IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

IA No.393 of 2022 in
CP (IB) No.51/BB/2018
U/s 60(5) of IBC, 2016 r/w
Rule 11 of NCLT Rules, 2016

In the matter of:

Assistant Commissioner of Commercial Taxes
LGSTO-150, Bengaluru
3rd Floor, TTMC Building,
Yeshwanthpura,
Bengaluru – 560 022. … Applicant / Secured Creditor

Versus

1. Mr. Alok Kailash Saksena
Resolution Professional of
Associate Décor Limited
C/o. Desai Saksena and Associates
Chartered Accountants, 1st Floor,
Laxmi Building, Sir Phirozshah Mehta
Road, Fort Mumbai – 400 001. **& 8 Ors.** … Respondents

Order delivered on: 28th June, 2023

Coram: 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)

2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present:

For the Applicant	:	Shri Sandeep Huilgol, Adv.
For R-2, 3, 4	:	Shri Sharan Kukreja, Adv.
For the R-5	:	Shri Srinivasa Raghavan, Sr. Adv.

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. This application has been filed by the Asst. Commissioner of Commercial Taxes, Bangalore under Section 60(5) of the I&B Code, 2016 read with Rule 11 of the NCLT Rules, 2016 seeking the following reliefs:

(a) Declare the Information Memorandum passed by the Respondent No.1 in the present CIRP Proceedings as null and void and as contrary to the provisions of IB Code and the CIRP Regulations and consequently:

i. To declare the Resolution Plan dated 11.02.2020 approved by the Committee of Creditors based on the Information Memorandum prepared by the Respondent No.1 as null and void as the said Resolution Plan dated 11.02.2020 is contrary to the provisions of IB Code and the CIRP Regulations read with Section 48 of Karnataka Value Added Tax Act, 2003; Section 82 of Karnataka Goods and Services Tax Act, 2017; Section 82 of the Central Goods and Services Tax Act, 2017; Section 20 of the Integrated Goods and Services Tax Act, 2017 read with Central Goods and Services Tax Act, 2017 and consequently to set aside the Resolution Plan submitted by Respondent No.6;

ii. To set aside the approval given by the Respondents No.2, 3 and 4 for the Resolution Plan submitted by the Respondent No.5 through Respondent No.1, as null and void.

iii. To direct the Respondents No.2, 3 and 4 to comply with the Common Order dated 28.05.2021 passed by this Hon'ble Tribunal concerning IA 134 of 2020.

(b) To pass such other order/s that this Hon'ble Tribunal may deem fit in the facts and circumstances of this case, in the interest of justice and equity.

2. Brief facts of the Application are as under:

(a) In the course of its business, the Corporate Debtor (CD) – Associate Decor Ltd. effected taxable supplies of goods in and from the State of Karnataka and accordingly, registered under the provisions of Karnataka VAT Act, KGST Act, the Central GST Act, 2017 and the

Integrated GST Act, 2017 and accordingly liable to comply with the requirement of the above Acts including for payment of tax. Despite its registration under the GST Act, the Company did not file its monthly returns since Sept. 2017 and thus contravened the provisions of Sec.39 of the Act.

(b) Therefore, the Applicant served notice u/s 46 of the KGST Act on the Company calling upon it to file its returns within 15 days. However, the Company did not file its returns. Hence, the Applicant passed orders u/s 62 of the KGST Act in which he determined the tax liability of R-2 under the KGST, CGST & IGST Acts to the best of his judgment. As per the best judgment assessment orders, the total tax, interest and penal liability of the Company aggregated to Rs.84,82,50,692/-. The said Assessment Orders were passed between the period Sept. 2017 and October 2018. The CD was again provided 30 days from the date of service of the orders to file its returns. However, the CD failed to do so again.

(c) Thus, the Applicant initiated recovery proceedings u/s 79(1)(c) of the KGST Act by issuing garnishee notices to various Bank of Company. Being aggrieved, the CD filed a Writ Petition before the Hon'ble High Court of Karnataka in WP No.40360-40364/2018, and the Hon'ble High Court *vide* order dt.12.04.2019 dismissed the WP as infructuous and the demands made by the Applicant were not quashed.

