

W.P.(MD) No.8260 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

|               |            |
|---------------|------------|
| Reserved on   | 14.07.2025 |
| Pronounced on | 14.08.2025 |

CORAM

**THE HON'BLE MR.JUSTICE C. SARAVANAN**

**W.P.(MD) No.8260 of 2025**

and

**W.M.P.(MD) No.6197 of 2025**

M/s.Avenue Realty (A Partnership Firm)  
represented by its Managing Partner  
Mr.T.M.Elayaraja,  
Registered Office : No.39/19 Second Floor,  
1<sup>st</sup> Cross Street, West CIT Nagar,  
Nandanam, Chennai – 600 035.

... Petitioner

Vs.

- 1.The Assistant Commissioner  
Srirangam (GST Circle)  
Moolathoppu Melur Road,  
Srirangam, Tiruchirappalli - 620 006.
- 2.The Sub Registrar,  
Keezhsathanur,  
Palani Road, K.K.Nagar,  
Tiruchirappalli, Tamil Nadu 620 001.
- 3.RLS Alloys Private Limited  
(Under Liquidation)  
Rep. by its Liquidator,  
Mr.S.R.Shiraam Shekher,  
CIN: U27108TN2006PTC058862



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Rep. by its Managing Director/  
Authorised Representative,  
S.F.No.118/1, 2, 3,  
Sethurapatti Road, Fathima Nagar,  
Tiruchirappalli, Tamil Nadu,  
India - 620 012.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the attachment order over the subject properties as mentioned in Schedule A to the writ petition, issued by the first respondent dated 03.02.2016 bearing reference No.Na.Ka.115/A3/2016 and quashing the same as arbitrarily and illegally sustained, despite taking legal recourse under the provisions of the Insolvency and Bankruptcy Code, 2016 and consequently, directing the second respondent to remove and lift the attachment from the encumbrance certificate.

For Petitioner : Mr.T.Mohan, Senior Counsel  
for Mr.V.G.Suresh Kumar

For R1 & R2 : Mr.R.Suresh Kumar  
Additional Government Pleader

For R3 : M/s.K.H.Dhanya Dheekshitha

### **ORDER**

The Petitioner has challenged the Attachment Order dated 03.02.2016, bearing Reference No. Na.A.115/A3/2016 (hereinafter referred as the 'impugned Attachment Order'). By the impugned



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Attachment Order dated 03.02.2016, the 1<sup>st</sup> Respondent has attached the property of RLS Alloys Pvt Ltd/3<sup>rd</sup> Respondent under TNVAT Act, 2006 for arrears of VAT for the Assessment Years 2007-2008 to 2014-2015 for a sum of Rs.2,11,57,636/-.

2. Relevant portion of the impugned Attachment Order dated 03.02.2016 passed by the 1<sup>st</sup> Respondent is extracted hereunder:-

“பார்வையில் காணும் இவ்வலுவலக செயல்முறை ஆணைகளின்படி திரு.பி.தமிழரசு, ஊரிமையாளர் திள். RLS ALLOYS (P) LTD-S.F.No.118/1-3, Sethurappatty Road, Fathima Nagar, Trichy-12 (TIN: 33633463227)-2007-2008 முதல் 2014-2015 வரை உள்ள ஆண்டிற்கு வணிகம் செய்த வகையில் வரித்தொகை ரூ.2,11,57,636/- அரசுக்கு செலுத்த வேண்டியுள்ளது. வணிகருக்கு வரிநிலுவையினை செலுத்திட அறிவிப்பு வழங்கிய பின்னரும், வரிநிலுவையினை செலுத்தவில்லை. மேலும் அரசுக்கு ஏற்படும் வருவாய் இழப்பினை தவிர்க்கும் பொருட்டு வணிகரின் பெயரில் உள்ள இடத்தில் உள்ள சொத்துக்கள் மீது வில்லங்கம் ஏற்படுத்தி மேற்படி பதிவேட்டின் நகலை உடன் இவ்வலுவலகத்திற்கு அனுப்பிவைக்குமாறு அன்புடன் கேட்டுக்கொள்கிறேன்.”

**FACTUAL BACKGROUND OF THE CASE:-**

3. The Petitioner has purchased the property in an auction conducted by the Liquidator appointed by the National Company Law Tribunal (NCLT) on 24.10.2024, during the course of liquidation of the 3<sup>rd</sup> Respondent company. The 3<sup>rd</sup> Respondent is represented by its



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Liquidator, namely Mr.S.R.Shiraam Shekher. The 3<sup>rd</sup> Respondent issued a

Submission of Claims on 23.01.2025.

4. The 3<sup>rd</sup> Respondent company was ordered to be liquidated by the National Company Law Tribunal, Single Bench, Chennai, *vide* order dated 14.06.2019, in a petition filed by M/s.Foseco India Limited, an operational creditor, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code'), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

5. Earlier by an order dated 03.12.2018, Mr.Ramasamy Shanmugam was appointed as an Interim Resolution Professional by the National Company Law Tribunal.

6. After Mr.Ramasamy Shanmugam was appointed on 03.12.2018 as an Interim Resolution Professional (IRP), took over the management of the Corporate Debtor, namely RLS Alloys Pvt Ltd/3<sup>rd</sup> Respondent (now represented by Liquidator, Mr.S.R.Shiraam Shekher. The Interim Resolution Professional (IRP) presided over the first meeting of the



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Committee of Creditors on **18.01.2019**. Mr.Ramasamy Shanmugam, the  
WEB COPY IRP, thus, issued an advertisement on 25.04.2019 and invited expression  
of intent for proposed Resolution Authority for Resolution Professional.

7. In the said first meeting of the Committee of Creditors held on 18.01.2019, the said Mr.Ramasamy Shanmugam, who was appointed on 03.12.2018 as the Interim Resolution Professional (IRP), was appointed as Resolution Professional (RP).

8. Thereafter, the third meeting of the Committee of Creditors was held on 25.04.2019 and the 4<sup>th</sup> meeting of the Committee of Creditors was held on 28.05.2019, where the Committee of Creditors unanimously passed the resolution for liquidation of the company.

9. In this background, Mr.Ramasamy Shanmugam, Interim Resolution Professional (IRP) filed a petition in M.A.No.559 of 2019 in C.P./661(IB)/CB/2017 under Section 33(2) of the Code for the following relief:

- i. To pass an order for liquidation of the Corporate Debtor (M/s.RLS Alloys Private Limited).*



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- ii. *To appoint the Resolution Professional as Liquidator for administering the Liquidation Process of the Corporate Debtor and*
- iii. *To pass such other orders which may be deemed fit and proper.*

10. The NCLT thus passed its Order dated 14.06.2019 in M.A.No.

559 of 2019 in C.P./661(IB)/CB/2017 and ordered as follows:-

*“III. The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of liquidation;*

*IV. Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.*

*V. This Authority makes it clear that Para (IV) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.*

*VI. This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.*

*VII. All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the*



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*Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the Company Liquidator viz., Mr. Ramasamy Shanmuggam.*

*VIII. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.*

*IX. The Company Liquidator shall be entitled to charge such fees for the conduct of the liquidation proceedings and in such a proportion to the value of the liquidation estate assets as specified under Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*

*X. Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, and Registered Office of the Corporate Debtor by the Company Liquidator viz., Mr. Ramasamy Shanmuggam for information and compliance.*

*10. In terms of the above, MA/559/2019 filed in CP/661/IB/2017 by the Resolution Professional under Section 33 (2) of the I&B Code, 2016, for initiation of the Liquidation Proceedings against the Corporate Debtor viz., 1/s.RLS Alloys Private Limited, stands allowed.”*

11. In this background, the 1<sup>st</sup> Respondent, Assistant Commissioner, Srirangam GST Circle, issued a communication dated 10.08.2020, bearing reference Rc.No.169/2020/A5, to the Resolution Professional, Mr.R.Shanmugam.



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12. In the said communication, the 1<sup>st</sup> Respondent, Assistant Commissioner, Srirangam GST Circle, expressed the Department's inability to recover the dues directly from the 3<sup>rd</sup> Respondent and, therefore, requested that the property of the 3<sup>rd</sup> Respondent be sold, and the dues recovered and be paid to the Department. The prayer in the said communication reads as under:

*“5) As the revenue to the Government become due, and as the company is not in a position to pay the arrears, the amount mentioned above may be taken into consideration and it is requested to settle the sales tax dues to the Government when the sale proceeds on the property (movable/immovable) is made.”*

13. Thus, in no uncertain terms, Mr.R.Shanmugam, Resolution Professional, who was appointed as a Liquidator *vide* Order dated 14.06.2014, was aware of the request of the 1<sup>st</sup> Respondent, Assistant Commissioner Srirangam (GST Circle), *vide* aforesaid communication bearing dated 10.08.2020 reference Rc.No.169/2020/A5.

14. In this background, a claim petition was filed by the 1<sup>st</sup> Respondent before the 3<sup>rd</sup> Respondent, the Liquidator, on 10.08.2020. The same was rejected on 24.08.2020 by the Official Liquidator.



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WEB COPY 15. Meanwhile, the subject property was thereafter sold on 24.10.2024 by the Official Liquidator, and a Sale Certificate was also issued to the Petitioner on **23.01.2025** by the Official Liquidator.

16. The Petitioner paid a sum of **Rs.3,05,55,143/-**. However, the registration of the subject property is now pending in view of the Impugned Attachment Order dated 03.02.2016 bearing reference No.Na.A.115/A3/2016 of the property by the 1<sup>st</sup> Respondent, Assistant Commissioner Srirangam GST Circle.

