

Sl. No. 1

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

(Virtual Hearing)

PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)

: SHRI SANJAY PURI – MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 07.01.2025 AT 01:00 P.M.

TC/CP. Nos.	IBC Stage	Present stage of the case	Section/Rule	Name of Parties
TCP(IB)/28/7/AMR/2019	Under Liquidation	Under Liquidation	7 of IBC	Axis Bank Ltd Vs Sembmarine Kakinada Ltd
	IA(IBC)/253/2023	For Orders	42 of IBC, 2016	The Customs Departments Vs. Sri Vedagiri Venkata Krishnamurthy, Liquidator of Sembmarine Kakinada Limited
	IA(IBC)/261/2023	For Orders	60(5) of IBC, 2016	Mr. Vedagiri Venkata Krishnamurthy, Liquidator of Sembmarine Kakinada Limited Vs. The Deputy Commissioner of Customs

ORDER

IA(IBC)/253/2023:

Present: Ms. Santhi Chandra, Ld. Counsel for the Applicant.

Orders pronounced. IA(IBC)/253/2023 is dismissed as disposed of and recorded vide separate sheets.

IA(IBC)/261/2023:

Present: Ms. Santhi Chandra, Ld. Counsel for Respondent.

Orders pronounced. IA(IBC)/261/2023 is partly allowed and recorded vide separate sheets.



**SANJAY PURI
MEMBER (TECHNICAL)**



**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

IA(IBC)/253/2023 & IA(IBC)/261/2023

in

TCP(IB)/28/7/AMR/2019

In the matter of
M/s. SEMBMARINE KAKINADA LIMITED

IA (IBC)/253/2023

[Filed under Section 42 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016]

The Customs Department,

Rep by: The Deputy Commissioner of Customs,
Office of the Additional Commissioner of Customs,
Custom House, Port Road,
Kakinada – 533 007

Email: kkdcustomhouse@gmail.com

... Applicant

Versus

M/s. Sembmarine Kakinada Limited,

Rep by: Mr. Kondareddy Ravinder Reddy
(Authorized Signatory-cum-Director)
Office at First floor, OSV Complex, Kakinada Deep Water Port,
Beach Road, Kakinada,
Andhra Pradesh – 533 007

Email: paramesh.skl@sembkakinada.com

... Respondent

IA (IBC)/261/2023

[Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016]

M/s. Sembmarine Kakinada Limited,

Rep by: Mr. Kondareddy Ravinder Reddy
(Authorized Signatory-cum-Director)
Office at First floor, OSV Complex, Kakinada Deep Water Port,
Beach Road, Kakinada,
Andhra Pradesh – 533 007

Email: paramesh.skl@sembkakinada.com

... Applicant

Sd/-

Sd/-

NCLT Amaravati Bench
IA(IBC)/253/2023 and IA(IBC)/261/2023 in TCP (IB)/28/7/AMR/2019

Versus

The Customs Department,
Rep by: The Deputy Commissioner of Customs,
Office of the Additional Commissioner of Customs,
Custom House, Port Road,
Kakinada – 533 007
Email: kkdcustomhouse@gmail.com

... Respondent

Date of order: 07.01.2025

Coram:

SHRI RAJEEV BHARDWAJ, MEMBER (JUDICIAL)
SHRI SANJAY PURI, MEMBER (TECHNICAL)

Parties/Counsels present:

For the Customs Department:	Mr. Sri Suresh Kumar Routhu, Ld. Sr. Standing Counsel, Mr. Santhi Chandra, Ld. Standing Counsel
For the Corporate Debtor:	Mr. Y. Vadeendra Joshi, Advocate Mr. N Pavan Krishna Reddy, Advocate Ms. Harika Tejavath, Advocate Mr. Abhishek, Advocate

COMMON ORDER

(Per: Bench)

IA(IBC)/253/2023:

1. The Application IA(IBC)/253/2023 is filed by The Deputy Commissioner of Customs on behalf of the Customs GST Department ('Applicant') praying this Tribunal
 - i. *To order the setting aside the impugned order Dt. 22.05.2023 of the liquidator treating the liability to be paid to the applicant as 'belated claim'*

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IA(IBC)/253/2023 and IA(IBC)/261/2023 in TCP (IB)/28/7/AMR/2019*

