

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through Physical Hearing/VC Mode (Hybrid))

I.A. No. 310/2024

in

C.P. (IB) No.220/BB/2018

Application Under Section 35 (1) (n) of the
Insolvency & Bankruptcy Code, 2016 r/w Rule 11
Of the NCLT Rules, 2016

In the matter of:-

Shri. Konduru Prashanth Raju,
Liquidator of Base Corporation Ltd.,
B-804, Shriram Suhaana Apartments,
Harohalli, Nagenahalli Gate,
Yelahanka, Bengaluru - 560064

... Applicant

Versus

1.The Assessing Officer

ITO Ward- 1 (1) (3)
Circle 1(1)(1),
BMTC Building, Koramangala
Bengaluru - 560095

... Respondents

2.Commissioner of Income

Tax Circle 1(1)(1),
Pr. CIT/CIT, B-1,
BMTC Building,
Koramangala,
Bengaluru - 560095.

3. Principle Chief Commissioner of Income Tax

Circle 4(1)(1), CCIT,
BMTC Building,
Koramangala,
Bengaluru - 560095.

4. Deputy Director of Income Tax

Central Processing Center,
Income Tax Department,
Bengaluru-560500.

.... Respondents

Order delivered on: 25.07. 2025

CORAM:


1. Hon'ble Shri Sunil Kumar Aggarwal, Member (Judicial)
2. Hon'ble Shri Radhakrishna Sreepada, Member (Technical)

**PRESENT:**

For Liquidator : Mrs. Lakshmi Menon

ORDER**Per RADHAKRISHNA SREEPADA, Member(Technical)**

1. The present Application is filed by the **Mr.Konduru Prashanth Raju, Liquidator of Base Corporation Limited** (hereinafter referred as "Applicant") under Section 35 (1) (n) of the I & B Code, 2016 read with Rule 11 of the National Company Law Tribunal, 2016 against **The Assessing Officer** and 3 others (hereinafter referred as "Respondents").
2. Facts of the case mentioned by the Applicants in this application are:
 - a. It is stated that in the present main petition the insolvency proceedings against the corporate Debtor was initiated on 02.08.2019 and Mr. Aashish Gupta was appointed as Interim Resolution Professional (IRP). Thereafter, in the 11th meeting, the Final resolution plan was put up to be approved by the Committee of Creditors (COC) by way of e-voting on 30.08.2020, however, the final resolution plan was rejected by the CoC on 02.08.2020.
 - b. The application was filed for liquidation of the Corporate Debtor under Section 33 (1) of the Code, which was admitted by this Adjudicating Authority vide order dated 26.04.2022 and the Applicant herein Mr. Konduru Prashanth Raju was appointed as Liquidator.
 - c. Subsequently, the Applicant formed the Consultation Committee of Stakeholders (hereinafter referred as SCC). The Applicant thereafter conducted several meetings with the SCC and the reports to the same have been filed before this Tribunal. Currently, the Liquidator has been in the process of auctioning the assets of the CD through public auction. The assets of the CD namely, the flat at Mumbai as well as the Plant at HOsur have already sold in the auction to the highest bidders, on a going concern basis and the other major asset remaining the plant at



Solan, Himachal Pradesh remains to be sold for which steps have been initiated.

- d. Meanwhile, the Respondents herein, initiated the scrutiny assessment u/section 143(3) for the assessment year 2007-08 of the Income Tax Act, 1961, against the Corporate Debtor. The Income Tax Assessment was concluded and the Notice of Demand u/section 156 of the Income Tax Act, 1961 was issued by the Respondents, with a total outstanding tax amount of Rs. 49,70,998/- (Rupees Forty-Nine Lakhs Seventy Thousand And Nine Hundred And Ninety Eight only), payable for the AY 2007-08 by the Corporate Debtor. At this juncture, it is necessary to state that the Income Tax Department had not filed its claim with neither the RP nor this Liquidator towards any tax dues.
- e. For the assessment year 2023-24, the CD was eligible for tax refund amount of Rs. 34,410/- (Rupees thirty-four thousand and four hundred ten only).
- f. On 24.01.2024, the CD received an intimation from the Respondent Authority No.4, that the refund amount for the Assessment year 2023-24, is adjusted against the outstanding tax amount of Rs.49,70,998/- (Rupees Fortynine Lakhs Seventy Thousand Nine Hundred Ninetyeight only).
- g. It is submitted that, the under Section 238 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code"), which stipulates that in case of any conflict arising on the application of the Code or any other statute, Section 238 is a non-obstante clause which is to be strictly construed and shall override the provisions of any other provision or clause in the Act.
- h. Further, under Section 178 of the Income Tax Act, 1961 (hereinafter referred to the "Act") deals with the 'Companies in Liquidation', sub clause (6) of the same section, explicitly provides for an exception where the provisions of the Code, shall override the provisions of Sec 178 of the Act. The applicant relied on the decision of the Apex Court, in the case of *Pr. Commissioner of*



Income Tax v. Monnet Ispat and Energy Ltd. SLP (C) No. 6487 of 2018, held that Sec 238 of the Code, is a non-obstante clause and in case of any incongruity with the provision of any other statute including the Income Tax Act, 1961, Sec 238 shall override and provisions of Sec 238 of the Code will be applicable.