(d) The Company having defaulted in payment to R-2, 3 & 4, were made as the Parties for recovery of sums due to them in CP (IB) 51 of 2018, which got admitted on 26.10.2018 and R-1 got appointed as IRP who was later confirmed as RP of Corporate Debtor. Pursuant thereto, the Applicant filed its claim before R-1 on 19.12.2018 for its total demand of Rs.54,46,13,819/-. Despite the above, no payment was made by R-1. Since the said orders have not been set aside by any statutory appellate authority, the said orders on the CD continued to be valid. Hence, the Applicant issued endorsement to the CD calling upon it to pay the balance amounts *vide* the assessment orders.

(e) The R-1 (RP) finalized all claims & prepared Information Memorandum (IM) to obtain EOI from PRAs. The Applicant once again filed its claim and came to understand that RP rejected its claim without any intimation, for which Applicant filed IA 134/2020 which was disposed of by common order by this Adjudicating Authority on 28.05.2021.

(f) Meanwhile, the CD through the R-1 filed WP No.45290/2019 before the Hon'ble High Court seeking to quash the endorsement dated 25.04.2019 issued by the Applicant. The same was disposed of on 02.07.2021 with a direction to proceed with the return filed u/s 62(2) of the CGST Act. In pursuance of the order passed by Hon'ble High Court, the assessment was done based on the returns filed by the CD and the tax demands were made and demand notices were issued.

(g) The CD (Rep. by RP) filed WP No.17303/2021 before the Hon'ble High Court *inter alia* seeking quashing of notices issued by Respondent therein. The order passed on 16.12.2021 in said WP reiterates the demand of the Applicant as enforceable in law after completion of the moratorium period and the prayers of quashing the demands were not granted and instead reserved the liberty to Applicants to enforce their statutory demands after moratorium.

(h) It is stated that R-1 had exceeded his jurisdiction to reject the claims of Applicant while preparing the IM thereby suppressed deliberately the amounts due to the Applicant as well as other Govt. Authorities of more than Rs.100 Crores for inclusion in the IM, the R-1 had indicated only a sum of Rs.40.92 Crores by illegally rejecting Rs.105.43 Crores. The IM not being prepared in accordance with law and not having being rectified and corrected by common order dt.28.05.2021 of this

AA, the subsequent actions of R-2, 3 & 4 including the consideration of Resolution Plan of R-5 need to be declared as null and void.

(i) It is stated that under Section 40(1) power is granted only to the Liquidator and to reject any claims after verification and no such power of rejection is conferred on the RP under the IBC. Therefore, the IM prepared by rejecting the entire demand merits to be declared as null and void. The claim of the Applicant is being covered and protected by mandatory provisions of Sec.82 of KGST Act; Sec.82 of CGST Act and Sec.20 of IGST Act r/w CGST Act. Thus, the Applicant falls under the definition of Secured Creditor in IB Code.

(j) It is stated that R-1 assailed the Common Order dated 28.05.2021 of this AA before the Hon'ble NCLAT, Chennai Bench in Company Appeal (AT) (Ins.) No.171/2021, the same was dismissed as withdrawn. Further, the IM prepared on 17.10.2019 by R-1 is being prejudicial to the interest of the State and hence, cannot be allowed to stand.

(k) In support of its contentions, the Applicant relied upon the decisions of Hon'ble Apex Court in *State Tax Officer (1) v. Rainbow Papers Ltd. dated 06.09.2022; Ebix Singapore Pvt. Ltd. v. CoC of Educomp Solutions Ltd. & Anr. (2022) 2 SCC 401*; *CoC of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors. (2020) 8 SCC 531.*

3. The Respondent No.1 – Resolution Professional of Corporate Debtor *vide* Diary No.5175 dated 01.12.2022 has *inter alia* contended as under:

(a) The claim filed by the Applicant in Form-F in respect of GST liability has rightly been rejected, as the claim was based on estimates and orders of best judgment assessment u/s 62 of KGST Act. Further, no claim was made by the Applicant during the relevant period of time when the claims were invited. This AA *vide* order dated 28.05.2021 further dismissed the application filed by the Applicant on the ground that the best judgment assessment orders were passed on the basis of uncrystallised debt and as such directed the Applicant to crystalize such debt and place the same for consideration. No crystalized claim is made till date. Further, on the basis of Judgment of Hon'ble Apex Court in *Ghanshyam Mishra*, the present claim cannot be considered at all as the claim was not made at the relevant point of time within the time lines.