- ii. To direct the liquidator to consider or treat the total liability/due of INR 31,38,87,164/- (Customs Duty: INR 12,52,37,825/- and interest: INR 18,86,49,339/-) payable to the applicant-department as part of Liquidation Costs and to allot the applicable share to the applicant in liquidation proceeds, with all consequential benefits*
 - iii. To condone the delay of Five Hundred Twenty Seven (527) days in submitting the claim of the Operational Creditor before the Liquidator of the Corporate applicant/debtor to accept the claim, to take on record and to include the entire claim of the applicant amounting to INR 31,38,87,164/- in total debt of the Corporate Debtor.*
 - iv. To direct the Liquidator to allot operational creditor's applicable share in the liquidation process and to allot the same to the operational creditor account, with consequential reliefs.*
 - v. To grant stay on the liquidation process and to keep the same in abeyance till disposal of this application.*
 - vi. To grant interim relief in terms of the prayers made in the above clauses;*
 - vii. To award costs of the application in favour of the Applicant.*
2. The present application IA(IBC)/253/2023 was initially filed against the Liquidator of the CD who was later substituted by the Successful Buyer of the CD (as going concern) as the Respondent *vide* the order of this Tribunal dated 30.07.2024 in IA(IBC)/260/2024 in IA(IBC)/253/2023.

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3. Brief Facts and contentions of the applicant

- 3.1. The Respondent/Corporate Debtor ('CD') was an integrated offshore and Marine Engineering Company offering ship repairing, ship building, conversion, offshore fabrication and related services.
- 3.2. In the year 2012, CD has imported a Floating Dry Dock (FDD) under Bill of Entry no. 8617966 dt. 29.11.2012 by claiming full exemption. The FDD was also registered as the "Ship Repair Unit" *vide* Registration Certificate bearing No. SRU/2012/04 dated 22.10.2012 issued by Director General of Shipping.
- 3.3. It is submitted that the CD has not paid any custom duty by virtue of availing duty exemption against Sr. No. 459 of Notification No. 12/2012-Customs dated 17.03.2012 read with condition No. 79 appended to the Sr. No. 459. Upon failure of fulfilment of the post importation conditions at any stage later after import, laid down in the condition no. 79¹, the Customs Department is entitled to recover the duty foregone amount.
- 3.4. As per the Form B Public Announcement dt. 04.11.2021 issued by the Liquidator the stakeholders were invited to submit claims on or before 01.12.2021, later the assets of CD were auctioned as per the notice. The Liquidator requested the Applicant to undertake essential maintenance and repairs of the FDD that is required to keep it afloat. The Liquidator later exported the FDD to the foreign buyer, M/s. Asyad Dry Dock LLC, Oman *vide* Shipping Bill No. 7683680 dt. 10.02.2023 and got customs clearance on the same day i.e. 10.02.2023.

¹ Pg. 17 Point 5. Of the Application

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- 3.5. It is submitted that the sale and export of used and old FFD to a foreign buyer is a breach of contract or violation of the conditions that laid down in the condition 79 appended to the Sr. No. 459 of Notification No. 12/2012-Customs dt. 17.03.2012. Further submitted that the dues in this case are contingent in nature and cannot be determined till the occurrence of breach of conditions or continuing obligation by way of sale or exportation. As the FDD was sold to a foreign buyer by the CD, resulting in violation of the conditions laid down, the Applicant has determined the customs duty of INR 12,52,37,825/- along with applicable interest of INR 18,86,49,339/- *vide* Speaking Order No. 04/2023(KVK) dated 09.05.2023.
- 3.6. As the CD is under the process of Liquidation, the recovery proceedings cannot be initiated against the CD and hence, the Applicant submitted the Claim in Form-C for INR 31,38,87,164/- (Customs duty of INR 12,52,37,825/- and Interest of INR 18,86,49,339/-) before the Liquidator.
- 3.7. The said claim was rejected by the Liquidator *vide* email dt: 22.05.2023 stating that the Applicant's claim was submitted after the expiry of the statutory timeline and the same amounts to "belated claim".
- 3.8. It is submitted that the duties determined in this present case are contingent in nature and the determination of the same can only be done upon occurrence of breach of conditions or continuing obligation by way of sale and exportation. The claim arose only after the issue of the Speaking Order No. 04/2023 (KVK) dt: 09.05.2023 and the same could not be submitted before the Liquidator on or before 01.12.2021.

