NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
IA(IB) NO. 124/CB/2025
In
T.P. NO. 44/CTB/2019
[earlier C.P. (IB) NO. 373/KB/2017]

(An application under Section 60(5) of The Insolvency & Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules)

In the Matter of:

STATE BANK OF INDIA ...... **FINANCIAL CREDITOR**

VERSUS

ADHUNIK METALIKS LTD. ...... **CORPORATE DEBTOR**

AND

In the Matter of:

ADHUNIK METALIKS LTD.
Through Authorised Representative Mr. Rajiv Bajaj
having Registered Office
at Chadri Hariharpur, P.O.:
Kuarmunda, Dist.: Sundergarh,
Odisha – 770039.
Email-rajiv.bajaj@libertyhouseuk.com ...... **APPLICANT**

VERSUS

PRINCIPAL COMMISSIONER OF CUSTOMS (PORT)
at Office of the Principal Commissioner
of Customs (Port), Custom House:
15/1, Strand Road, Kolkata-
700001, West Bengal. ...... **RESPONDENT**

ORDER PRONOUNCED ON: 21.08.2026

CORAM: **CHEEKATI RADHA KRISHNA, MEMBER (JUDICIAL)**
BANWARI LAL MEENA, MEMBER (TECHNICAL)

APPEARANCE:

FOR APPLICANT: **MR. SASWAT KUMAR ACHARYA, ADV.**
MR. JAISH JOSHI, ADV.

FOR RESPONDENT: **MR. UMESH CHANDRA SAHOO, ADV.**

Sd

Sd

ORDER

PER: BANWARI LAL MEENA, MEMBER (TECHNICAL)

1. The present application was filed on 07.05.2025 under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "**Code**") read with Rule 11 of the NCLT Rules, 2016 seeking the following reliefs:

A. *An order declaring that the demand raised vide order dated 06.03.2025 stands extinguished, and consequently, quashing the order dated 06.03.2025 under ANNEXURE-19, and all consequential proceedings, if any;*

B. *Interim orders of protection in terms of prayers (A) restraining the Respondent from taking any coercive actions against the Applicant pursuant to the impugned demand, pending disposal of the instant application; and*

C. *Pass such other order(s) as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case.*

SUMMARY OF PLEADINGS

CONTENTIONS BY APPLICANT:

2. The applicant in its application has made inter alia, the following averments:

a. The Counsel for the Applicant submitted that the Corporate Insolvency Resolution Process **("CIRP")** against the Corporate Debtor ("Adhunik Metaliks Ltd."/ **"CD"**) was initiated under Section 7 of the Code *vide* order dated 03.08.2017 passed by the NCLT, Kolkata Bench, wherein Mr. Sumit Binani was appointed as the Resolution Professional **("RP")**.

b. It was submitted that pursuant to the public announcement issued by the RP inviting claims, the final list of creditors was prepared and published on 02.07.2018. Thereafter, the Resolution Plan submitted by Liberty House Group Pte. Ltd.

Sd

Sd

("Successful Resolution Applicant" / **"SRA"**) was approved by the Committee of Creditors **("CoC")** and subsequently received approval from the NCLT, Kolkata Bench *vide* order dated 17.07.2018 under Section 31(1) of the Code.

c. It was further submitted that although implementation issues arose leading to an order of liquidation dated 09.07.2019 passed by this Adjudicating Authority, the Hon'ble NCLAT, New Delhi, *vide* its judgment dated 03.03.2020 in Company Appeal (AT) (Insolvency) No. 724 of 2019, *set aside* the liquidation order and held that the Resolution Plan had attained finality and was to be implemented in letter and spirit

d. It was pointed out that under the express provisions of the approved Resolution Plan specifically *Clause 4.1* of the Detailed Financial Proposal read with *Schedule 3 (Clauses 13 and 16)* all claims, liabilities, or demands pertaining to any period prior to the approval date, including direct or indirect tax dues, statutory charges, penalties, and duties owed to any Governmental Authorities, stood permanently extinguished, abated, and discharged in perpetuity.

e. It was contended that despite the settled legal position, the Respondent issued a Show Cause-cum-Bond Enforcement Notice dated 18.02.2021 under Section 143(3) of the Customs Act, 1962, demanding customs duty of Rs. 1,94,60,124/- along with interest. The said notice pertained to alleged non-submission of Export Obligation Discharge Certificate **("EODC")** against Export Promotion Capital Goods **("EPCG")** licenses for the financial years ranging from 2009 to 2012, long preceding the initiation of the CIRP. Further, the Respondent issued another notice dated 31.01.2022 to the Applicant to submit proof of discharge of EODC against different EPCG authorisations.