(b) The returns filed pursuant to orders of the Hon'ble High Court of Karnataka in WP No.40360-64 of 2018 was considered as requisite compliance u/s 62 of KGST Act, 2017. Thereafter, the demands of Rs.54,46,13,819/- raised on the basis of best judgment orders have been treated as withdrawn and the said claim filed by GST Dept. no longer survives. The rejection of said claim which was based on best judgment orders and uncrystallised demand was proper. The IM disclosed the claim of the GST Dept. as disputed and rejected claim and thus the same was in accordance with Law.

(c) The RP filed WP No.17303/2021 praying for staying the operation of the Audit enquiry and Audit Report dated 22.07.2021 by the GST Dept. and further staying the operation of intimation issued u/s 74(5) of KGST and CGST Act. The same disposed of by Hon'ble High Court *vide* order dated 16.12.2021 and has suspended/kept in abeyance all proceedings as against CD till the disposal of proceedings before this Tribunal, lifting of moratorium and completion of CIRP process.

(d) The entire claim of Applicant being a disputed claim did not form part of the admitted claims in the IM and he has rightfully rejected the claim based on best judgment assessment as after filing of regular return on 30.03.2019, the best judgment order did not survive. This was upheld by the Hon'ble High Court in WP No.45290/2019, wherein, it is held that these best judgment orders were considered as withdrawn once the regular returns have been filed.

(e) The CD could not file the GST Returns for the period September, 2017 to October, 2018 (prior to initiation of CIRP) due to various difficulties like non-payment due to freezing of Bank a/c despite full payment of GST liability a wrong allocation between SGST and IGST etc. which led to passing of orders based on estimates and best judgment. A total of Rs.84,82,50,692/- was claimed in Form-F for the period Sept.2017 to October 2018 which includes additional interest. A claim of Rs.54,46,13,819/- was filed on 21.12.2018 in Form-F after adjusting the receipt of Rs.30,36,36,873/-.

(f) Pursuant to the interim order of Hon'ble High Court dated 13.02.2019 in WP No.40360-64/2018, the CD was allowed to file its return within one week, the CD complied with the order and filed its GST returns for the period Sept.2017 to Oct.2018 on 30.03.2019. The CD paid its entire GST liability for this period before filing GST Returns. The actual GST liability for the said period was Rs.53,23,37,694/- based on the books of accounts and the transactions which was also paid in full as against best judgment orders of Rs.84,82,50,692/-. Therefore, there is no liability towards GST. Best Judgment orders passed u/s 62 of KGST Act were passed based on an estimate of the liability when returns are not filed. It is stated that the GST Dept. was a Party to all High Court proceedings and was fully aware of the orders.

(g) In support of its contentions, RP relied upon the decisions of Hon'ble Apex Court in *CoC of Essar Steel India Ltd. through Authorised Signatory v. Satish Kumar Gupta & Ors.* (Civil Appeal No.8766-67 of 2019 dt.15.11.2019) and the Hon'ble NCLAT in Company Appeal (AT) (Ins.) No.242 of 2019 dt.04.04.2019. The RP submits that the entire claim of GST Dept. being a disputed claim could not part of the admitted claims in IM. Further, in view of the dictum of Hon'ble Supreme Court in *Ghanshyam Mishra*, the question of entertaining the claim belatedly does not arise, and the Applicants reliance on the decision of Hon'ble Apex Court in *State Tax Officer v. Rainbow Papers Ltd.* is misplaced as the claim itself was disputed and rejected by RP.

4. The Respondent Nos.2 to 4 being the Members of the CoC of CD *vide* Diary No.5176 dated 01.12.2022 has *inter alia* contended as under:

(a) The Applicant is barred by the principle of *res judicata* to file the present Application as IA No.134 of 2020 filed by Applicant on exactly same grounds in CIRP has already been disposed of by this Tribunal *vide* order dated 28.05.2021 with a direction to the Commercial Taxes Dept. to place before the RP only ascertained, crystallised demand that may have arisen from a regular assessment for the period under consideration.