17. Aggrieved by the said rejection on 24.08.2020 by the Liquidator, the 1<sup>st</sup> Respondent, Assistant Commissioner Srirangam GST Circle approached the NCLT in IA/372(CHE)/2022 in MA/559/2019 on 07.09.2022 against the Order of the Liquidator dated 24.08.2020. The said application was however dismissed for non-prosecution on 08.01.2024 with the following observations:

*“This application was filed on **07.09.2022**. Even on the last date, none for the Applicant was present.*

*Even Rejoinder is not filed despite time given.*



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*It appears that Applicant is not interested in the prosecution of this application.*

*The application in IA/372(CHE)/2022 IN MA/559/2019 is dismissed in default and for non-prosecution.”*

18. Thereafter, the 1<sup>st</sup> Respondent, Assistant Commissioner, Srirangam GST Circle, filed another application in I.A.No.01/2025 in IA/372(CHE)/2022 in MA/559/2019 on 07.12.2024 before the NCLT seeking condonation of delay in filing an application for restoration of the earlier application that was dismissed on **08.01.2024**. However, the NCLT, by its order dated **07.02.2025**, dismissed the said application with the following observations:

*“As seen from the application, the Applicant came to know of the order immediately but this application has been filed on 07.12.2024 i.e., after about eleven months though it should have been filed within 30 days from the dismissal of the application. Admittedly, this application relates to tax claim and for the State Exchequer but it is expected from the parties to be vigilant and diligent while making and pursuing the application. Strangely, even restoration application has been filed with a delay of 304 days.”*



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WEB COPY 19. On 10.07.2023, Mr.S.R.Shriraam Shekher was appointed as the Liquidator replacing Mr.Ramasamy Shanmugam by National Company Law Tribunal.

**SUBMISSION ON BEHALF OF THE PETITIONER:-**

20. The learned Senior Counsel for the Petitioner submits that the 1<sup>st</sup> Respondent attached the property purchased by the Petitioner, on account of non-payment of Tamil Nadu Value Added Tax and Central Sales Tax by the 3<sup>rd</sup> Respondent.

21. It is submitted by the learned Senior Counsel for the Petitioner that the 1<sup>st</sup> Respondent filed its claim before the Official Liquidator after a delay of one year, and the same was rejected. This decision has attained finality, as the 1<sup>st</sup> Respondent thereafter approached the NCLT by filing an Interlocutory Application in I.A. (IBC)/372(CHE)/2022, which was dismissed for default on 08.01.2024. A subsequent application in Rest. Application No.1 of 2025, filed for condonation of delay in restoring the earlier application, was also dismissed on 07.02.2025.



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WEB COPY 22. It is therefore submitted by the learned Senior Counsel for the Petitioner that the 1<sup>st</sup> Respondent is unjustly enriching itself at the cost of other stakeholders, including the Petitioner. It is further submitted that the underlying claim has long since been extinguished, akin to an attachment without a decree.

23. It is submitted by the learned Senior Counsel for the Petitioner that during the liquidation process under the Insolvency and Bankruptcy Code, 2016, the secured and operational creditors, who have created a charge or attachment on the assets of a corporate debtor, are required to release such attachment on the property of the corporate debtor to enable the sale of such property and ensure realization of its value.

24. It is further submitted that, by virtue of the procedure enshrined under the Insolvency and Bankruptcy Code, 2016, once the sale proceeds are realized, the same shall be distributed among the creditors and other stakeholders of the corporate debtor in accordance with the waterfall mechanism under Section 53 of the Code.



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WEB COPY 25. Therefore, the remedy of the 1<sup>st</sup> Respondent, if any, to realize its dues would lie in the manner postulated and enshrined in the said waterfall mechanism.

26. It is further submitted that as per Regulation 47 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016, the liquidation process should be completed within a period of one year from the date of its initiation. The action of the 1<sup>st</sup> Respondent in disregarding the provisions of the Insolvency and Bankruptcy Code, 2016, by not lifting the attachment on the subject properties, amounts to manifest arbitrariness and is violative of Article 14 of the Constitution of India.

27. It is further submitted that the Insolvency and Bankruptcy Code, 2016 is a special statute, and by virtue of the *non-obstante* clause under Section 238 of the Insolvency and Bankruptcy Code, 2016, its provisions shall have an overriding effect in cases of inconsistency with any other law, including the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956.



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WEB COPY 28. Arguing on behalf of the Petitioner, the learned Senior Counsel

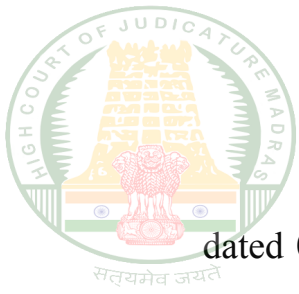
would draw the attention of this Court to the following decisions:

- i. **Paschimanchal Vidyut Vitran Nigam Limited v. Raman Ispat Private Limited and others**, reported in (2023) 10 SCC 60.
- ii. **KRBL Ltd. v. State of Gujarat**, reported in [2023] 154 taxmann.com 489 (Gujarat).
- iii. **Su-Kam Power System Ltd. and another v. State of Himachal Pradesh and others**, reported in [2025] 253 Comp Cas 511 (HP).

29. It is further submitted that further appeal before the NCLT under Section 61(2) of the Insolvency and Bankruptcy Code, 2016 has also expired. It is therefore submitted that this is the fit case for quashing the Impugned Attachment Order.

**SUBMISSIONS ON BEHALF OF THE RESPONDENT:-**

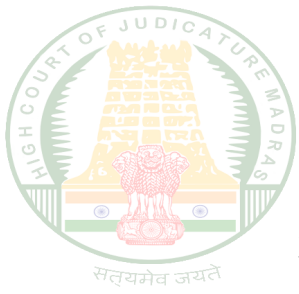
30. Per contra, the learned Additional Government Pleader for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents submits that the 3<sup>rd</sup> Respondent, the Official Liquidator, filed an application under Section 23 of the Insolvency and Bankruptcy Code, 2016, before the NCLT for removal of the attachment made by the 1<sup>st</sup> Respondent, which was dismissed by the NCLT vide order



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dated 02.06.2022. It is submitted that against the said order of the NCLT dated 02.06.2022, the 3<sup>rd</sup> Respondent/Official Liquidator filed Company Appeal (AT)(INS) No.412 of 2022, and a successful bidder/e-auction purchaser, namely G.Subramanian, who is none other than the partner of the Petitioner, filed Company Appeal (AT)(INS) No.334 of 2023, before the National Company Law Appellate Tribunal (NCLAT). It is therefore submitted that Company Appeal (AT)(INS) No.412 of 2022 filed by the official liquidator was also dismissed on 29.04.2025, and hence, the attachment on the subject properties made by the 1<sup>st</sup> Respondent stands automatically confirmed.

31. It is submitted that the submission of the Petitioner, that the rejection of the 1<sup>st</sup> Respondent's claim before the 3<sup>rd</sup> Respondent/Official Liquidator has attained finality, as the application filed by the 1<sup>st</sup> Respondent for condonation of delay in restoring the earlier application dismissed for default on 08.01.2024 was also dismissed on 07.02.2025, cannot be accepted, for the reason that against the said dismissal, the 1<sup>st</sup> Respondent has filed an appeal before the NCLAT, and the issue is now sub judice.



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32. The learned Additional Government Pleader for the 1<sup>st</sup> and 2<sup>nd</sup>

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Respondents further submits that the subject properties were sold through public auction on an 'as-is-where-is, whatever-there-is' basis, and that the sale notice categorically reflected the nature of title and encumbrances. It is submitted that the attachment by the 1<sup>st</sup> Respondent was lawfully made on 03.02.2016 and was duly recorded in the Encumbrance Certificate well before the auction took place.

33. It is submitted by the learned Additional Government Pleader that the 1<sup>st</sup> Respondent had lawfully attached the subject property of the 3<sup>rd</sup> Respondent on 03.02.2016, much prior to the initiation of the CIRP proceedings on 03.12.2018, under Sections 42 and 49 of the Tamil Nadu Value Added Tax Act, 2006, for recovery of tax dues amounting to Rs. 2,11,54,636/- for the Assessment Years 2007-2008 to 2014-2015, which takes priority in law, as held in multiple precedents. These statutory provisions continue to apply by virtue of Section 142(8)(a) of the CGST Act, 2017. Therefore, it is prayed for dismissal of this Writ Petition.

34. The learned Additional Government Pleader appearing for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent relied on the following judgments:



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- i. **Sanjay Kumar Agarwal vs. State Tax Officer (1) and another**, reported in (2024) 2 SCC 362.
- ii. **State Tax Officer vs. Rainbow Papers Limited**, reported in (2023) 9 SCC 545.
- iii. **Ghanashyam Mishra and Sons Private Limited through the authorised Signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director and others**, reported in (2021) 9 SCC 657.

### **DISCUSSION:-**

35. I have considered the arguments advanced by the learned Senior Counsel for the Petitioner, the learned Additional Government Pleader for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and the learned counsel for the 3<sup>rd</sup> Respondent.

### **BRIEF FACTS OF THE CASE:-**

36. In the present case, the Resolution Professional filed an application to liquidate the 3<sup>rd</sup> Respondent/Operational Debtor, namely RLS Alloys (P) Ltd., which was proceeded against under Section 9 of the Code by the operational creditor, namely, FOSECO (P) Ltd.

