

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

IA No.1001/2022

In

C.P. (IB) No. 380/MB/2018

Under Section 60(5) read with Section 33(5)
of Insolvency and Bankruptcy Code, 2016

Mr. Ashish Singh

**(Liquidator for M/s RRC International
Freight Services Limited)**

IBBI/IPA-002/IP-N00416/2017-18/11230

Having address at- GF 14, Tower-A, The
Corenthum, A-41, Sector-62, Noida-201301,
India

.... Applicant

Versus

**Additional/Joint/Deputy/Assistant
Commissioner of Income Tax**

Income-Tax Officer

National Faceless Assessment Centre

.... Respondent

In the matter of

Indiabulls Housing Finance Limited

...Petitioner

Versus

RRC International Freight Services Limited

... Respondent

Order Delivered on :- 22/02/2024

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Applicant : Adv. Amey Hadwale a/w
Adv. Geeta Lundwani

For the Respondent : None present

ORDER

Per: - Coram

1. This IA has been filed by the Applicant/Liquidator seeking the following reliefs:
 - (a) Pending disposal of the present application, the respondent shall be restrained from proceeding in furtherance to its orders dated 10.03.2021, 07.12.2021 and 14.01.2022.
 - (b) The Hon'ble Tribunal be pleased to declare that the penalty proceedings which were initiated vide order dated 10.03.2021 are non-est in law.
 - (c) The Hon'ble Tribunal be pleased to set aside the orders dated 07.12.2021 and 14.01.2022 and declare them non est as the same are in contravention to section 33(5) of IBC.
 - (d) The Hon'ble Tribunal be pleased to restrain the respondents from taking any execution, distress or recovery action in furtherance to the assessment order dated 10.03.2021.
 - (e) Any other orders as this Hon'ble Tribunal may deem fit.

2. None has present on behalf of the Respondent though notice was duly served and, therefore, the matter is being proceeded with ex-parte.
3. The Counsel for the Liquidator has pointed out that CIRP against the Corporate Debtor commenced on 26.12.2018. Subsequently, vide order dated 22.10.2019 liquidation order was passed in terms of Section 33 of the Code. The Counsel for the Liquidator has further pointed out that during the liquidation proceedings notices dated 27.07.2020, 11.12.2020 and 13.01.2021 under Section 142(1) of the Income Tax Act were received from the Respondent Income Tax Authorities to which the liquidator filed reply. The aforesaid notices culminated into an assessment order dated 10.03.2021 passed by the Respondent under Section 143(3) of the Income Tax Act assessing total income of the Corporate Debtor at Rs.3,44,86,678/-. The counsel for the liquidator has further pointed out that subsequently, proceeding under Section 270A and 270AAC were initiated against the Corporate Debtor following which show causes notices dated 10.03.2021, 10.06.2021 and 27.12.2021 were issued under Section 274 and 270A. Consequently, vide order dated 07.12.2021 passed under Section 271B, penalty of Rs.1.5 Lakhs and vide order dated 14.01.2022 another penalty of 1,66,211/- has been imposed upon the Corporate Debtor.
4. It has been pointed out by the counsel for the Liquidator that the impugned penalties could not have been imposed by the Respondent as the Corporate Debtor was in CIRP and liquidation and remedy available with the Respondent was to file a claim either with the RP or with the Liquidator for recovery of the outstanding dues, but no such claim has been filed till date by

the Liquidator. The counsel for the liquidator has further stated that the order dated 07.12.2021 and 14.01.2022 be set aside. The liquidator, however, has not pressed for any relief qua the order dated 10.03.2021.

5. Having considered the contentions raised by the counsel for the Liquidator, we are of the considered view that the orders dated 07.12.2021 and 14.01.2022 cannot be executed against the Corporate Debtor as the same are in violation of the moratorium and therefore, the respondent is restrained from executing the said order against the corporate debtor or the Liquidator. However, the respondent shall be at liberty to lodge its claim, if any, with the liquidator for recovery of the outstanding dues, if any, as per law. It is, however, being made clear that this order will not preclude the respondent from proceeding against the suspended directors of the Corporate Debtor if they have committed any illegality which may be actionable as per the provision of the Income Tax Act.
6. As a result of the above observations, the **IA No. 1001/2022 is partly allowed and disposed of to the extent indicated above.**

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)