- i. The applicant has further relied on judgment of the *Hon'ble High Court of Andhra Pradesh in the case of Leo Edibles & Fats Ltd v. The Income Tax Department, WP 8560 of 2018*, where the immovable property of the petitioner was attached by the Income Tax Department to recover the outstanding tax liability. Simultaneously, the petitioner was undergoing the liquidation proceedings, and the petitioner was unable to discharge the said immovable property. The Hon'ble High Court held that the Income Tax Department cannot claim priority in clearing of the outstanding tax amount due, when the petitioner company is already undergoing liquidation under IBC laws, and further stated that once the moratorium is declared, it guarantees that any other pending law suits or proceedings shall be stopped.
- j. The applicant humbly submits that, under Sec 53 of the Code, provides for the waterfall mechanism, where the section delineates the hierarchical distribution mechanism for the repayment of the financial creditors. In the order of priority, the Central Government and the State Government holds fifth position. Therefore, the Income Tax Department can claim the outstanding tax amount payable to them by the CD, if any, only by submitting a claim to the liquidator herein and thereafter, receiving sums, if at all, under the water fall mechanism.
- k. The applicant has relied on the recent judgment of the Supreme Court of India, in the case of *Principal Commissioner of Customs v. Rajendra Prasad Tak Etc. (Civil Appeal No. 6432-6233 of 2023)*, where it was reiterated that all the payments due to the financial creditors should be discharged according to the Waterfall Mechanism as per Sec 53 of the Code, and further it was held that

the insolvency proceedings should be carried out in a fair manner, and the payment due to the Central Board of Indirect Taxes & Customs should be made in the order of priority as envisaged under Sec 53 of the Insolvency and Bankruptcy code, 2016.

l. It is submitted that, the Respondents, have acted in violation of Sec 53 and Sec 238 of the Code, by adjusting the tax refund amount against the outstanding tax liability during the liquidation proceedings, is bad in law and negates the intention of the Insolvency and Bankruptcy Laws for speedy and fair discharge of the liabilities of the CD.

m. The applicant has further relied on the decisions of the co-ordinate Benches :

i. Regal Metal Ferro alloys vs. SPM Auto Private Limited, CP (IB) No.433/(ND)/2017 by NCLT, New Delhi;

ii. National Company Law Tribunal, Kolkata Bench in the case of Vinod Kumar Kothari v. Assessing Officer, Income Tax Department and Ors, in I.A. (IB) No. 1168/KB/2020 in C.P (IB) No. 3/KB/2017,

3. In view of the above, the Applicant has filed the present application seeking following reliefs:

a. Pass an order/direction to set aside the impugned communication letter dated 25.01.2024, being document bearing no. CPC/2324/G23/406772395 issued by the Respondent Authority No.4 restraining the Respondents from adjusting an amount of Rs.34,410/- (Rupees Thirty Four Thousand Four Hundred Ten only) for the AY 2023-24, along with interest, towards any outstanding tax demands of the CD;

b. Alternatively, if such amount of Rs.34,410/- (Rupees Thirty Four Thousand Four Hundred Ten only) for the AY 2023-24 is already adjusted against any outstanding tax amount payable by the CD, then pass an order/direction against the respondent authorities to



refund the same back to the CD's liquidation estate, within a period of Two (2) Weeks: and

- c. Pass any such orders/directions, as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the case.

4. The Respondent have filed counter/reply to the application vide Dy. No.978 dated 24.02.2025 contending as under:

- a. It is submitted that M/s. Base Corporation Limited is assessed to tax under jurisdiction of this charge. As per the records available with this office, the above said taxpayer has outstanding income tax demand payable against him.
- b. In para 8 of the I.A filed by the Liquidator, it is incorrectly stated that the income tax department had not filed any claim either before the IRP or Liquidator. The correct fact is that the Income tax Department has filed its claim in form B as well in form C before the IRP and the Liquidator. The Liquidator has not responded till date with respect to status of the claim filed by the Department.
- c. M/s. Base Corporation Limited e-filed its return of income for the assessment year 2023-24 on 31.10.2023 offering nil total income with current losses of Rs.2,08,24,085/0 to the carried forward. The ROI filed by the assessee was processed by the CPC-ITR, Bengaluru, accepting the returned income and determining a refund of Rs. 34,410/-. Accordingly, an intimation under section 143 (1) of the Income Tax Act, 1961 was issued to the assessee on 24.11.2023.
- d. Considering the facts that the assessee has outstanding income tax demands, a communication was issued to the assessee from CPC-ITR on 24.11.2023 seeking response to the outstanding demands. The assessee, vide communication was provided details of all the demands and requested to verify the same and submit its response through e-filing of the income tax Department.



