

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**I.A. 541 OF 2022**

Under Section 42 of Insolvency &  
Bankruptcy Code, 2016

**Union of India**  
SEEPZ-SEZ, Through Development  
Commissioner  
...Applicant

Vs.

**Mr. Ashok Kumar Dewan,**  
Liquidator of Corporate Debtor  
...Respondent

In the matter of

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

Edelweiss Assets Reconstruction  
Company Limited

**...Financial Creditor**

Vs.

M/s Maxx Mobile Communication  
Limited

**...Corporate Debtor**

*Order delivered on: 27.03.2024*

*Coram:*

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice Shri V.G. Bisht**  
Hon'ble Member (Judicial)

*Appearances*

For the Applicant : Mr. M. S. Bhardwaj, Advocate  
For the Liquidator : Mr. Abhishek Anand, Advocate

**ORDER**

*Per: Justice V. G. Bisht (Retd.), Member (Judicial)*

1. This Application IA 541/2022 is filed by Union of India, SEEPZ Sez, Through Development Commissioner (“Applicant”) in the Liquidation Process of the Corporate Debtor seeking following relief:
  - a. Pass an order quashing and setting aside the communications of the Respondent dated 20-04-2021 and 22-06-2021 issued to Applicant;
  - b. Pending the hearing and final disposal of this appeal, direct that the liquidation proceedings may not be proceeded with;
  - c. To pass any such Order or Orders as this Hon'ble Tribunal may deem fit and expedient;
2. The Respondent herein was appointed as Liquidator of the Corporate Debtor vide this Tribunal vide Order dated 21-08-2019. That after his appointment, the Respondent sold the Corporate Debtor as a going concern to Tushti International Private Limited for a consideration of 33,41,50,000/-.
  - 2.1. The Respondent thereafter vide its email dated 20-04- 2021 sought "No Dues Certificate from the Applicant for the period prior to 11-03-2021 i.e. upto the date of issuing Sale Certificate to the Successful Bidder viz. Tushti International Private Limited.

- 2.2. The Applicant vide its letter dated 11-06-2021 refused to issue No Dues Certificate to the Respondent and sought its outstanding dues as receivable from the Corporate Debtor.
- 2.3. The Corporate Debtor was in possession of the premises bearing Unit No. 160, SDF-V, SEEPZ SEZ Andheri (E), Mumbai 96 under LOA No. SEEPZ/SEZ/IA-I/HW-30/08-09/5171 dated 25-05-2009 (hereinafter referred to as the "premises"), which was valid for the period of 5 years from the dated of commencement i.e. for the period 06.08.2009 to 05.08.2014 and not renewed thereafter. Further the Sublease agreement dated 02.07.2010 executed by M/s Maxx Mobile Communication Ltd for the period of 5 years from the dated of possession receipt i.e. w.e.f. 04.06.2009 to 04.06.2014, was also not renewed/executed with effect from 05.06.2014
- 2.4. In view of the above an Eviction proceedings under section 4 of Public Premises (Eviction of Unauthorised Occupants), Act 1971 was initiated by issuing the Show Cause notice dated 08.09.2015, which was further adjudicated and Eviction Order dated 15.03.2016 was passed under section 5 of Public Premises (Eviction of Unauthorised Occupants), Act 1971. Accordingly, the goods lying in the premises were shifted to the Central Warehouse and the possession of the said unit No. 160 was granted to M/s Micro Components vide allotment letter dated 13.05.2016 and M/s. Micro component has been carrying out its business and export activities from the said unit.
- 2.5. The Corporate Debtor as on 01-04-2015 was in arrears of the dues of the said premises to the tune of Rs. 38,35,552.94/- and accordingly the Applicant had also initiated the recovery

proceedings under section 7 of Public Premises (Unauthorised occupants) Act, 1971 by issuing the Recovery Notice dated 18-12-2015 and thereby called upon the Corporate Debtor to repay the outstanding dues.

2.6. The Corporate Debtor was also issued the Demand Notice dated 03.09.2017 for an amount of Rs. 2,98,37,311/- with the applicable interest towards the customs duty liability.

2.7. The Respondent as Resolution Professional vide his letter dated 12-06-2019 informed the Applicant that Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor vide Order dated 31-01-2019 i.e. Insolvency Commencement Date.

2.8. This Tribunal vide its Order dated 19-05-2021 stayed the notices dated 09-09-2015, 18-12-2015 and 11-02-2019 issued by the Applicant to the Corporate Debtor. The Respondent vide its further communications dated 22-06-2021 requested the Applicant to issue No Dues Certificate upto 11-03-2021. It is pertinent to note that no provision is prescribed under SEZ Act & Rules to issue No Dues Certificate for the dues to be recovered from the Corporate Debtor.

2.9. It is further pertinent to note that there is no provision for issue of No Dues Certificate under the SEZ Act. It is submitted that the demand of the Respondent for availing the No Dues Certificate upto 11-03-2021 is completely unjustified and bad in law. It is submitted that it is just, necessary and in the interest of justice that the communications dated 20-04-2021 and 22-06-2021 issued by the Respondent asking for No Dues Certificate shall be recalled.

