

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA/396/2020 in CP/1226/IB/
2018 filed under Section 60(2) of
the Insolvency & Bankruptcy
Code, 2016

In the matter of ***M/s. R L Logistics Private Limited***

Mr. A. Arumugam (Liquidator),

In respect of
M/s. R L Logistics Private Limited,
No.1/56, Market Road,
(Devi Stores Upstairs), Kelambakkam,
Chennai – 600 103.

... Applicant / Liquidator

-vs-

- 1. The Office of the Chief Commissioner of
Customs,**
Headquarters of Chennai Customs,
Customs House No.60,
Krishna Block, Rajaji Salai,
Opp. to Collectorate, Chennai – 600 001.
- 2. The Office of the Deputy Commissioner of
Customs VIII,**
Headquarters of Chennai Customs,
Customs House No.60,
Krishna Block, Rajaji Salai,
Opp. to Collectorate, Chennai – 600 001.
- 3. The Office of the Assistant Commissioner of
Customs,**
Headquarters of Hyderabad Customs,
No.52 & 53, Usha Mullapudi Road,
Bhagya Nagar Colony, Kukatpally,
Hyderabad, Telangana – 500 072.

4. Mr. S.Rajagopal,
Ex-Director of the Corporate Debtor,
No.350/1, Mohan Ram Nagar,
Mogappair West, Chennai – 600 037.

... Respondents

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicant : K. Moorthi, Advocate
For R1 to R3 : A.P. Srinivas, Advocate
For R4 : Shubharanjani Ananth, Advocate

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

Order delivered on 18th of June, 2020

1. This is an Application filed by the Liquidator appointed by this Tribunal while initiating the process of liquidation in relation to the Corporate Debtor namely M/s. R L Logistics Private Limited, vide Order dated 21.10.2019.
2. The facts which are essential in brief as averred in the Application for the determination of the Application are as follows:-

The Corporate Insolvency Resolution Process (CIR Process) in relation to the Corporate Debtor based on an Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short, I&B Code, 2016) read with attendant Rules was initiated before and ordered by this Tribunal on 27.02.2019. Consequent thereto, IRP appointed by this Tribunal and the RP seems to have complied with the duties cast upon them under the provisions of I&B Code, 2016 as well as the Regulations framed there under. On the expiry of the period of CIR Process, on 21.10.2019 this Tribunal directed the liquidation of the Corporate Debtor as already stated and appointed the Applicant as the Liquidator.

It is further averred that the Company under Liquidation is having its registered Office at Chennai and branch Offices at Hyderabad, Mumbai, Tuticorin and several other places. In relation to the Customs, it is averred that the Company in Liquidation was operative with registration of 'F' License in Chennai Customs and 'G' License in Hyderabad Customs and

other places with License No. CHN/R-125/2011-CHA dated 11.07.2011 and the License was valid up to 10.07.2021.

It is averred that even though the License was valid till 10.07.2021, it came to be cancelled and thereby the Hyderabad Office of the Company in Liquidation came to a standstill w.e.f. 12.03.2020. However, the fact of cancellation of the License came to the knowledge of the Applicant/Liquidator only when the necessary documents in relation to the consignment was filed by the Hyderabad branch office of the Company in Liquidation and same was rejected on the ground that the License was cancelled.

It is further averred that the cancellation of the License came into effect in view of the 4th Respondent herein, being the Ex-Director of the Company in Liquidation, misguided some of the officials of the Respondents to cancel the License of the Company in Liquidation and it seems to have been based on the communication addressed by the 4th Respondent dated 29.01.2020.

It is averred in the Application that the said cancellation as done by the Respondents is against the provisions of Section 14 (1(a) of the I&B Code, 2016 as amended by the subsequent amendment Act of 2020. It is also averred that the cancellation of the CHA License has been done unilaterally by the Authority without giving an opportunity to the Applicant/Liquidator despite the directions by this Tribunal vide Order dated 21.10.2019 permitting the Corporate Debtor/ Company in Liquidation which is operating the Branch at Hyderabad, is a clear violation of the said Order passed by this Authority on 21.10.2019. It is also stated that the 4th Respondent, being the Ex-Director of the Company in Liquidation has no authority to interfere in the affairs of the Company in Liquidation. Despite several communications being addressed to the Respondent Nos.1 to 3 in relation to the cancellation of the CHA License, the Respondent Nos. 1 to 3 did not choose to respond to the said communications. In the said circumstance, this Application has been field by the