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- 3.9. It is submitted that as the custom duty liability has arisen on the account of action of the Liquidator, as part of liquidation process, the liability should have been rightly treated by the Liquidator as "Liquidation Costs". Further submitted that the Liquidator paid the IGST and did not pay customs duty which are co-liabilities which are indirect taxes and the applicant placed reliance on the case of *M/s. Mansi Oils and Grains Pvt Ltd* rendered by the Authority of Advance Ruling (West Bengal) and the judgement by Hon'ble Supreme Court in the case of *State Tax Officer v. Rainbow Papers Ltd.*
- 3.10. The said Speaking Order which was passed in relation to the breach of the conditions exempting the custom duty has been passed in the year 2023 which has caused the delay in filing the claim with the Liquidator in the year 2023 but not on or before 01.12.2021. The Liquidator has placed his reliance on the cases of State Bank of India Vs. Surya Pharmaceuticals rendered by NCLT, Delhi and M/s. KVK Nilachal Power Private Limited by NCLT, Hyderabad in regards to condone the delay in filing of the claim.
- 3.11. The Applicant has prayed this Tribunal to condone the delay in filing of claim before the Liquidator and to admit the claim under the liquidation costs by setting aside the email dt: 22.05.2023 of the Liquidator and allot them with the applicable share in the liquidation process. Hence this Application.
4. The Liquidator filed the Counter in IA(IBC)/253/2023 stating that the Application is not maintainable and is devoid of merits, denied the

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allegations and averments made by the Applicant as follows and the same has been adopted by the present Respondent:

4.1. The Liquidator in relation to the consolidation, verification and admission/rejection of claims invited in Liquidation under IBC, 2016 and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 has submitted that

- The claims of creditors shall be received or collected within a period of 30 days from the Liquidation Commencement Date (LCD).
- Upon receipt of claims within stipulated time period, the same shall be verified from the last date of receipt of claims.
- Communication of decision of acceptance/rejection of claim within 7 days as the case maybe, to concerned creditor and the CD and the reasons shall be recorded in writing, if the claims are rejected.
- The list of stakeholders to be filed by the Liquidator with the Adjudicating Authority within 45 days of the last receipt of claims i.e., with a total period of 75 days from LCD.

4.2. Further submitted that the Liquidator has not verified and/or admitted any belated claim in the liquidation process of the CD and that allowing the same would amount to giving unequal treatment to different entities in the same situation.

4.3. It is submitted that the FDD was imported in 2012 under Ship Repair Unit (SRU) License at NIL rate of Customs Duty and the same has been obtained by CD as per registration no. SRU/2012/04 dated 22.10.2012. A Press Note issued by the Ministry of Shipping dated 16.01.2025 *vide* which the requirement for registration of SRU License with Director General of Shipping was dispensed which was later confirmed and

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reiterated by the Director General of Shipping in Reply to CD's Letter dated 26.08.2015.

- 4.4. Further submitted that once the importer installs, uses or consumes the specified goods for the purpose of repairs of ocean-going vessels the condition would be satisfied and that payment of duty would arise only in the case where the capital goods are not used or installed for the purpose they were imported and the parts, raw materials and consumables are not consumed for the required purpose within one year from the date of importation or any extended period as that of the commissioner being satisfied. It is also submitted that there is no 'actual user' condition in relation to the exemption and that whether or not the goods are thereafter disposed of should not pose a duty liability.
- 4.5. The Rules under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 are not applicable to the Sl No. 459 in Exemption Notification No. 12/2012 – customs dated 17.03.2012 as the same have been made applicable to Sl. No. 459 *vide* Notification No. 12/2016 – Customs dated 01.03.2016. Hence the duty liability envisaged under the said Rules or re-export related procedure are not relevant for the said exemption under which the FDD has been imported which is also specified under Rule 2² of the said Rules.
- 4.6. Contending that in cases where the determination of duty is not possible due to availability of exemption notification, the customs resort to provisional assessment which is subsequently finalized upon satisfaction of the customs department. When the entire process of import has been finalized to the satisfaction of the applicant, the

² Pg. 7 point c. of the Counter

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applicant's view to charge duty and interest on the goods sold would lead to importing the goods twice which is bad in law.