f. The Applicant stated that replies dated 03.02.2022, 07.03.2022, and 03.03.2025 were submitted, and written notes of arguments

Sd

Sd

were filed during personal hearings, explicitly bringing to the Respondent's notice the completion of the CIRP, the approval of the Resolution Plan, and the resultant extinguishment of all pre-CIRP liabilities.

g. The Applicant submitted that notwithstanding these comprehensive explanations, the Respondent passed the impugned Order-in-Original **("OIO")** dated 06.03.2025 (DIN: 20250376NN0000333ECD) after an inordinate delay of nearly four years from the initial Show Cause Notice, confirming the demand of Rs. 1,94,60,124/-.

h. The Applicant vehemently argued that the Respondent failed to submit any claim before the RP during the CIRP. Therefore, relying upon the **"Clean Slate Theory"** laid down by the Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.*** [(2020) 8 SCC 531] and ***Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited*** [(2021) SCC OnLine SC 313], all unasserted pre-CIRP claims stood frozen and extinguished, and no recovery proceedings could be initiated or continued in respect thereof.

i. The Applicant further placed reliance on the decisions of the Hon'ble Supreme Court in ***Ruchi Soya Industries Ltd. v. Union of India*** [(2022) SCC OnLine SC 455] and ***JSW Steel Limited v. Pratishtha Thakur Haritwal*** [(2025) SCC OnLine SC 672], wherein it was held that any action by statutory authorities to enforce pre-CIRP demands contrary to the *Ghanshyam Mishra* ruling was illegal and non-tenable in law.

j. In conclusion, the Applicant submitted that by virtue of Section 31(1) read with the overriding effect under Section 238 of the Code, the approved Resolution Plan is binding on all governmental authorities. Hence, the demand raised *vide* the

Sd- Sd

impugned OIO dated 06.03.2025 was completely non-existent, illegal, and liable to be quashed in its entirety.

REPLY BY RESPONDENT:

3. The submissions by the Respondent are summarised herein:

a. The Respondent submitted by way of Preliminary Objections that the present application filed under Section 60(5) of the Code was misconceived, non-maintainable, and liable to be dismissed for want of jurisdiction: It was contended that the Applicant was seeking to convert the insolvency jurisdiction of this Tribunal into an appellate forum to challenge an OIO passed under the Customs Act, 1962.

b. Relying upon the judgments of the Hon'ble Supreme Court in ***Embassy Property Developments Pvt. Ltd. v. State of Karnataka & Ors.*** and ***Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain***, the Respondent submitted that the NCLT cannot adjudicate disputes or set aside orders that fall strictly within the exclusive domain and statutory appellate framework of other authorities under special enactments like the Customs Act, 1962.

c. It was submitted that the impugned demand of Rs. 1,94,60,124/- along with interest arose out of statutory proceedings initiated under Section 143(3) of the Customs Act, 1962 due to the Applicant's failure to fulfill Export Obligations and non-submission of EODC under conditional EPCG exemption notifications. It was argued that these constituted statutory consequences for breach of exemption conditions and were not mere operational debts left unclaimed during CIRP.

d. The Respondent vehemently contended that the "Clean Slate" doctrine and the protection under Section 31(1) of the Code are not absolute and do not grant blanket immunity from sovereign debts, especially where the implementation of the Resolution Plan

Sd Sd

was interrupted by persistent defaults, protracted litigation, and an intervening order of liquidation passed by this Adjudicating Authority on 09.07.2019.

e. It was argued that the failure and rejection of the Resolution Plan *vide* order dated 09.07.2019 rendered the proposed waivers and "haircuts" null and void, thereby reviving the Department's statutory claims to be prioritized under the Waterfall Mechanism under Section 53 of the Code.

f. The Respondent submitted that the subsequent setting aside of the liquidation order by the Hon'ble NCLAT *vide* order dated 03.03.2020 did not *ipso facto* extinguish the statutory liabilities that had crystallized during the intervening period of default and non-implementation. It was asserted that the "Clean Slate" doctrine cannot be retrospectively invoked to benefit an applicant from its own material breaches and delays in adhering to court-mandated timelines.

g. Placing reliance on the decision of the Hon'ble Supreme Court in ***Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs (CBIC)***, the Respondent submitted that the Customs Authorities are well within their statutory mandate to assess, determine, and crystallize the quantum of outstanding sovereign dues, and such assessment is not prohibited by the moratorium or insolvency framework.

h. The Learned Counsel further submitted that the landmark rulings in ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta*** and ***Ghanshyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.*** relied upon by the Applicant were factually distinguishable and inapplicable to the unique facts of the present case, as the "Clean Slate" protection cannot serve as a cloak to wash away liabilities accrued due to non-performance.