37. The NCLT, *vide* order dated 03.01.2018, allowed the application filed by the operational creditor and appointed Mr.Ramasamy



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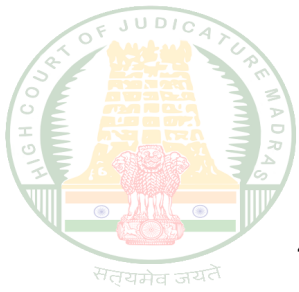
Shanmugam as an Interim Resolution Professional (IRP) under Section 13

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of the Code. The IRP was also required to comply with the provisions of Sections 13(2), 15, 17, and 18 of the Code.

38. The promoters and directors of the assessee-in-default/corporate debtor viz the operational debtor, and persons associated with its management, were directed to extend assistance and cooperation in terms of Section 19 of the Code, to enable the IRP to discharge his functions under Section 20 of the Code.

39. Since no meaningful resolution application was filed under Section 33(2) of the Code for the corporate insolvency resolution of the operational debtor (assessee in default), the Interim Resolution Professional (IRP) appointed by the NCLT by its order dated 03.12.2018 convened a meeting of the Committee of Creditors (CoC), during which it was recommended to appoint valuers and issue the Expression of Interest in Form G. This was after the Interim Resolution Professional (IRP) was confirmed as the Resolution Professional (RP) on 18.01.2019.



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40. In the meeting of the Committee of Creditors (CoC), the Resolution Professional (RP) placed the Expressions of Interest received from M/s.MAK Auto Services and Ferrosco Industries Private Limited. However, the Committee of Creditors (CoC) rejected the Expressions of Interest and passed a resolution for the liquidation of the operational debtor, namely RLS Alloys (P) Ltd.

41. It is in this background the liquidation proceedings began under Section 33(2) of the Code. As per Section 33(2), where the Resolution Professional, at any time during the Corporate Insolvency Resolution Process (CIRP) but before the confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the Committee of Creditors (CoC) (approved by not less than sixty-six per cent of the voting share) to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii), and (iii) of clause (b) of sub-section (1).

42. It is in this background, the Interim Resolution Professional (IRP) appointed vide order dated 03.12.2018 in CP/661/(IB)/CB/2017, who was subsequently designated as the Resolution Professional (RP) in



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the first meeting of the Committee of Creditors (CoC) held on 18.01.2019 was appointed as the Liquidator by NCLT vide its Order dated 14.06.2019 in MA/559/2019 filed in CP/661/IB/2017.

43. By its order dated 14.06.2019 in MA/559/2019 in CP/661/IB/2017, the Resolution Professional was to liquidate the assets of the Corporate Debtor (assessee in default), namely the 3<sup>rd</sup> Respondent/RLS Alloys (P) Ltd.

44. After the aforesaid order was passed by the NCLT on 14.06.2019, the 1<sup>st</sup> Respondent, Assistant Commissioner of GST, Srirangam, sent a letter on 10.08.2020 bearing reference Rc.No. 169/2020/A5, wherein it was stated that the said company was in arrears of Rs.2,74,63,181/-.

45. It was further informed that, since revenue had become due to the Government and the company was under liquidation and was not in a position to pay the arrears, the above amount should be taken into consideration and requested that the sales tax dues be settled from and out of the sale proceeds of the company's movable and immovable properties.

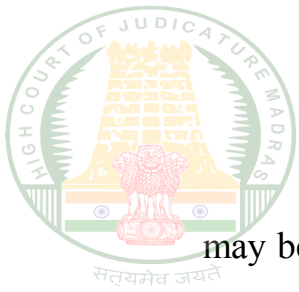


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**WEB COPY** 46. In the said communication, the 1<sup>st</sup> Respondent enclosed a copy of the assessment order along with the ‘C’ notice issued under the IBC. It is to be borne in mind that the assets of the said company were attached as early as 03.02.2016, and the encumbrance to that effect was reflected pursuant to the communication dated 03.02.2016.

47. Thus, the point for consideration is whether, as a “secured creditor” within the meaning of Section 3(30) of the IBC, 2016, the Commercial Taxes Department, represented by 1<sup>st</sup> Respondent, was required to file a claim petition within the time stipulated in the order passed on 03.12.2018 under Section 13 of the Code, and within the period stipulated in the public announcement regarding the last date for submission of claims under Section 15(1)(c) of the Code or whether the 1<sup>st</sup> Respondent was required to file a claim petition at all?

48. As per Section 45(6) of the Tamil Nadu Value Added Tax Act, 2006, any amount that a person is required to pay to the assessing authority, or for which he is personally liable under this section, shall, if it remains unpaid, constitute a charge on the properties of such person and



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may be recovered as if it were an arrear of land revenue. Section 45(6) of

WEB COPY the TNVAT Act, 2006 reads as under:

***45. Further mode of recovery***

*(1) ....*

*.....*

*(6) Any amount which a person required to pay to the assessing authority or for which he is personally liable to the assessing authority under this section shall, if it remains unpaid, be a charge on the properties of the said person and may be recovered as if it were an arrear of land revenue.*

**DEFINITIONS FROM THE CODE:-**

49. To understand the scope of the Code, it will be useful to refer to few definitions in the Code. The expression “Adjudicating Authority” has been defined in Section 5(1) of the Code, which reads as under:

***5. Definitions.***

*In this Part, unless the context otherwise requires,--*

*(1) **Adjudicating Authority**, for the purposes of this Part, means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013 (18 of 2013);*



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50. The expression “debt” has been defined in Section 3(11) of the

WEB COPY Code, which reads as under:

**3. Definitions.**—*In this Code, unless the context otherwise requires,—*

*(11) “debt” means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;*

51. The expression “claim” has been defined in Section 3(6) of the

Code, which reads as under:-

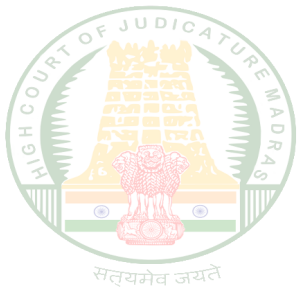
*(6) “claim” means —*

- (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;*
- (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;*

52. The expression “creditor” has been defined under Section 3(10)

of the Code. It includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor, and a decree-holder. The definition of “creditor” under Section 3(10) of the Code reads as under:

**3. Definitions.**—*In this Code, unless the context*



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*otherwise requires,—*

(10) “**creditor**” means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;

53. The expression “secured creditor” has been defined in Section 3(30) of IBC, which means a creditor in favour of whom security interest is created. The definition of “secured creditor” in Section 3(30) of the Code reads as under:

**3. Definitions.**—*In this Code, unless the context otherwise requires,—*

(30) “**secured creditor**” means a creditor in favour of whom security interest is created;

54. The expression used is “security interest” in the above definition. It has been defined under Section 3(31) of the Code. The definition of “security interest” in Section 3(31) of the Code reads as under:

**3. Definitions.**—*In this Code, unless the context otherwise requires,—*

(31) “**security interest**” means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes



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*mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person:*

*Provided that security interest shall not include a performance guarantee;*

55. The expression “security interest” means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person. As per proviso to Section 3(31) of IBC, “**security interest**” does not include a “**performance guarantee**”.

56. The expressions '**financial creditor**', '**operational creditor**' and '**corporate applicant**' have been defined as under:

| Financial Creditor                                                                     | Operational Creditor      | Corporate Applicant      |
|----------------------------------------------------------------------------------------|---------------------------|--------------------------|
| <b>Section 5. Definitions</b> - In this Part, unless the context otherwise requires,-- |                           |                          |
| Section 5(7) of the Code                                                               | Section 5(20) of the Code | Section 5(5) of the Code |



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|                                                                                                                                                                            |                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>(7) <b>financial creditor</b> means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to</p> | <p>(20) <b>operational creditor</b> means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;</p> | <p>(5) <b>corporate applicant means--</b></p> <p>(a) corporate debtor; or</p> <p>(b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution processs or the pre-packaged insolvency resolution process, as the case may be, under the constitutional document of the corporate debtor; or</p> <p>(c) an individual who is in charge of managing the operations and resources of the corporate debtor; or</p> <p>(d) a person who has the control and supervision over the financial affairs of the corporate debtor;</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

57. The Income Tax Department or for that matter any other Tax Department are a “secured creditor” within the meaning of Section 3(30) of the Code, if they have already passed an assessment order and have attached the assets of such assessee i.e., the “corporate debtor” in accordance with the provisions of the respective Direct and Indirect Tax enactments. Thus, the Commercial Taxes Department, represented by the



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1<sup>st</sup> Respondent, is a '**secured creditor**' within the meaning of Section 3(30) of the Code.

58. A '**secured creditor**' creditor stands under a different footing under the Code where there liquidation is ordered directly without the 'corporate debtor' undergoing a 'Corporate Insolvency Resolution Process' (CIRP).