(b) The claim of the Applicant was not included in the IM after due consideration by the R-1, therefore, the IM does not suffer from any illegality. Further, the claim does not fall under the purview of the judgment passed by the Hon'ble Apex Court in *State Tax Officer* vs. *Rainbow Papers* and the Applicant is not a Secured Creditor. The Resolution Plan cannot be declared null and void and is not hit by Hon'ble Apex Court's finding in *Rainbow* judgment on inability of a Resolution Plan to pay statutory dues. The Plan has been approved by CoC in its commercial wisdom and is duly compliant and has adequate provisions for treatment of operational creditors (including statutory creditors) whose claims have been admitted by the R-1.

(c) In compliance with the order dated 28.05.2021, the Applicant never filed a revised claim form. Further, the Applicant has no locus to challenge the Resolution Plan of R-5 which was approved by CoC in its commercial wisdom and after the Hon'ble Appellate Tribunal *vide* its order dt.19.09.2022 passed in appeals pertaining to instant CIRP (Company Appeal (AT) (Ins.) Nos.159, 165 and 172 of 2022) filed by R-5 and R-1 against the order dated 28.05.2021 passed by this AA in IA No.227 of 2020 filed by one of the Resolution Applicants, has categorically held that there was *"absence of any 'material irregularity' and 'violation of any Law' for the time being in force."*

(d) Further, the Applicant would not be considered to have first charge at par with Secured Creditors under the mandatory provisions of Sec.82 of the Karnataka GST Act, 2017, Sec.82 of Central GST Act, 2017 and Sec.20 of Integrated GST Act, 2017, since the provisions of these Sections lay down a specific exception to the provisions of the Code and expressly gives an over-riding effect to the Code.

5. The R-5 i.e. Mohammed Enterprises (Tanzania) Ltd. (Successful Resolution Applicant) has filed reply *vide* Diary No.5305 dated 08.12.2022 and written submissions *vide* Diary No.1997 dt.12.04.2023 by *inter alia* contending as under:

(a) The Members of the CoC in its 19th meeting assessed the feasibility and viability of all the Resolutions Plans submitted before it, including the METL Resolution Plan. Resultantly, the Resolution Plans were put up for voting wherein METL Resolution Plan was approved by the CoC with 100% voting share.

(b) Pursuant to the direction given by this AA *vide* common order dated 28.05.2021 in IA No.134 of 2020, the Applicant has not undertaken any regular assessment of the alleged GST liability. The Applicant filed the instant application for a demand of Rs.54,46,13,819/- u/s 62 of the KGST Act on a 'best judgment'. However, subsequently, the entire claim towards GST liability in respect of the period from September

2017 to October 2018 has been discharged by the CD which has also filed its returns pursuant to orders of Hon'ble High Court of Karnataka.

(c) The Karnataka High Court *vide* order dated 02.07.2021 set aside all 13 assessment orders issued by the Applicant for the aforesaid period and further directed that the GST Dept. may proceed to process the return filed by the CD in accordance with law. In view of the same, all tax liability has been discharged and no tax demand currently subsist against the Corporate Debtor.

(d) The Hon'ble Supreme Court in *Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs (2023) 1 SCC 472*, while dealing with an interplay between provisions of IBC and Sec.142A of the Customs Act, 1962, which is *para materia* to the provisions of KGST Act, stated that in view of Sec.238 of IBC, the provisions of IBC will have an overriding effect on the Customs Act. It is stated that the Judgment in the matter of *Sundaresh Bhatt* is squarely applicable to the present case and to Sec.48 of KGST Act.

(e) Even assuming without admitting that Applicant's claim is tantamount to a claim of Secured Creditor, as per Clause 10 of Part II of the METL Resolution Plan, in the event a payment/distribution to any class of creditor is sought to be modified, the amount payable to Creditors of the CD under the METL Resolution Plan shall be adjusted from the payments to be made to the Secured Financial Creditors. The total amount payable by the METL Resolution Applicant will not exceed the amount as contemplated in the Resolution Plan. Further, it is stated that the METL Resolution Plan is duly compliant with all the mandatory requirements of the Code and relevant Regulations made thereunder.

6. The R-6: M/s. Svamitva Landmarks, R-7: M/s. Shankeshwar Landmarks LLP and R-8: M/s. Shankeshwar Landmarks have filed common reply *vide* Diary No.5198 dated 02.12.2022 by *inter alia* contending as under:

(a) It is submitted that the relief sought by the Applicant at prayer a(i) of the Application erroneously mentions the Resolution Plan submitted by R-6 while the Applicant in effect seeks the setting side of the Plan submitted by R-5.

