the Steel Division shall fall upon the Corporate Debtor. While we recognize the fact that both the Applicant and the Corporate Debtor are separate legal entities, the Corporate Debtor being a creature of the Applicant and a subsidiary, the actual nature of the transaction under the Slump Sale Agreement and segregation of business between the two companies requires detailed examination and leading of evidence which cannot be done in a summary procedure followed by the Adjudicating Authority under the provisions of the Code. Further, the disputes between the Applicant and the Corporate Debtor are purely contractual in nature and do not arise solely from or relating to the insolvency of the Corporate Debtor and therefore, the nexus with the insolvency of the Corporate Debtor is missing. Hence, we lack jurisdiction to entertain and decide the controversy arising out of this application. Our view is supported by the judgment of Hon'ble Supreme Court of India *in Gujarat Urja Vikas Nigam v/s. Mr. Amit Gupta [(2021) 7 SCC 209]* and *in Embassy Property Developments Private Limited vs. State of Karnataka and Others [(2020) 13 SCC 308]*, whereby time and again, the Hon'ble Apex Court has cautioned the NCLT and the NCLAT to refrain from entertaining u/s 60(5) of the Code the disputes which are dehors the insolvency of the Corporate Debtor.

7. The Resolution Professional ('RP') in his reply has annexed the copies of two advance licenses belonging to the Applicant to show that the said licenses are non-transferable. The Applicant has admitted in its rejoinder that the advance licenses, referred to in the application by the Applicant, were non-transferrable. If the advance licenses were transferable, the Applicant could have taken steps

to get the name changed on the advance licenses and bonds executed by it. It is also an admitted position that the bonds, which were executed by the Applicant in respect of the advance licenses, continue to remain in its name. Therefore, prima-facie, the liability to pay customs duty in respect of Advance License No. 1110022706 and 1110022950 under the provisions of the Customs Act, 1962 is that of the Applicant and not of the Corporate Debtor. Since the advance licenses were not transferrable, the entire contract and transactions carried out between the Applicant and the Corporate Debtor become dubious and illegal on the basis of which, in our considered view, no relief can be granted to the Applicant.

8. The Applicant has contended that by virtue of the Slump Sale Agreement dated 30<sup>th</sup> March 2011, since the Corporate Debtor has utilized the Advance Licenses referred to above, the liability in respect thereof should now be borne by the Corporate Debtor as per the contractual terms and conditions. However, even if we were to consider the aforesaid contention of the Applicant, we are of the considered view that the Applicant ought to have filed its claim before the RP so that the learned RP could have determined the same under Regulation 14 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. However, no such claim has been filed by the Applicant and therefore, the present application does not merit any consideration.
9. Even otherwise, the Resolution Plan of the Corporate Debtor has already been approved by this Tribunal vide Order dated 09.01.2024 in I.A. No. 1240 of 2021. Therefore, the present application ought to be dismissed and the relief(s) prayed for by the Applicant in Para No.13 of the application cannot be granted. Further, in view of the resolution plan of the Corporate Debtor having been

approved by the Adjudicating Authority u/s 31 of the Code, the Applicant is now even precluded from filing its claim against the Corporate Debtor before the RP.

10. In view of the foregoing discussion, findings and analysis, we are of the considered opinion that this application is devoid of any substance, and merits dismissal. **Hence, we hereby dismiss I.A. No. 3925/2022** with no order as to costs.

Sd/-

**ANIL RAJ CHELLAN**  
**(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER**  
**(MEMBER JUDICIAL)**