Sd

Sd

i. In conclusion, the Respondent submitted that the demand raised *vide* OIO dated 06.03.2025 remains a valid, subsisting sovereign debt and a statutory charge upon the assets of the CD, lawfully issued to protect the Public Exchequer. Therefore, the Respondent prayed for the dismissal of the application with costs.

ANALYSIS AND FINDINGS

4. We have heard the counsels appearing for both the parties, perused the pleadings on record, and examined the written notes of arguments and relevant judicial precedents. The primary issue that falls for our consideration is whether the Respondent/Customs Authority is entitled to demand, adjudicate, and recover customs duty/statutory dues pertaining to the pre-CIRP period (FY 2009–2012) after the approval and implementation of the Resolution Plan under Section 31 of the Code.

5. At the outset, dealing with the preliminary objection raised by the Respondent regarding the maintainability and jurisdiction of this Adjudicating Authority under Section 60(5) of the Code in light of ***Embassy Property Developments Pvt. Ltd. v. State of Karnataka & Ors.*** [(2020) 13 SCC 308] and ***Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain*** [(2022) 2 SCC 583], we find the said objection to be misplaced and unmerited. The decisions in *Embassy Property* and *TCS* pertained to scenarios during an ongoing CIRP where the Adjudicating Authority had erroneously ventured into adjudicating the substantive validity of statutory lease terminations or contractual breaches governed strictly by public law or private contract law. In contrast, the present application does not call upon this Tribunal to assess the tax liability on merits, verify export obligations, or sit as an appellate authority over an OIO under the Customs Act, 1962. Rather, the Applicant seeks the enforcement of the statutory consequences flowing from the approval of the Resolution Plan under Section 31(1) of the Code and a declaration regarding the extinguishment of pre-CIRP

Sd Sd

liabilities under the settled "Clean Slate" doctrine. Such an inquiry is intrinsically linked to and arises directly out of the insolvency resolution process of the CD, which squarely falls within the residuary jurisdiction of this Adjudicating Authority under Section 60(5)(c) read with the overriding mandate of Section 238 of the Code. Therefore, this Tribunal has full jurisdiction to determine whether the impugned demand survives post-plan approval and implementation.

6. Addressing next the primary defense set up by the Respondent that the liquidation order dated 09.07.2019 broke the 'clean slate' and revived the statutory claims under Section 53 of the Code. We find the same to be factually contrary to the record and legally unsustainable. It is a matter of undisputed record that the liquidation order dated 09.07.2019 was challenged in appeal, and the Hon'ble NCLAT *vide* its final judgment dated 03.03.2020 in *Company Appeal (AT) (Insolvency) No. 724 of 2019* set aside the liquidation order, restored the Resolution Plan, and directed its implementation in letter and spirit. **The legal effect of setting aside the liquidation order is that the order stood wiped out *ab initio*, rendering any reliance on Section 53 of the Code completely redundant.** Furthermore, the reliance placed by the Respondent on the decision of the Hon'ble Supreme Court in ***Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs (CBIC)*** [(2023) 1 SCC 472], is entirely misplaced and misconstrued. In *Sundaresh Bhatt*, the Hon'ble Apex Court recognized the limited jurisdiction of the Customs Authority to assess and determine duty liabilities *during the pendency of a CIRP or liquidation process* solely for the purpose of enabling the department to lodge its claim as an operational creditor before the Resolution Professional or Liquidator within the statutory timelines of the Code. The said ruling neither creates an exception to the "Clean Slate" doctrine nor permits the Customs Authority to initiate fresh assessment and recovery proceedings years after the approval and successful implementation of a Resolution Plan under Section 31(1) of the Code.

Sd Sd

In the present case, both the Show Cause Notice dated 18.02.2021 and the impugned OIO dated 06.03.2025 were issued long after the Resolution Plan was approved and implemented pursuant to the Hon'ble NCLAT's final order dated 03.03.2020. Consequently, the Respondent cannot seek shelter under *Sundaresh Bhatt* to validate an otherwise extinguished pre-CIRP demand.