Applicant/Liquidator seeking for the reliefs as under :-

- a) *To direct the 1st & 2nd respondents to revoke the cancellation of License No. CHN/R-125/2011 – CHA dated 11.07.2011 which is valid up to 10.07.2021 and permit the Hyderabad office of the Corporate Debtor M/s. R L Logistics Private Limited to function as an ongoing concern.*
- b) *To direct the 3rd Respondent to accept the License No.CHN/R-125/2011 – CHA to allow the Hyderabad office of the Corporate Debtor M/s. R L Logistics Private Limited to continue its normal operations.*
- c) *To pass appropriate orders against the act of the 4th Respondent which resulted in cancellation of the License No.CHN-R-125/2011 – CHA of the CD.*
- d) *To pass such other orders or further orders in this regard as this Hon'ble Tribunal may deem fit and proper and thus render justice.*



3. Upon Notice of this Application issued by the Applicant/Liquidator as well as the Application for the urgency in moving this Application, the Respondent No. 1 to 3 is being represented by Learned Counsel, Mr. A.P. Srinivas and in relation to the Respondent No.4, Learned Counsel Ms. Shubharanjani Ananth has entered appearance, all through Video Conferencing.
4. Learned Counsel for the Applicant as well as Counsel for the Respondent Nos. 1 to 3 and Counsel for the Respondent No.4 have made their respective submissions through Video Conferencing when the matter was listed on 15.06.2020.
5. This Authority raised a query to the Learned Counsel for the Respondent Nos.1 to 3 whether any alternate remedy in the form of an Appeal is available in relation to the cancellation of CHA License for the person aggrieved by such cancellation, to which the Learned Counsel for the Respondent Nos. 1 to 3 represented that the Customs Act -1962 provides for an Appeal to be filed before Customs Excise and

Service Tax Appellate Tribunal (CESTAT,) if any persons is aggrieved by the Order passed by the Respondent Nos. 1 to 3 in this regard.

6. In relation to the Respondent No.4, being an Ex-Director of the Corporate Debtor/Company in Liquidation, the Learned Counsel for the said Respondent represented that the CHA License stands in the individual name of Respondent No.4 and in the said circumstances, there cannot be any grievance in relation to the cancellation on part of the Company in Liquidation or the person managing the affairs of the Company in Liquidation. Hence, it is contended that this Application is liable to be dismissed *in limini*.

7. We have carefully considered the oral submissions made by the respective Counsel appearing for the parties. Further, considering the submissions of the Counsel for the parties, when a query was posed to the Counsel for the Applicant/Liquidator as the cancellation of CHA License and the Applicant's Appellate remedy, which is required to be pursued,

falls within the domain of the public law, whether this Authority can grant any relief as sought for in the Application taking into consideration the judgement rendered by Hon'ble Supreme Court in **M/s Embassy Property Developments Pvt. Ltd. V. State of Karnataka & Ors**, in *Civil Appeal No. 9170 of 2019* and as well as the judgement of the Hon'ble High Court of Madras in **Deputy Director, Office of the Joint Director Directorate of Enforcement, Chennai Zonal Office Vs. Asset Reconstruction Company (India) Ltd. (ARCIL) & 2 Ors.**, in *WP No. 29970/2019 and WMP Nos. 29872 & 34971/2019* following the Embassy Property judgement.

8. The Learned Counsel for the Applicant/Liquidator represented that an opportunity may be given to the Applicant/Liquidator to pursue the Appeal remedy, if any, as provided under the Customs Act as represented by the Learned Counsel for the Respondent Nos. 1 to 3. Further, it is also submitted that despite several communications by the Applicant/Liquidator, the Respondent Nos. 1 to 3 have not chosen to respond

and in the said circumstances, the basis and rationale for considering the cancellation of CHA License is not ascertainable and under the circumstances, the Applicant is handicapped in pursuing his remedy before CESTAT.

9. We are of the view that based on the decision in **M/s Embassy Property** case referred *supra* as well as the subsequent decision which was passed by the Hon'ble High Court of Madras, we cannot encroach upon the jurisdiction of CESTAT and hence, the following Order is passed in the matter under the circumstances:-

(i) This Application cannot be maintained before this Tribunal and recourse if at all available to the Applicant is to pursue before the Appellate Authority namely CESTAT against the cancellation of CHA License.

(ii) However, in view of the representation made by the Counsel appearing on behalf of R1 to R3

that they are agreeable to communicate to the parties to consider the representation as given by the Applicant/Liquidator of which they have not till date chosen to respond, the Respondent Nos. 1 to 3 shall respond at the least within the period of 2 weeks from today and duly communicate the response to the Applicant/Liquidator for availing appropriate remedy thereafter as available under the Customs Act, 1962, in this regard, taking into consideration the interest of the Company in Liquidation.

10. With the above observation, the Application stands disposed of.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

P. ATHISTAMANI