59. In this connection, the Hon'ble Supreme Court in *State Tax Officer vs. Rainbow Papers Limited*, (2023) 9 SCC 545 has also held as under:

*“29. As argued by the learned Solicitor General, the term “secured creditor” as defined under IBC is comprehensive and wide enough to cover all types of security interests, namely, the right, title, interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction, which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person.*

*30. The learned Solicitor General rightly argued that in view of the statutory charge in terms of Section 48 of the GVAT Act, the claim of the Tax Department of the State, squarely falls within the definition of “security interest” under Section 3(31) IBC and the*



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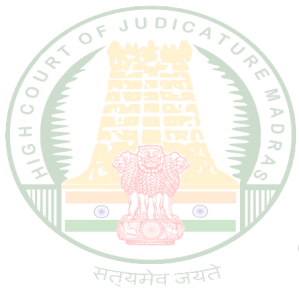
*State becomes a secured creditor under Section 3(30) of the Code.*

### **SCHEME OF IBC:-**

60. It will be useful to refer to the scheme of Insolvency and Bankruptcy Code, 2016. The background of the scheme of IBC was to unify the legal regime on commercial insolvency.

61. The insolvency resolution process can be triggered against a corporate debtor's failure to repay a debt and when the value of the default crosses the threshold as defined in Section 4 of the Code. The Corporate Insolvency Resolution Process (CIRP) can be initiated by a Corporate Debtor itself or a Financial Creditor or a Operational Creditor as defined in Section 6 of the Code.

62. A scheme for 'Corporate Insolvency Resolution Process' (CIRP) under the provisions of the Code starts with the admission of application by the Adjudicating Authority under Section 13 of the Code under Sections 7, 9 or 10 of the Code, followed by Declaration of Moratorium and Public Announcement.



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63. For the purpose of discussion, it would suffice to state that the National Company Law Tribunal (NCLT), constituted under Section 408 of the Companies Act, 2013, is the Adjudicating Authority contemplated under Section 13 onwards of the Code.

64. The Adjudicating Authority is empowered to admit the application under Sections 7, 9 and 10 of the Code. These are the proceedings for initiation of Corporate Insolvency Resolution Process (CIRP) by a “Financial Creditor”, or “Operational Creditor” or a “Corporate Applicant” itself respectively.

65. A Petition under Section 9 of the Code has to preceede a notice contemplated under Section 8 of the Code. The “Corporate Debtor” is expected to respond to the said notice within a period of 10 days. It is only after the expiry of 10 days from the date of delivery of the notice under Section 8(1) of the Code, an “Operational Creditor” can initiate proceedings under Section 9 of the Code.

66. Once the 'Corporate Insolvency Resolution Process' (CIRP) is admitted by the Adjudicating Authority, the Adjudicating Authority has to



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declare a “Moratorium” in terms of Section 14 of the Code and appoint an

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Interim Resolution Professional (IRP) in the manner laid down under Section 16 of the Code, for issuance of a public announcement of the initiation of the 'Corporate Insolvency Resolution Process' (CIRP) for the submission of “claims” under Section 15 of the Code.

67. Thus, the initiation of the 'Corporate Insolvency Resolution Process' (CIRP), although can be at the behest of a “Financial Creditor”, or a “Operational Creditor”, or a “Corporate Applicant” as the case maybe, as provided under Sections 7, 9, and 10 of the Code, it has to be followed with a declaration of “Moratorium” and “Public Announcement” under Section 13 of the Code.

68. The “Public Announcement” of the initiation of the 'Corporate Insolvency Resolution Process' (CIRP) has to contain the details specified under Section 15(1)(a) to (f) of the Code., namely:-

- (a) name and address of the corporate debtor under the corporate insolvency resolution process;
- (b) name of the authority with which the corporate debtor is incorporated or registered;
- (c) the last date for submission of claims, as may be specified;



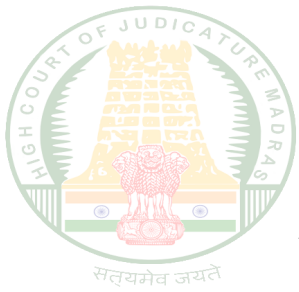
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- (d) details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims;
- (e) penalties for false or misleading claims; and
- (f) the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application under sections 7, 9 or section 10, as the case may be.

69. The Corporate Insolvency Resolution Process (CIRP) can either result in rehabilitation of a “Corporate Debtor” against whom proceedings have been initiated under Sections 7, 9, or 10 of the Code or result directly in liquidation of the “Corporate Debtor” under Section 33 of the Code.

70. Reading of Section 29 of the Code read with Regulation 36 of the 2016 Regulations reveals that a Resolution Professional (RP) appointed has to prepare an “Information Memorandum” containing various details of the “Corporate Debtor” so that a Resolution Applicant who intends to submit a “Resolution Plan” (RP) is aware of the assets and liabilities of the “Corporate Debtor”, including the details about the “Creditors” and the amounts claimed by them.



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71. The “Information Memorandum” is required to contain the details of the guarantees that have been given in relation to the debts of the Corporate Debtor by other persons and the details with regard to all material litigation and an ongoing investigation or proceeding initiated by the Government and statutory authorities are also required to be detailed in the information memorandum. So also the details regarding the number of workers and employees and liabilities of the corporate debtor towards them and other Statutory Authorities are required to be contained in the Information Memorandum.

72. Section 29 of the Code is reproduced below:-

***“29. Preparation of information memorandum. -***

*(1) The resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.*

*(2) The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes-*

*(a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading;*



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*(b) to protect any intellectual property of the corporate debtor it may have access to; and*

*(c) not to share relevant information with third parties unless clauses (a) and (b) of this sub-section are complied with.*

***Explanation.*** – *For the purposes of this section, “relevant information” means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified.”*

73. Thus, the Resolution Professional (RP) is required to take note of pre-existing charges. The details contained in the Information Memorandum is intended to equip a Resolution Applicant about the liabilities of the Corporate Debtor to prepare a “Resolution Plan”, which apart from satisfying a part of such liabilities would also ensure that the Corporate Debtor is revived and made a running establishment.

74. Section 30 of the Code deals with the submission of a Resolution Plan. It is reproduced below:-

***“30. Submission of resolution plan. -***

*(1) A resolution applicant may submit a resolution plan along with an affidavit stating that he is*



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*eligible under section 29A to the resolution professional prepared on the basis of the information memorandum.*

*(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan -*

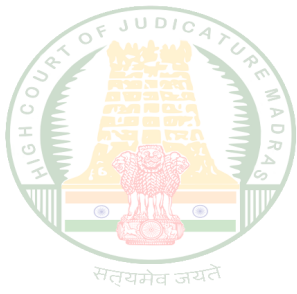
*(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;*

*(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-*

*(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or*

*(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.*

***Explanation 1.*** — *For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.*



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**Explanation 2.** — *For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-*

*(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;*

*(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*

*(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;*

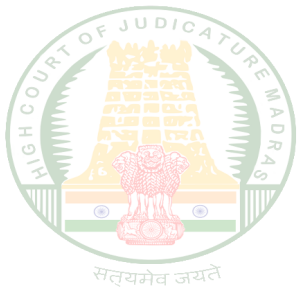
*(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;*

*(d) The implementation and supervision of the resolution plan;*

*(e) does not contravene any of the provisions of the law for the time being in force;*

*(f) confirms to such other requirements as may be specified by the Board.*

**Explanation.** — *For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the*



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*implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.*

*(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).*

*(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six per cent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board:*

*Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:*

*Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:*



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*Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that subsection:*

*Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.*

*(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered: Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.*

*(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.”*

75. The legislative intent of making the Resolution Plan binding on all stakeholders after it gets the seal of approval of the Adjudicating Authority and after it is approved by CoC, if the Resolution Plan meets all the requirement of in sub-section (2) of Section 30 of the Code. Section 31 of the Code is reproduced below:-



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**“31. Approval of resolution plan. -**

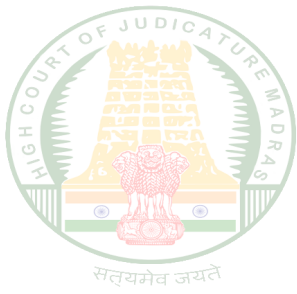
*(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, 2 including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.*

*Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.*

***(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.***

*(3) After the order of approval under sub-section (1), - (a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and (b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.*

*(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the*



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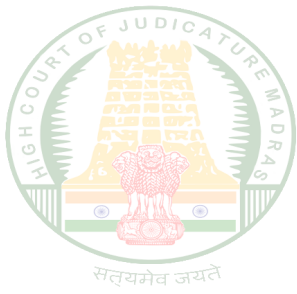
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*date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:*

*Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.*

76. It is to ensure that after the approval of a Corporate Resolution Plan by NCLT, no surprise claims are flung on a successful Resolution Applicant. The idea is to ensure that a Corporate Debtor thereafter starts with a clean slate with a new management or new commitment on the basis of the Resolution Plan approved by the Adjudicating Authority (NCLT) under Section 31 of the Code.