7. It is undisputed that the demand of Rs. 1,94,60,124/- corresponds to non-submission of EODCs under EPCG licenses for the period FY 2009 to FY 2012, which is long prior to the Insolvency Commencement Date (03.08.2017). It is equally undisputed that the Respondent did not lodge any claim before the RP during the CIRP.

8. The question of whether unasserted pre-CIRP claims of statutory authorities survive against SRA is no longer *res integra*. In ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.*** [(2020) 8 SCC 531], the Hon'ble Supreme Court laid down the **"Clean Slate Theory"** and observed as under:

> *"105. Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were.*
>
> *.......*
>
> *107. ... A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate*

Sd

Sd

debtor. This the successful resolution applicant does on a fresh slate."

9. Reiterating and expanding this principle specifically to statutory dues owed to Central and State Governments, the Hon'ble Supreme Court in ***Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited***, [(2021) SCC OnLine SC 313], held as follows:

> *"95. In the result, we answer the questions framed by us as under:*
>
> *(i) That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;*
>
> *(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;*
>
> *(iii)* ***Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued."***

Sd

Sd

10. The aforesaid position was specifically applied to the demands of the Customs Department in ***Ruchi Soya Industries Ltd. v. Union of India*** [(2022) SCC OnLine SC 455]. Moreover, the High Court of Orissa in the Applicant's own matter, titled ***Adhunik Metaliks Ltd. v. State of Odisha***, W.P. (C) No. 1553 of 2022 (Order dated 08.12.2022), quashed all the pre-CIRP tax demands by applying the *Ghanshyam Mishra* ruling.

11. Recently, in ***JSW Steel Limited v. Pratishtha Thakur Haritwal*** [2025 SCC OnLine SC 672], the Hon'ble Supreme Court deprecated the practice of statutory authorities continuing recovery proceedings in disregard of the clean slate doctrine, holding as follows:

> *"45. Undoubtedly, in the present case, in spite of public notice, neither the State of Chhattisgarh nor its authorities raised any claim before the CoC. In that view of the matter, we are of the considered view that the case of the present Petitioner is specifically covered by the judgment of this Court in the case of Ghanshyam Mishra (supra), which judgment was brought to the notice of the respondents/ authorities, the respondents/ authorities could not have proceeded with the recovery proceedings.*
>
> *46. When the law laid down by this Court in the case of Ghanshyam Mishra (supra) is clear and unambiguous and specifically when the Petitioner's own case was part of the batch which is specifically dealt with by this Court, the respondents/ alleged contemnors ought not to have proceeded further with the recovery proceedings and ought to have dropped them forthwith. The continuation of such proceedings despite the judgment and order of this Court being pointed out to their notice is nothing but contemptuous in nature.*
>
> *47. We have, therefore, no hesitation in holding that the continuation of the proceedings by the respondents/ authorities even after the judgment of this Court in Ghanashyam Mishra was specifically brought to their notice is contemptuous in nature. However, we do not*

Sd

Sd

propose to proceed against the respondent contemnors inasmuch as they are entitled to benefit of doubt."

12. In light of the statutory scheme of Section 31(1) read with Section 238 of the Code and the settled judicial precedents, all claims of the Respondent pertaining to the pre-CIRP period stand extinguished in perpetuity, rendering the demand arising out of Order-in-Original dated 06.03.2025 legally unenforceable against the Applicant/Corporate Debtor. Accordingly, the present Interlocutory Application **I.A. (IB) No. 124/CB/2025** is **ALLOWED** with the following directions:

a. The demand of **Rs. 1,94,60,124/-** along with applicable interest and penalties raised vide **Order-in-Original No. KOL/CUS/PORT/AC/334/EOMC/2025 dated 06.03.2025 (DIN: 20250376NN0000333ECD)** stands extinguished in terms of the law laid down by the Hon'ble Supreme Court in ***Ghanshyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.***, and is rendered non-enforceable against the Applicant/Corporate Debtor.

b. The Respondent shall not initiate or pursue any coercive recovery proceedings against the Applicant/Corporate Debtor or its management in respect of the aforesaid extinguished demand.

13. Accordingly, **I.A. (IB) No. 124/CB/2025** in **T.P. No. 44/CTB/2019** stands **disposed of.**

Sd

BANWARI LAL MEENA
MEMBER (TECHNICAL)

Sd

CHEEKATI RADHA KRISHNA
MEMBER (JUDICIAL)