- 4.7. *Vide* letter dated 20.12.2022 addressed to the Applicant, upon receiving the legal advice by the Liquidator that no incidence of customs duty will accrue pursuant to sale of FDD to ADC, relevance has been placed by the Liquidator in the same letter on the decision of Hon'ble Supreme Court in the matter of ***Sundaresh Bhatt, Liquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs***, by virtue of which provisions of the Code will override Customs Act, 1962.
- 4.8. It is contended that despite explaining the correct legal position on the captioned issue that no customs duty is required to be paid, the Applicant has not allowed the delivery of FDD to ADC, until the payment of Customs Duty is being done. A bond dated 22.12.2022 was executed by the Liquidator to the applicant to move the FDD for undertaking repair works and an undertaking has also been given that the FDD would not be moved without obtaining NOC from the applicant.
- 4.9. Considering the time bound mechanism of Liquidation process which is to be completed in a requisite timelines as stipulated under the Code, the Liquidator was constrained to make payment of Customs Duty of INR 6,39,26,500/- to the Applicant to which CD is eligible for a rightful refund, to deliver the FDD to ADC and conclude the sale process.
- 4.10. The breakup of payments made is as following:
- *Issuance of revised sale invoice with GST along with the remittance of the same. The outgo towards IGST was ~INR 5.81 crores (5% on INR 116.23 crores)*

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- *After remittance of GST, the sales invoice was filed with the customs department along with covering letter requesting for No Due Certificate.*
- *As per the Customs department the customs duty break up was as follows*

BCD = ~INR 5.81 crores (5% on INR 116.23 crores)

Surcharge = ~INR 0.58 crores (10% on INR 5.81 crores)

Total Payable (BCD + Surcharge) = ~INR 6.39 crores

- 4.11. The Liquidator has addressed a letter dated 23.03.2023 to the applicant requesting to consider that the amount of custom duty being INR 6,39,26,500/- is wrongfully sought by the applicant and such amount forms part of the assets of the CD which is also public money. The Liquidator has requested to refund the same within 15 days from the date of receipt of the said letter.
- 4.12. Upon receipt of the said letter dated 23.03.2023, *vide* correspondence dated 03.04.2023, the applicant has informed the Liquidator regarding a personal hearing which is scheduled on 26.04.2023 before the Deputy Commissioner of Customs, Kakinada. The Deputy Commissioner has passed Speaking Order dated 09.05.2023 which has determined the liability payable to the Applicant to a tune of INR 31,38,87,164/- (Principal amount: INR 12,52,37,825/-, Interest: 18,86,49,339/-).
- 4.13. Further contended that the applicant in accordance to the said Speaking Order dt: 09.05.2023 has filed Claim Form dated 12.05.2023, for a total claim of INR 31,38,87,164/- (Principal amount: INR 12,52,37,825/-, Interest: 18,86,49,339/-) which the Applicant has prayed this Tribunal to treat the claim amount as part of liquidation cost but has filed the said claim under Form C – Proof of claim by operational Creditors except Workmen and Employees.

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- 4.14. It is submitted that on account of the expiry of the statutory time line, the claim submitted by the applicant are treated as "belated claim" and for the same reason the said claim has been rejected by the Liquidator on ground of delay.
- 4.15. It is submitted that the applicant has miserably failed to demonstrate and make out the case on merits so as how the Condition 79 as applicable to the exemption under Sl. No. 459 in Notification No. 12/2012 – Customs dated 17.03.2012, either by the CD during pre-CIRP period or by the RP during the CIRP Period or by the Liquidator during the Liquidation Period.
- 4.16. Further contending that without prejudice to any submission made before, the Liquidator submitted that when the dues were contingent in nature and not payable at the time of filing claim within stipulated timeline, the applicant was obligated to file their claim within the statutory time and not after more than one and half years of liquidation commencement as according to Regulation 28 of the Liquidation Regulations.

IA(IBC)/261/2023

5. This Application is filed by the Liquidator of M/s. Sembmarine Kakinada Limited ('CD'), praying this Tribunal
- i. Adjudicate the question of law/fact that the customs duty of INR 6,39,26,500/- deposited by the Applicant under protest without prejudice on 08.02.2023 to the Respondent is a "government due" arising from a claim which falls within the scope of clause e(i) of subsection (1) of Section 53 of the Code and has lower priority of*

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payment from the Liquidation Estate as per the distribution waterfall prescribed under section 53 of the Code;