77. Thus, the Corporate Insolvency Resolution Process (CIRP) first involves a steps towards the rehabilitation of the “Corporate Debtor” defined under Section 3(8) of the Code. An Interim Resolution Professional (IRP) appointed by an adjudicating authority under is required to keep up with the duties prescribed under Section 18 of the Code, namely,:-



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*(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—*

- (i) business operations for the previous two years;*
- (ii) financial and operational payments for the previous two years;*
- (iii) list of assets and liabilities as on the initiation date; and*
- (iv) such other matters as may be specified;*

*(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;*

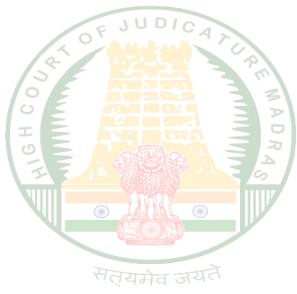
*(c) constitute a committee of creditors;*

*(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;*

*(e) file information collected with the information utility, if necessary; and*

*(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—*

- (i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;*
- (ii) assets that may or may not be in possession of the corporate debtor;*
- (iii) tangible assets, whether movable or immovable;*



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*(iv) intangible assets including intellectual property;*

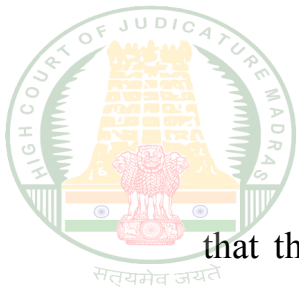
*(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;*

*(vi) assets subject to the determination of ownership by a court or authority;*

*(g) to perform such other duties as may be specified by the Board.*

78. It is the duty of the Interim Resolution Professional (IRP) to protect and preserve the value of the property of the Corporate Debtor. It is further the duty of the Interim Resolution Professional (IRP) to make an application before the Adjudicating Authority, viz. NCLT, i) listing the financial creditors, and ii) the name of the Insolvency Professional (IP) to be appointed as the Resolution Professional (RP) under Section 21 of the Code.

79. Section 33(1)(b) of the Code contemplates that, where the Adjudicating Authority rejects the resolution plan under Section 31 or where there is non-compliance with the requirements specified therein, it shall pass an order requiring the corporate debtor to be liquidated in the manner laid down in this Chapter, issue a public announcement stating



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that the corporate debtor is in liquidation, and direct that a copy of the order be sent to the authority with which the corporate debtor is registered. Section 33 of the Code reads as under:

***“33. Initiation of liquidation***

*(1) Where the Adjudicating Authority, -*

*(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or*

*(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,*  
*it shall -*

*(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*

*(ii) issue a public announcement stating that the corporate debtor is in liquidation;and*

*(iii) require such order to be sent to the authority with which the corporate debtor is registered.*

*(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the*



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***committee of creditors approved by not less than sixty-six per cent. of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).***

*(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii), (iii) of clause (b) sub-section (1).*

*(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*

*(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor: Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority,*

*(6) the provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

*(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except*



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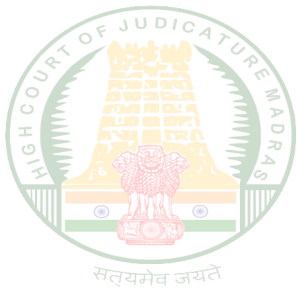
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*when the business of the corporate debtor is continued during the liquidation process by the liquidator.*

80. Under the Companies Act, 1956, ordinarily Claim Petitions are filed only after a company is/was ordered to be wound up under it. Official Liquidators were appointed to liquidate the assets of the Company which would ultimately culminate in dissolution of the Company.

81. In this case, the Resolutional Professional (RP) proceeded to implement the decision of Committee of Creditors (CoC) to liquidate the 3<sup>rd</sup> Respondent/RLS Alloys Pvt Ltd under Section 33(2) of the Code. An elaborate procedure has been prescribed for winding up followed by liquidation and dissolution of a company.

82. Under the Code there is a slight variation. The decision as to whether to revive a “Corporate Debtor” or to spell its death knell under Section 33(1)(b) of the Code is in the hands of the Committee of Creditors (CoC) under the Code. The Resolution Professional (RP) merely informs the Adjudicating Authority about their decision.



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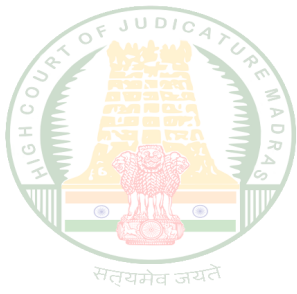
83. In the present case, the “Corporate Debtor” namely, the 3<sup>rd</sup> Respondent/RLS Alloys Private Ltd, did not go through the rigmorale of Corporate Insolvency Resoluton Plan (CIRP). In this case, the “Corporate Debtor” namely, RLS Alloys Private Ltd, the 3<sup>rd</sup> Respondent was ordered to be liquidated by the Committee of Creditors (COC) in their meeting held on 28.05.2019 and thus, its assets were brought to sale by the Resolution Professional (RP).

84. As per Section 53 of the Code, the proceeds from the sale of the assets during the liquidation of the “Corporate Debtor” are to be distributed in a prescribed manner. The hierarchy for distribution of assets of a “Corporate Debtor” to the creditors is popularly referred to as the “**waterfall mechanism**”. Section 53(1) of the Code reads as under:

***“53. Distribution of assets.***

*(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period as may be specified, namely: -*

*(a) The insolvency resolution process costs and the liquidation costs paid in full;*



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*(b) The following debts which shall rank equally between and among the following:*

*(i) Workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and*

*(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;*

*(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;*

*(d) financial debts owed to unsecured creditors;*

*(e) the following dues shall rank equally between and among the following: -*

*(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;*

*(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;*

*(f) any remaining debts and dues;*

*(g) preference shareholders, if any: and*

*(h) equity shareholders or partners, as case may be.*



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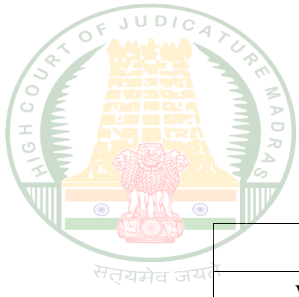
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85. After the procedure prescribed under Section 53 of the Code is followed, the affairs of a “Corporate Debtor” is dissolved under Section 54 of the Code. Section 54 of the Code reads as under:

***54. Dissolution of corporate debtor. –***

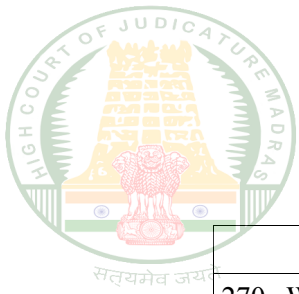
- (1) Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudication Authority for the dissolution of such corporate debtor.*
- (2) The Adjudicating Authority shall on application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.*
- (3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.*

86. Presently, under the Companies Act, 2013, a separate chapter has been prescribed for winding up of a Company in Chapter XX. It is divided into four parts. They are as follows:-



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| Part-I                            | Part-II                           | Part-III                                                 | Part-IV                           |
|-----------------------------------|-----------------------------------|----------------------------------------------------------|-----------------------------------|
| <b>Winding Up</b>                 | <b>Omitted</b>                    | <b>Provisions applicable to every mode of winding up</b> | <b>Official Liquidators</b>       |
| <i>Section 270 Section to 303</i> | <i>Section 304 to Section 323</i> | <i>Section 324 to Section 358</i>                        | <i>Section 359 to Section 365</i> |



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| Part-I                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Part-II | Part-III                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Part-IV                                                                                                                                                                                                                                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 270. Winding up by the Tribunal<br>271. Circumstances in which company may be wound by Tribunal<br>272. Petition for winding up<br>273. Powers of Tribunal<br>274. Directions for filing statement of affairs<br>275. Company Liquidators and their appointments<br>276. Removal and replacement of liquidator<br>277. Intimation to Company Liquidator, Provisional Liquidator and Registrar<br>278. Effect of winding up order<br>279. Stay of suits, etc., on winding up order<br>280. Jurisdiction of Tribunal<br>281. Submission of report by Company Liquidator<br>282. Directions of Tribunal on report of Company Liquidator<br>283. Custody of company's properties<br>284. Promoters, Directors etc., to cooperate with Company Liquidator<br>285. Settlement of list of contributions and application of assets<br>286. Obligations of Directors and Managers<br>287. Advisory Committee<br>288. Submission of periodical reports to Tribunal<br>289. [Omitted]<br>290. Powers and duties |         | 324. Debts of all descriptions to be admitted to proof<br>325. [Omitted]<br>326. Overriding preferential payments<br>327. Preferential payments<br>328. Fraudulent preference<br>329. Transfers not in good faith to be void<br>330. Certain transfers to be void<br>331. Liabilities and rights of certain persons fraudulently preferred<br>332. Effect of floating charge<br>333. Disclaimer of onerous property<br>334. Transfers, etc., after commencement of winding up to be void<br>335. Certain attachments, executions, etc., in winding up by Tribunal to be void<br>336. Offences by officers of companies in liquidation<br>337. Penalty for frauds by officers<br>338. Liability where proper accounts not kept<br>339. Liability for fraudulent conduct of business<br>340. Power of Tribunal to assess damages against delinquent directors, etc.,<br>341. Liability under Sections 339 and 340 to extent to partners or directors in firms or companies<br>342. Prosecution of delinquent officers and | 359. Appointment of Official Liquidator<br>360. Powers and functions of Official Liquidator<br>361. Summary procedure for liquidation<br>362. Sale of assets and recovery of debts due to company<br>363. Settlement of claims of creditors by Official Liquidator<br>364. Appeal by creditor<br>365. Order of dissolution of company |



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WEB COPY 87. A similar provision was also available in the Sick Industrial Companies (Special Provisions) Act, 1985, wherein Section 20 deals with the winding up of companies. It reads as follows:-

***“20. Winding up of sick industrial company.—***

*(1) Where the Board, after making inquiry under section 16 and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of opinion that the sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record and forward its opinion to the concerned High Court.*

*(2) The High Court shall, on the basis of the opinion of the Board, order winding up of the sick industrial company and may proceed and cause to proceed with the winding up of the sick industrial company in accordance with the provisions of the Companies Act, 1956 (1 of 1956).*

*(3) For the purpose of winding up of the sick industrial company, the High Court may appoint any officer of the operating agency, if the operating agency gives its consent, as the liquidator of the sick industrial company and the officer so appointed shall for the purposes of the winding up of the sick industrial company be deemed to be, and have all the powers of, the official liquidator under the Companies Act, 1956 (1 of 1956).*



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*(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), the Board may cause to be sold the assets of the sick industrial company in such manner as it may deem fit and forward the sale proceeds to the High Court for orders for distribution in accordance with the provisions of section 529A, and other provisions of the Companies Act, 1956 (1 of 1956).*

88. The Sick Industrial Companies (Special Provisions) Act, 1985 was repealed by Sick Industrial Companies Act, 2003 with effect from 01.01.2004.