(b) In the Appeals filed by R6 to R8 before the Hon'ble Apex Court against the Orders dated 19.09.2022 passed by the Hon'ble NCLAT, it was contended that R1, as a RP, has no right to reject the statutory dues of the Government as has been held by the Hon'ble Apex Court in its judgment dated 06.09.2022 in *Rainbow Papers Ltd.* case. Further, the governmental authorities to whom tax is owed assume the nature of a 'secured creditor', and neither the RP nor the CoC has right to reject the claim of such a secured creditor.

(c) It is contended that R1 has colluded with R5 from the beginning of CIRP to ensure that R5 takes over ownership of the CD and with this intent R1 rejected the tax liabilities of CD so that R5 would not have to bear such liabilities after acquiring the CD and with same intent R1 did not place the Resolution Plan of R6 to R8 before the CoC.

(d) It is stated that in para 8(2) of the order dated 28.05.2021 in IA No.227 of 2020 passed by this Tribunal, it has been found that the preparation of the IM was not in conformity with the Code, and in para 8(4) this Tribunal found a grave infirmity in the procedure followed by Respondent No.1.

7. Heard the Ld. Counsels for the Applicant, R2 to R4 and Ld. Senior Counsel for R5 and carefully perused the pleadings on record.

8. On perusal of the facts it is observed that the Applicant herein i.e. Asst. Commissioner of Commercial Taxes, LGSTO-150, Bangalore has filed a claim on 21.12.2018 in Form-F for Rs.54,46,13,819/- after adjusting the receipts of Rs.30,36,36,873/- in respect of GST liability and the same has been rejected by the R1-Resolution Professional of the Corporate Debtor, as the claim was based on estimates and orders of best judgment assessment under Section 62 of the Karnataka GST Act, 2017.

9. It is seen that the Applicant herein has earlier filed IA No.134 of 2020 inter alia seeking an order for setting aside the RP's order rejecting the entire claim of the Applicant for Rs.54,46,13,819/-; to admit its entire claim; to suitably revise the IM and EoI in the CIRP of Corporate Debtor after taking into account its claim for Rs.54,46,13,819/-. This Adjudicating Authority *vide* order dated 28.05.2021 dismissed the said application with a direction to the Commercial Taxes Dept. to place before the RP only ascertained, crystallised demand that may have arisen from a regular assessment for the period under consideration and the RP shall place the same before the CoC/reconstituted CoC, for its consideration.

10. However, the Applicant through the instant IA has *inter alia* sought to declare the Resolution Plan dated 11.02.2020 approved by the CoC based on the Information Memorandum prepared by the R-1/RP as null and void as the said Plan is contrary to the provisions of the Code and Regulations and to direct the R2, R3 and R4 to comply with the common order dated 28.05.2021 passed by this Adjudicating Authority in IA No.134 of 2020. Therefore, the Applicant had raised same issues between the same Parties in the IA No.134 of 2020 in which case order has already been passed by this AA.

11. It has been correctly contended by the Respondents that once an issue has already been adjudicated upon by this Tribunal, the same cannot be adjudicated again without taking necessary consequential steps in accordance with the observations of the Tribunal. It was stated by this Adjudicating Authority in the above order dated 28.05.2021 that once the return is already filed and taxes paid, the demand raised in the best judgment assessment order would not be enforceable. Therefore, the IA was disposed of with directions that the Commercial Taxes Department should place before the RP only ascertained, crystallised demand after the regular assessment is made.

12. The contention of the Respondents is that the Applicant has come up with the same claim amount which arose on account of the best judgment assessment order made earlier and the regular assessment has not been made; so the demand is not ascertained and crystallised and placed before the R-1 for the consideration of the CoC. Therefore, the Respondents have rightly contended that the Applicant is barred by *res judicata* and is estopped to raise similar grounds for consideration before this Adjudicating Authority without following the directions in accordance with Law.