- 2.10. It is submitted that the Applicant received the last letter from the Respondent seeking No Dues Certificate on 22-06- 2021 and the appeal challenging the order of the Respondent ought to be filed on or before 06-07-2021. However, the Hon'ble Supreme Court vide Order dated 10-01-2022 in Suo Motu Writ Petition No. 3 of 2020 has excluded the period from 15-03-2020 and 28-02-2022, therefore the present application is within limitation.
3. The Respondent filed affidavit in reply dated 28.03.2022 stating that the present application filed u/s 42 of the Code is not maintainable, as the claim of the applicant has been duly admitted and there is no grievance in so far as the applicant's claim is concerned. The Applicant has filed this Application resisting issuance of No dues certificate sought by the Liquidator upon settlement of applicant's claim in accordance with the Code. Non-issuance of the No Dues Certificate by Applicant is contrary to the provisions of section 32A of the Code, as the dues of the applicant, if any, have extinguished in view of the sale of the Corporate Debtor as a going concern. Post distribution of funds lying in the account of the Corporate Debtor, even the entire liabilities of Secured Financial Creditors could not be extinguished/exhausted fully, hence, no funds were remaining for distribution to other Creditors/Stakeholders of the Corporate Detor including the Applicant as per the provisions of waterfall mechanism prescribed under Section 53 of the Code, hence, the liabilities, if any, of the Corporate Debtor towards the Applicant stands extinguished as per the provisions of the Code and the Liquidation Regulations.

4. Heard learned Counsel and perused the material available on record.

4.1. In this application, the Applicant has sought quashing and setting aside the communications of the Respondent dated 20-04-2021 and 22-06-2021 issued to Applicant by the Respondent.

4.2. The Liquidator had sent an email dated 20.4.2021 stating that *“In view of the above stated approvals, the corporate debtor has been sold as a going concern to M/s Tushti International Private Limited for a consideration of Rs. 33,41,50,000/- and the liabilities of the Corporate Debtor have been dealt in accordance with the section 53 read with Section 32A of the Insolvency and Bankruptcy Code, 2016”*. It was further stated in the said mail that *“Section 238 of the Code provides overriding effect to the provisions of the Code over all other laws in the Country including the provisions of Custom & Taxation”*. It was further stated in the said mail that *“In distribution of funds even liability of Secured Financial Creditors has not been exhausted fully, hence, no fund remains available for distribution to any other Creditors/Stakeholders who falls in the waterfall mechanism given under Section 53 of IBC. In view of the above stated position, no fund is available for distribution to you against the claim, if any, filed by your good office in the liquidation process of M/s Maxx Mobile Communication Limited-In Liquidation. Hence your liabilities stand extinguished”*.

4.3. The Respondent had sent another letter dated 22.6.2021 reiterating the legal position, fact of sale of Corporate Debtor as going concern and seeking co-operation for closer of the sale of corporate debtor i.e. M/s Maxx Mobile Communication

Limited-In Liquidation, as going concern and requested the Applicant to issue a “No Dues Certificate” in favour of the Corporate Debtor of any period prior to the sale of Corporate Debtor as a going concern i.e. 11.03.2021, the issue of issuing Sale Certificate to Successful Buyer.

4.4. Vide these communications, the Respondent Liquidator had requested for issuance of No Dues Certificate after the claim of the Applicant got extinguished in terms of Section 53 of the Code. Section 32A of the Code explicitly grants immunity to the Corporate Debtor and its assets from any prosecution or action for an offence committed prior to commencement of Corporate Insolvency Resolution Process and Section 53 of the Code discharges the debts owed to the Creditors by a Corporate Debtor upon payment of such debts in accordance with said section. It is trite law that the Corporate Debtor or its assets are succeeded by prospective buyer on clean slate principal and no previous debts can be claimed from Corporate Debtor or its assets or even the successful buyer. The claims settled in accordance with Section 53 of the Code releases the Corporate Debtor and its assets from any claim, even if such claim remains unpaid or partly paid and such claimant had a lien over the assets of the Corporate Debtor.

4.5. It is the contention of applicant that the Special Economic Zone Act, 2005 does not contemplate issuance of No Dues Certificate. However, we note that 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*". Accordingly, extinguishment of debts owed to creditors in pursuance of settlement in accordance with Section 53 of the Code contemplated under Code shall prevail over the provisions of Special Economic Zone Act, 2005 and the debts owed to the Applicant shall also stand extinguished. Accordingly, we declare that the Applicant's debts owed by the Corporate Debtor have extinguished and nothing remains to be paid to the Applicant after settlement of creditors dues in accordance with section 53 of the Code. Hence, we do not find any merit in the prayer for setting aside or quashing of communications dated 20-04-2021 and 22-06-2021 issued to Applicant by the Respondent.

5. In view of the foregoing, IA 541/2022 is dismissed and disposed of accordingly.

**Sd/-**  
**Prabhat Kumar**  
**Member (Technical)**

**Sd/-**  
**Justice V.G. Bisht**  
**Member (Judicial)**