89. As far as the winding up of the Company under the Companies Act, 1956 is/was concerned, the Hon'ble Supreme Court after consulting the High Courts, framed the Companies (Court) Rules, 1959 in exercise of its powers conferred under Section 643(1) and Section 643(2) of the Companies Act, 1956.

90. Under Rule 9 of the Companies (Court) Rules, 1959, Courts are /were vested with an inherent power to give such directions or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. This is similar to the powers are vested with the Hon'ble Supreme Court under Article 142 of the Constitution of India in



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its quest to do complete justice. However, such a provision is absent

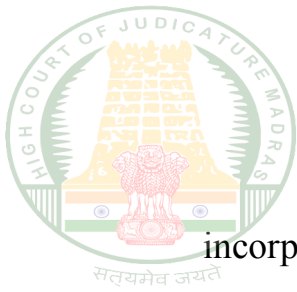
under the Code or the Rules made thereunder.

91. The essence of the Companies (Court) Rules, 1959, has now been incorporated under the Code with such changes that are consistent with the object of the Code to speed track the process either by subjecting the company to be rehabilitated or to liquidate it.

92. Under Rule 7 of the Companies (Court) Rules, 1959, Courts have also been vested with the power to enlarge or abridge the time appointed under the Rules or fixed by the Court for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require and any such enlargement may be ordered, although the application for the same is not made until after the expiration of the time appointed or allowed.

93. Rule 7 of the Companies (Court) Rules, 1959 was perhaps by inspired from Section 148 of the Code of Civil Procedure, 1908.

94. Similarly, under Rule 8 of the Companies (Court) Rules, 1959, a method was prescribed for computation of time. This was again by



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incorporating the principle under the General Clauses Act, 1897. Rule 8

of the of the Companies (Court) Rules, 1959 is reproduced below:-

| <b>Rule 8. Computation of time</b>                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) Where any particular number of days not expressed to be clear days, is prescribed the same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last day shall happen to fall on a day on which the offices of the Court are closed, in which case the time shall be reckoned exclusively of that day also and of any succeeding day or days on which the offices of the Court continued to be closed. | (b) Where any particular number of days expressed to be clear days, is prescribed, the same shall be reckoned exclusively of both the first and the last day. |

95. Even as on date, where the Claim Petitions are invited in respect of Companies which are under liquidation under the provisions of the Companies Act, 1956 and where ever there is/was delay, the Court entertain(s) the Claim Petitions beyond the period prescribed so as to ensure that legitimate interest of (a) creditor(s) is/are not lost even when the date prescribed for filing the Claim Petition have already expired.

96. The procedure to windup a company under Section 433 of the Companies Act, 1956 is now vastly different under the Companies Act,



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2013 and under the Code.

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97. Under Section 433 of the Companies Act, 1956 there were six instances when a company could be ordered to be wound up after following procedure, apart from voluntary winding up under Chapter IV of Part VII of the Companies Act, 1956.

98. Under Section 271 of the Companies Act, 2013, there is a slight departure. Only five of the circumstances, under Section 433 of the Companies Act, 1956 have been specified for winding up of a company before the NCLT under the provisions of the Companies Act, 2013.

99. However, in case of inability of a corporate debtor to pay the amount due to its creditors or where the company wants certain relief, it has to be under the provisions of the Code.

100. Under the Companies Act, 1957 once a company is ordered to be wound up, a Liquidator is appointed for its liquidation. Liquidation commences with the issuance of a notice by the Official Liquidator requiring the creditors to file a claim petition within such time. Liquidation would culminate in dissolution of the company.

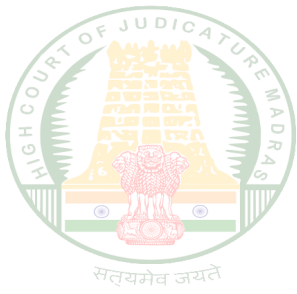


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WEB COPY 101. However, under Section 13 of the Code, once admission of application under Section 7, 9 or 10 is made, Corporate Insolvency Resolution Process (CIRP) commences with appointment of Interim Resolution Professional (IRP). The Interim Resolution Professional (IRP) has to call for submission of claims under Section 15 of the Code. Claims have to be submitted with the Interim Resolution Professional (IRP).

102. As mentioned above, the purpose of collating the claims by the Interim Resolution Professional (IRP) is to prepare an Information Memorandum under Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016. The Hon'ble Supreme Court in Paragraph 67 in ***Ghanashyam Mishra and Sons Private Limited through its Authorized Signatory*** (cited *supra*) has explained the position as follows:-

*“67. Perusal of Section 29 of the I&B Code read with Regulation 36 of the Regulations would reveal that it requires RP to prepare an information memorandum containing various details of the corporate debtor so that the resolution applicant submitting a plan is aware of the assets and liabilities of the corporate debtor, including the details about the creditors and the amounts claimed by them. It is also required to contain the details of guarantees that have been given in*



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*relation to the debts of the corporate debtor by other persons. The details with regard to all material litigation and an ongoing investigation or proceeding initiated by the Government and statutory authorities are also required to be contained in the information memorandum. So also the details regarding the number of workers and employees and liabilities of the corporate debtor towards them are required to be contained in the information memorandum.”*

103. The purpose of inviting claims are to enable a prospective resolution applicant to file a resolution application for reviving corporate/operational debtor under Corporate Insolvency Resolution Process (CIRP). However, where there is no scope for reviving a Corporate/Operational Debtor, and the Company by Committee of Creditors (CoC) resolves to liquidate the Corporate Debtor or where the Resolution Application is rejected, the Company has to be liquidated under the new Rules framed thereunder.

104. Therefore, the question to be decided is whether the claims have to be invited afresh for distributing the proceeds from the sale of the assets of the Corporate/Operational Debtor during liquidation where it is resolved to liquidate such Corporate/Operational Debtor or whether the



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claim filed earlier for preparation of Information Memorandum under

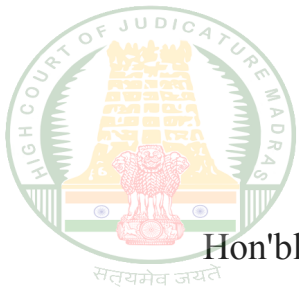
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Section 29 of the Code to enable a prospective Resolution Applicant to file Resolution Plan is sufficient and has to be considered as the last chance to file such claims, even where it is resolved to liquidate the Corporate/Operational Debtor.

105. That apart, the claims that are filed for the purpose of preparation of Information Memorandum is different from the claim that has to be entertained after liquidation is ordered. This is because the Company may have continued to carry on business even after the Moratorium is declared under Section 14 of the Code and in case any debt is incurred thereafter, such debt will have to be paid from and out of the assets of the corporate/operational debtor in terms of waterfall mechanism under Section 53 of the Code.

106. Further, the Information Memorandum prepared by the Resolution Professional was neither used for preparing the Resolution Plan nor any such Resolution Plan was sanctioned by the NCLT.

107. It will be useful to refer to the following decisions of the



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Hon'ble Supreme Court. The Hon'ble Supreme Court in **Embassy**

**Property Developments Pvt Ltd. Vs State of Karnataka**, (2020) 13 SCC

308 held as under:-

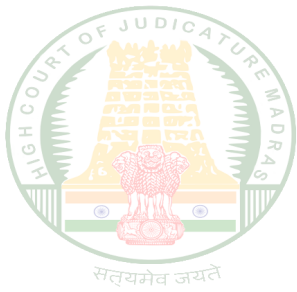
*“It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression 'operational debt' under Section 5(21), making the Government an 'operational creditor' in terms of section 5(20). The moment the dues to the Government are crystallised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the Adjudicating Authority, namely, the National Company Law Tribunal”.*

108. The Hon'ble Supreme Court in **Ghanashyam Mishra and Sons Private Limited through the authorised Signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director and others**, (2021) 9 SCC 657 dealt with the following issues:-

*“The issues before the Supreme Court were:*

*(i) As to whether any creditor including the Central Government, State Government or any local authority is bound by the resolution plan once it is approved by an adjudicating authority under Section 31(1) of the Insolvency and Bankruptcy Code, 2016 (“IBC”)?*

*(ii) As to whether the amendment to Section 31 by Section 7 of the Act 26 of 2019 is*



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*clarificatory/declaratory or substantive in nature?*

(iii) *As to whether after approval of resolution plan by the adjudicating authority a creditor including the Central Government, the State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the corporate debtor, which are not a part of the resolution plan approved by the adjudicating authority?*

109. The Hon'ble Supreme Court in ***Ghanashyam Mishra and Sons Private Limited through the authorised Signatory*** (cited *supra*) has held as under:

*“94. We have no hesitation to say that the words “other stakeholders” would squarely cover the Central Government, any State Government or any local authorities. The legislature noticing that on account of obvious omission certain tax authorities were not abiding by the mandate of the I&B Code and continuing with the proceedings, has brought out the 2019 Amendment so as to cure the said mischief. We therefore hold that the 2019 Amendment is declaratory and clarificatory in nature and therefore retrospective in operation.*

.....