- e. Subsequently, a proposal u/s 245 of the Act was sent to the assessee company by the CPC-ITR. The Assessee was required to respond to the proposal u/s 245 of the Act for the adjustment of refund against demands payable by the assessee. However, failure on the part of the official liquidator of the assessee company who was in-charge of the affairs of the company at that point of time, to submit response within time, resulted in adjustment of refund of Rs.34,410. The communication u/s 245 of Income Tax Act, 1961 dated 25.01.2025 intimating assessee about adjustment of demand clearly shows that the Tax payer failed to file any response with respect to adjustment of refund of Rs. 34,410/- hence the refund was adjusted by the CPC.
- f. The demands outstanding against M/s. Base Corporation Limited have been marked in the system as non-collectible in view of the ongoing proceedings under I & B Code, 2016. Further claim on part of the Official Liquidator that she/he was not intimated about demands outstanding against M/s. Base Corporation Limited is not correct as she/he himself filed before the Hon'ble NCLT.
- g. In view of the above stated facts, it may kindly be noted that refund of Rs.34,410/- getting adjusted against outstanding demand was the result of multiple factors beyond the control of the Revenue. Further there are no provisions under Income Tax Act, 1961 wherein a refund once adjusted against the demand can be reversed without extinguishing or mitigating the demand. Hence, it is prayed that favourable decision safeguarding the interest of the revenue be taken in this case.
5. We have heard the Learned Counsels for both the Applicant and Respondents and gone through the material available on record.
6. It is seen from Summary of Demand mentioned on Page 2 of the Written Submissions dated 20.02.2025 filed by the respondent vide diary no 978 on 24.02.25 that Amounts collectible as ZERO and the same is reproduced below.



S. No	AY	DIN	Demand Section	Date of Order	Demand Outstanding (in Rs.)	Amount Difficult to Recover (in Rs.)	Amount Collectible (in Rs.)
1.	2007-08	2009200751027521461C	143 (1)	19.01.2009	39,36,011	39,36,011	0
2.	2009-10	2010200910055737066C	115WE	29.03.2011	22,54,644,	25,54,644,0	
3.	2009-10	201320093701671269C	220(2)	01.07.2013	91,562,	91,562	0
4.	2010-11	2017201010159820030C	154	0901.2018	5,96,47,700	5,96,47,700	0
5.	2010-11	2023201340412426211C	154	01.12.2017	4,52,12,540	4,52,12,540	0
6.	2013-14	2023201340412426211C	147 r.w.s.144	24.04.2023	53,37,45,270	53,37,45,270	0
7.	2013-14	2023201340415487020C	271 (1) (c)	05.03.2024	22,54,02,176	22,54,02,176	0
8.	2013-14	2023201340415402412C	271 (1) (b)	26.02.2024	20,000	20,000	0
9.	2013-14	2023201340415402622C	271F	26.02.2024	5,000	5,000	0
10	2014-15	2018201440401794033C	147	27.12.2018	19,21,15,919	19,21,15,919	0
11	2015-16	202320153700140733C	147	20.05.2023	61,83,29,130	61,83,29,130	0
12	2015-16	2023201537001407342T	147	30.05.2023	8,23,080,	8,23,080	0
13	2015-16	2023201540413842993C	271 (1) (b)	22.09.2023	20,000,	20,000	0
14	2015-16	2023201540415784874C	271 (1) ©	24.03.2024	44,59,10,460	44,59,10,460	0
15	2016-17	2018201637046632952C	143(3)	26.12.2018	7,71,93,660	7,71,93,660	0
16	2017-18	2021201740409700082C	270A	29.03.2022	37,30,28,986	37,30,28,986	0
17	2018-19	2021201837001228096C	143 (3)	21.05.2021	2,78,030	2,78,030	0
18	2018-19	2021201837001228096C	143 (3)	21.05.2021	82,58,280	82,58,280	0
19	2018-19	2021201840409699281C	270A	29.03.2022	1,14,14,898	1,14,14,898	0
20	2018-19	2021201840409648973C	272A (1)(d)	28.03.2022	10,000	10,000	0

7. When this being so, it is surprising that the Communication seeking response has recorded AOs response as **Collectible for AY 2007**. This clearly indicates lack of Proper Communication between the Assessing Officer and the CPC. The present adjustment made is Contrary to the facts available on record which show that the AO has considered the Demand as not Collectible.
8. Respectfully following the Hon'ble Supreme Court Decision in **Principal Commissioner of Income Tax Vs Monnet Ispat and Energy Ltd** in **SLP no 6483/2018** it has to be held that it was not proper to adjust the Refund due for AY 2023-24 to the earlier dues and that as The Hon'ble Supreme Court held in **Principal Commissioner of Customs Vs Rajendra Prasad Tak etc in Civil Appeal no 6432-6433/2023**



the dues will be paid as per Waterfall Mechanism under section 53 of the Insolvency and Bankruptcy Code,2016.

9. In View of this discussion, the Respondent is directed to Refund the amount of Rs 34,410/- to the Liquidator within Four weeks from the date of this Order.
10. The **IA no 310/2024 is Allowed** as indicated above. There is no Order as to Costs.

-Sd-

(RADHAKRISHNA SREEPADA)
MEMBER (TECHNICAL)

-Sd-

(SUNIL KUMAR AGGARWAL)
MEMBER (JUDICIAL)