13. In this connection, the relevant provisions of Section 62 of the Karnataka GST Act, 2017 is reproduced hereunder:

> *"**62. Assessment of non-filers of returns.-** (1) Notwithstanding anything to the contrary contained in section 73 or section 74, <u>where a registered person fails to furnish the return</u> under section 39 or section 45, even after the service of a notice under section 46, <u>the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered</u> and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates. (2) <u>Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn</u> but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue."*

14. As stated supra, pursuant to the interim order of the Hon'ble High Court of Karnataka dated 13.02.2019 in WP No.40360-40364/2018, the Corporate Debtor filed its GST returns for the period September 2017 to October 2018 on 30.03.2019. Ordinarily, as per Section 62(2) of KGST Act, 2017, where the GST returns are filed within 30 days from the date of passing of the best judgment orders, these assessment orders shall be deemed to have been withdrawn.

15. The RP submitted that pursuant to the orders of the Hon'ble High Court of Karnataka in WP 15646/2018, WP 40360-40364/2018 and in particular the interim order dated 13.02.2019 in WP 40360-40364/2018, the Corporate Debtor was allowed to file its return within one week and the CD complied with the order and finally filed its GST returns for the period September 2017 to October 2018 on 30.03.2019. The CD paid its entire GST liability for this period before filing the GST returns. The actual GST liability for the said period was Rs.53,23,37,694/- based on the books of accounts and the transactions which was also paid in full as against the best judgment orders (which are estimates) of Rs.84,82,50,692/-. Pursuant to the filing of GST returns which were pursuant to orders of the Hon'ble High Court of Karnataka, Bangalore and payment of the GST taxes for the period Sept. 2017 to October 2018, there is no liability or amount payable towards GST.

16. From the pleadings, it is noticed that the Corporate Debtor filed another WP No.45290/2019 before the Hon'ble High Court of Karnataka seeking quashing of the best judgment assessment orders issued since the CD had already filed its returns and made payment towards the GST liability. The Hon'ble High Court vide its order dated 02.07.2021 has set aside all the assessment orders issued by the Applicant between September 2017 to December 2018 and directed the GST Department to process the return filed by the Corporate Debtor in accordance with Law. However, after this setting aside order, the GST Department has not undertaken to make any regular assessment in accordance with the returns filed. Therefore, it has been emphasised by the Respondent that this IA is liable to be dismissed.

17. Another line of argument by the Applicant is that keeping the powers of the State by having first charge on the property of taxable person against the demands and amounts payable, the Hon'ble Supreme Court in *State Tax Officer v. Rainbow Papers Ltd.* dated 06.09.2022, has inter alia held that the Sales Tax authority is a 'secured creditor' for tax purposes. In this context, it is also to be noted that the Hon'ble Apex Court in Rainbow Papers case at para 56 has held as under:

> *"56. Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of the IBC. Under Section 53(1)(b)(ii), the debts owed to a secured creditor, which would include the State under the GVAT Act, are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date."*

18. However, it has been explained that the Applicants' case would not be covered as a 'Secured Creditor' in the same manner as decided in the above judgment of the Hon'ble Apex Court. In the instant case, the claim of the Applicant would not be considered to have first charge at par with secured creditors under the mandatory provisions of Section 82 of the Karnataka Goods and Services Tax Act, 2017, Section 82 of the Central Goods and Services Tax Act, 2017 and Section 20 of the Integrated Goods and Services Tax Act, 2017 in view of the provisions contained in these Acts. Section 82 of both the KGST Act and CGST Act is reproduced hereunder:

> *"**82. Tax to be first charge on property** – Notwithstanding anything to the contrary in any law for the time being in force, <u>save as otherwise provided in the</u>*

> *Insolvency and Bankruptcy Code, 2016 (Central Act 31 of 2016), any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person."*

19. Further, Section 20 of the IGST Act provides that certain provisions of CGST Act *inter alia* those falling under demands and recovery section of CGST Act shall, *mutatis mutandis*, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under the IGST Act. The provisions extracted above laid down a specific exception to the provisions of the Code and expressly gives an over-riding effect to the Code. Therefore, the contention of the Applicant that it falls under the definition of 'Secured Creditor' under the Code is not tenable.

20. In view of the foregoing discussions, we are of the considered opinion that the instant application is liable to be dismissed. **Accordingly, IA No.393 of 2022 is hereby dismissed.**

Sd/-	**Sd/-**
MANOJ KUMAR DUBEY	**T. KRISHNAVALLI**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

jsr