*97. “Creditor” therefore has been defined to mean “any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder”. “Operational creditor” has been defined to mean a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred. “Operational debt” has been defined to mean a claim in respect of the provision of*



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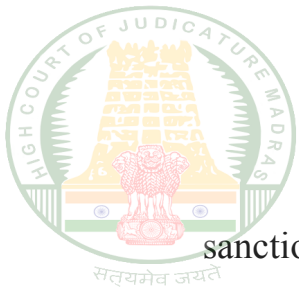


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*goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.”*

110. In ***Ghanashyam Mishra and Sons Private Limited through the authorised Signatory*** (cited *supra*), the Court was concerned with Corporate Insolvency Resolution Process (CIRP) and liquidation of assets of Corporate Debtor. Whereas in this case, the Committee of Creditors (CoC) in their IV meeting held on 25.08.2019 unanimously rejected the Expression of Interest filed by MAK Auto Services and FERROSCO Industries Private Limited. There was no application filed for Corporate Insolvency Resolution Process (CIRP) in this case. The Committee of Creditors (CoC) directly resolved to liquidate the 3<sup>rd</sup> Respondent/RLS Alloys Pvt Ltd, the Corporate Debtor.

111. The Committee of Creditors (CoC) rejected both the Expression of Interest and unanimously passed the resolution for liquidation of the Company. If a resolution plan was filed and acted upon and a plan was approved by the Committee of Creditors (CoC) and



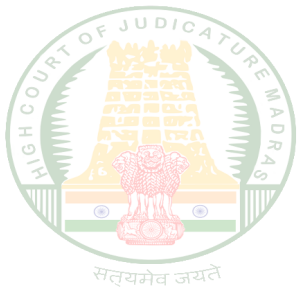
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sanctioned by the NCLT, failure to file a claim petition in response to paper publication on 25.04.2019 could be construed fatal. However, it will impact only the ordinary creditors and not secured creditors.

112. As far as the question of delay in the filing of claim, the Court in ***RPS Infrastructure Ltd. Vs. Mukul Kumar and others***, (2023) 10 SCC 718, the Hon'ble Supreme Court held that NCLAT's impugned judgment [***Mukul Kumar v. RPS Infrastructure Ltd.***, 2021 SCC OnLine NCLAT 648] cannot be faulted to reopen the chapter at the behest of the appellant. It further observed that the Court is not inclined to unleash the hydra-headed monster of undecided claims on the resolution applicant.

113. The Hon'ble Supreme Court in ***RPS Infrastructure Ltd. Vs. Mukul Kumar and others*** (cited *supra*) held as under:-

*“21. The second question is whether the delay in the filing of claim by the appellant ought to have been condoned by Respondent 1. The IBC is a time bound process. There are, of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters. The delay on the part of the appellant is of 287 days. The appellant is a commercial entity. That they were litigating against the corporate debtor is an undoubted fact. We believe that the appellant ought to*



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*have been vigilant enough in the aforesaid circumstances to find out whether the corporate debtor was undergoing CIRP. The appellant has been deficient on this aspect. The result, of course, is that the appellant to an extent has been left high and dry.*

*22. Section 15 IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the appellant. In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.*

*23. The mere fact that the adjudicating authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel [Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] , the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.*

*24. We have thus come to the conclusion that Nclat's impugned judgment [Mukul Kumar v. RPS Infrastructure Ltd., 2021 SCC OnLine NCLAT 648] cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.”*

114. The Hon'ble Supreme Court in ***State Tax Officer vs. Rainbow***

***Papers Limited***, (2023) 9 SCC 545 has also held as under:



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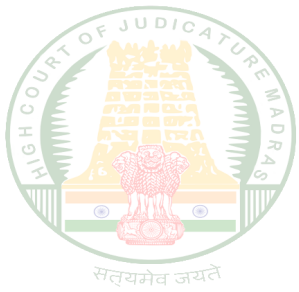
*53. In other words, if a company is unable to pay its debts, which should include its statutory dues to the Government and/or other authorities and there is no plan which contemplates dissipation of those debts in a phased manner; uniform proportional reduction, the company would necessarily have to be liquidated and its assets sold and distributed in the manner stipulated in Section 53 IBC.*

*54. In our considered view, the Committee of Creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owed to any Government or Governmental Authority or for that matter, any other dues.*

....

*56. Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of 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.*

*57. As observed above, the State is a secured creditor under GVAT Act. Section 3(30) IBC defines “secured creditor” to mean creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of “secured creditors” in IBC does not exclude any Government or Governmental Authority.”*



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115. The Hon'ble Supreme Court in *Paschimanchal Vidyut Vitran*

WEB COPY *Nigam Limited v. Raman Ispat Private Limited and others*, (2023) 10

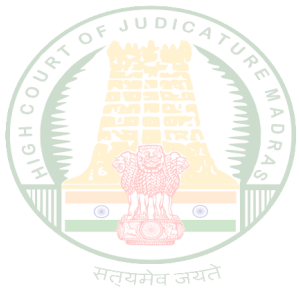
SCC 60 however doubted the view of the Court in *State Tax Officer Vs.*

*Rainbow Papers Limited* (cited *supra*). There, it observed as under:-

*“53. Rainbow Papers did not notice the waterfall mechanism” under Section 53-- the provision had not been adverted to or extracted in the judgement. Furthermore, Rainbow Papers was in the context of resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53 locates amounts payable to secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured and operational creditors. This design was either not brought to the notice of the Court in Rainbow Papers or was missed altogether. In any event, the judgement has not taken note of the provisions of IBC which treat the dues payable to the secured creditors at a higher footing than dues payable to the Central or State Government.*

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*58. In view of the above discussion, it is held that the reliance on Rainbow Papers is of no avail to the appellant. In this Court's view, that judgement has to be confined to the facts of that case alone.”*



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116. The Hon'ble Supreme Court recently in **Sanjay Kumar**

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**Agarwal vs. State Tax Officer (1) and another**, (2024) 2 SCC 362

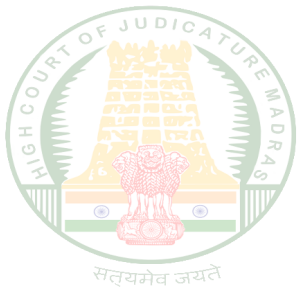
considered its decision in **Rainbow Papers** case (cited *supra*) and in

**Paschimanchal Vidyut Vitran** case (cited *supra*) and observed as under:-

*“24. Apart from the well-settled legal position that a coordinate Bench cannot comment upon the judgment rendered by another coordinate Bench of equal strength and that subsequent decision or a judgment of a coordinate Bench or larger Bench by itself cannot be regarded as a ground for review, the submissions made by the learned counsel for the review petitioners that the Court in the impugned decision had failed to consider the waterfall mechanism as contained in Section 53 and failed to consider other provisions of IBC, are factually incorrect. As evident from the bare reading of the impugned judgment [State Tax Officer v. Rainbow Papers Ltd., (2023) 9 SCC 545], the Court had considered not only the waterfall mechanism under Section 53 IBC but also the other provisions of IBC for deciding the priority for the purpose of distributing the proceeds from the sale as liquidation assets.*

----

*27. In view of the above stated position, we are of the opinion that the well-considered judgment [State Tax Officer v. Rainbow Papers Ltd., (2023) 9 SCC 545] sought to be reviewed does not fall within the scope and ambit of review. The learned counsel for the review petitioners have failed to make out any mistake or error apparent on the face of record in the impugned judgment [State Tax Officer v. Rainbow Papers Ltd., (2023) 9 SCC 545], and have failed to bring the case within the parameters laid down by this Court in*



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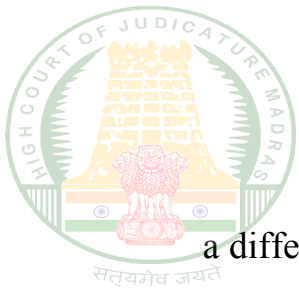
*various decisions for reviewing the impugned judgment. Since we are not inclined to entertain these review petitions, we do not propose to deal with the other submissions made by the learned counsel for the parties on merits.”*

Therefore, it has to be held that the view of the Hon'ble Supreme Court in ***Rainbow Papers*** case (cited *supra*) has been affirmed by the Hon'ble Supreme Court in ***Sanjay Kumar Agarwal vs. State Tax Officer (1) and another*** (cited *supra*) and lays the correct position of law to be followed.

#### **CONCLUSION:-**

117. I am of the view that even if the 1<sup>st</sup> Respondent had failed to file a claim statement within the time stipulated in the passed under Section 13 of the Code on 03.12.2018 when Mr.Ramasamy Shanmugam was appointed as an Insolvency Resolution Professional (IRP), the claims of the 1<sup>st</sup> Respondent as a secured creditor cannot be defeated. The Insolvency Resolution Professional (IRP) ought to have taken note of the Impugned Attachment Order dated 03.02.2016 passed against the 3<sup>rd</sup> Respondent/RLS Alloys Pvt Ltd, the Corporate Debtor.

118. That apart, a secured creditor like the 1<sup>st</sup> Respondent stands on



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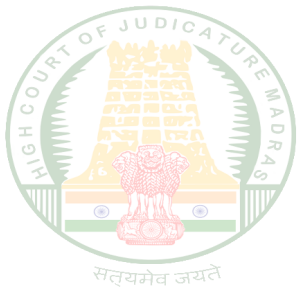
a different footing and is a class apart from other creditors. As per Section 52(1) of the Code, a secured creditor in the liquidation proceedings at best may relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets from the liquidator in the manner specified in Section 53 of the Code or realize its security interest in the manner specified in Section 52 of the Code.

119. Under Section 52(1) of the Code, a Secured Creditor in liquidation proceedings may:-

*(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in Section 53.*

*(b) realise its security interest in the manner specified in this section.*

120. If a secured creditor decides to realise its security, the amount of insolvency resolution process costs payable by the secured creditor shall be deducted from the realised proceeds. Where there is a surplus realised from the enforcement of a security interest, the secured creditor has to account for the same to the liquidator.



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121. Similarly, if the proceeds from the realisation of the secured assets are not sufficient to repay the debts owed to the secured creditor, the secured creditor may claim in accordance with the priority of payments under Section 53 for such unpaid portion. Thus, the claim of a secured creditor is never subservical.

122. As per Section 52(2) of the Code, if a secured creditor intends to realize the security interest under clause (b) of sub-section (1), he/she has to inform the liquidator of such security interest and identify the asset subject to such security interest to be realized. Thus, an independent right is vested with the secured creditor in respect of security interest.

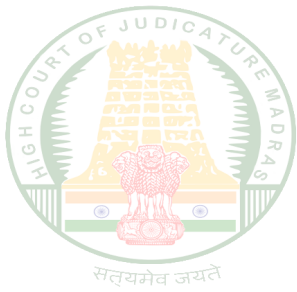
123. Section 52(1) of the Code is reproduced below:-

***52. Secured creditor in liquidation proceedings. -***

*(1) A secured creditor in the liquidation proceedings may-*

*(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or*

*(b) realise its security interest in the manner specified in this section.*



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(2) *Where the secured creditor realises security interest under clause (b) of subsection (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.*

(3) *Before any security interest is realised by the secured creditor under this section, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest, the existence of which may be proved either –*

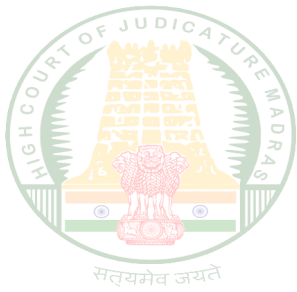
*(a) by the records of such security interest maintained by an information utility; or*

*(b) by such other means as may be specified by the Board.*

(4) *A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.*

(5) *If in the course of realising a secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security, the secured creditor may make an application to the Adjudicating Authority to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.*

(6) *The Adjudicating Authority, on the receipt of an application from a secured creditor under subsection (5) may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.*



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*(7) Where the enforcement of the security interest under sub-section (4) yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall-*

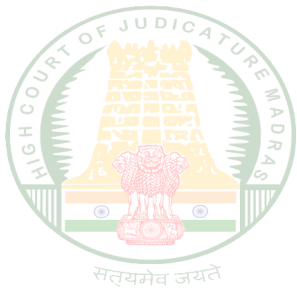
*(a) account to the liquidator for such surplus; and*

*(b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.*

*(8) The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.*

*(9) Where the proceeds of the realisation of the secured assets are not adequate to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in clause (e) of sub-section (1) of section 53.*

124. As per Section 52(4) of the Code, a secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.



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WEB COPY 125. In the present case, the 1st Respondent has merely asked the liquidator to settle the tax dues. The 1st Respondent had not relinquished the security interest. Instead, has opted the mechanism as prescribed under Section 52(4) of the Code.

126. The IRP/RP liquidator ought to have informed the 1<sup>st</sup> Respondent to either to opt under Section 52(1)(a) or Section 52(1)(b) of the Code. However, liquidator namely Mr.S.R.Shiraam Shekher, decided to auction the property and is said to have distributed the amounts contrary to the scheme of the Code.

127. In fact, rights are vested with the secured creditor to seek assistance of Adjudicating Authority namely the National Company Law Tribunal (NCLT) to facilitate such secured creditors to realize the security interest in accordance with law by inviting an order under sub-section 6 to Section 52 of the Code.

128. Section 52(7) of the Code, further states that where the enforcement of the security interest under sub-section (4) yields an



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amount by way of proceeds which is in excess of the debts due to the

secured creditor, the secured creditor shall-

- (a) account to the liquidator for such surplus; and
- (b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.

129. Thus, even if no Claim Statement was filed, a secured creditor stands on a separate foot and can enforce the right independently. Only if the secured creditor realizes its security interest under Section 52(1)(a) of the Code, it will stand in queue under the waterfall mechanism under Section 53 of Code.

130. Therefore, there has been a grave error committed by the liquidator in rejecting the claim of the 1<sup>st</sup> Respondent. Further, the request for bringing the security interest of the 1<sup>st</sup> Respondent to sale was made as early as **10.08.2020** whereas, the asset was brought to sale only on 24.10.2024 pursuant to E-auction Notice dated 18.11.2024 which is long after the request of the 1<sup>st</sup> Respondent on 10.08.2020 wherein it has been clearly stated that the 3<sup>rd</sup> Respondent corporate/operational debtor M/s.RLS Alloys Private Limited was in arrears of tax for the Assessment



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Years 2012-2013 to 2014-2015.

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131. The claim of a secured creditor under Section 52 and Section 53 of the Code makes it clear that the right of the secured creditor is sacrosanct and cannot be diluted as compared to different categories of creditors.

132. The crown debt is on the top of pyramid after the interest of the workers are taken care, where there is no secured asset. If the secured creditor chooses to work out the remedy independently, only the excess amount recovered by such secured creditor is to be paid back to the liquidator for making it available for distribution to the other category of credit.

133. In fact a somewhat similar provision was also available under Section 12(2) of the Presidency-Towns Insolvency Act, 1909 which now stands repealed after the Code came into force on 28<sup>th</sup> May, 2016. However, it operated differently. As per Section 12(2) of the Presidency-Towns Insolvency Act, 1909, if the petitioning creditor was a secured creditor, in his claim petition, he has to state that he was willing to



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relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security.

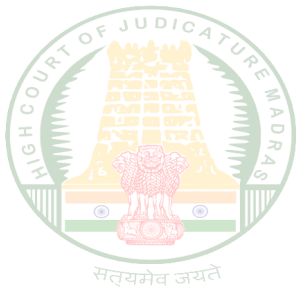
134. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor. Section 12(2) of the Presidency-Towns Insolvency Act, 1909 reads as under:-

***“12. Conditions on which creditor may petition.***

*(1) A creditor shall not be entitled to present an insolvency petition against a debtor unless-*

- (a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and*
- (b) the debt is a liquidated sum payable either immediately or at some certain future time, and*
- (c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.*

*Provided that where the said period of three months referred to in clause (c) expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court reopens. [Added by Insolvency Law (Amendment) Act, 1950 (3 of 1950), section 2.].*



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***(2) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.”***

135. In my view, the IRP/RP/Liquidator could not have ignored the rights of the 1<sup>st</sup> Respondent, as the 1<sup>st</sup> Respondent is a secured creditor within the meaning of Section 3(30) of the Code.

136. Since the 1<sup>st</sup> Respondent is a secured creditor, registration of Sale Certificate dated 23.01.2025 pursuant to auction held on 24.12.2024 cannot be countenanced. The sale made has seriously compromised the rights of the 1<sup>st</sup> Respondent as a “secured creditor”.

137. Since the Petitioner has invested a sum of Rs.3,05,55,143/- for purchasing the security interest of the 1<sup>st</sup> Respondent, the only remedy available/left for the Petitioner is to recover the amount from the person to whom amounts were paid by the liquidator through liquidation process.

138. The liquidator has to assist the Petitioner for recovering the



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amount(s) that may have been paid to the creditors who may have filed claim statements and would have received the amount from the liquidator.

The amount recovered may be paid to the 1<sup>st</sup> Respondent. Once the amount is fully paid to the 1<sup>st</sup> Respondent, the impugned attachment will stand vacated /lifted.

*139. Therefore, this Writ Petition is liable to be dismissed for the present with the above observation. It is accordingly dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.*

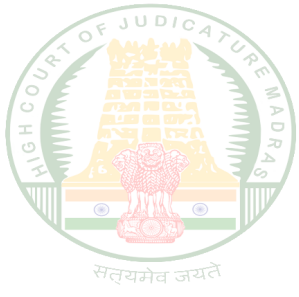
**14.08.2025**

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Index : Yes  
Internet : Yes  
Neutral Citation : Yes  
Speaking Order

To

- 1.The Assistant Commissioner  
Srirangam (GST Circle), Moolathoppu Melur Road,  
Srirangam, Tiruchirappalli - 620 006.
- 2.The Sub Registrar,  
Keezhsathanur,  
Palani Road, K.K.Nagar,  
Tiruchirappalli, Tamil Nadu - 620 001.



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**C.SARAVANAN, J.**

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Pre-Delivery order made  
in  
W.P.(MD) No.8260 of 2025  
and  
W.M.P.(MD) No.6197 of 2025

14.08.2025