- ii. Consequently, to direct Respondent to refund the customs duty of INR 6,39,26,500/- deposited by the Applicant under protest on 08.02.2023;*
- iii. Consequently, to direct Respondent to pay interest @18% or such other rate as deemed fit by this Hon'ble Tribunal for holding the INR 6,39,26,500/- deposited by the Applicant under protest on 08.02.2023;*
- iv. Also consequently, to direct the Respondent not to interfere/cause hindrance in the liquidation process and to cooperate with the Applicant Liquidator to follow the distribution/waterfall mechanism under section 53 of the Code while disbursing the liquidation sale proceeds;*
- v. to decide that the status of the right of the customs department, i.e., Respondent herein to payment of customs duty dues, if any, shall be a claim under the definition in s. 3(6) of the Code shall need to be treated accordingly;*
- vi. to decide that there is a delay in filing the claim and even if the claim is admitted, the entitlement of the customs department, i.e., Respondent herein, will be subject to the provisions of section 53 as mentioned in relief (i) above;*
- vii. to order costs in favour of the Applicant as deemed fit by this Hon'ble Tribunal;*

6. The facts in IA(IBC)/261/2023 are already submitted in IA(IBC)/253/2023 and hence are not repeated for the sake of brevity.

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7. This application was initially filed by the Liquidator of the CD who was later substituted by the Successful Buyer of the CD (as going concern) as the Applicant *vide* the order of this Tribunal dated 30.07.2024 in IA/262/2024 in IA(IBC)/261/2023.
8. The averments and contentions of the Respondent in the counter in IA(IBC)/261/2023 are similar to submissions made as Applicants in the IA(IBC)/253/2023.
9. Applicant and the Respondent have filed their written submissions in both the Applications i.e. IA(IBC)/253/2023 and IA(IBC)/261/2023 reiterating their oral submissions along with relevant case laws.
10. We have heard the Learned Counsels for both the parties and perused the entire records.
11. In the light of the contest as aforementioned, the point which emerges for our consideration in IA(IBC)/253/2023 is:

“Whether the Applicant is entitled for the Reliefs prayed for?”

12. The case laws relied on by the Applicant and the Respondent are as follows:

In IA(IBC)/253/2023:

Applicant:

- *M/s. Mansi Oils and Grains Pvt Ltd* rendered by the Authority of Advance Ruling (West Bengal)
- *State Tax Officer v. Rainbow Papers Ltd.* by Hon’ble Supreme Court

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Respondent:

- *Sundaresh Bhatt, Liquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs* by Hon'ble Supreme Court
- *Jaypee Kensington V. NBCC (India) Ltd. & Ors.* by Hon'ble Supreme Court.
- *Harish Polymer Product v. George Samuel* by Hon'ble NCLAT
- *Shyam Rathod v. Gopalswamy Ganesh Babu* by Hon'ble NCLAT
- *Pooja Mehra V. Nilesh Sharma* by Hon'ble NCLAT

13. Section 42 of the IB Code, 2016 reads as under:

"Section 42-Appeal against the decision of liquidator.

A creditor may appeal to the Adjudicating Authority against the decision of the liquidator accepting or rejecting the claims within fourteen days of the receipt of such decision."

14. The Applicant has filed a claim of INR 31,38,87,164/- which consists of the Customs Duty and the interest liability imposed on the CD, for the sale of the Flying Dry Dock (FDD) to a foreign buyer, M/s. Asyad Dry Dock LLC, Oman (M/s. ADD) by the Liquidator as part of the Liquidation Process.
15. The claim which was rejected as belated claim is from Speaking Order No. 04/2023 (KVK) dated 09.05.2023 passed by the Deputy Commissioner of Customs against the Corporate Debtor which is passed after more than one and a half year post the Liquidation Commencement Date i.e. 01.11.2021. An important question arises regarding the validity as to such order imposing such penalty.

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16. In this regard, it is important to refer to relevant provisions Section 14 and 33 of the Insolvency and Bankruptcy Code, 2016:

"Section 14 – Moratorium.

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:--

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*

...

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

"Section 33 – Initiation of liquidation.

...

(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. ..."

From the above stated law, it is clear that the moratorium shall cease to have effect from the date of Liquidation Order and that no new suit or legal proceedings shall be instituted by or against the Corporate Debtor from such date.

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17. The Speaking Order No. 04/2023 (KVK) has been passed on 09.05.2023 by the Applicant in relation to a sale of FDD which happened post the initiation of the Liquidation of the Corporate Debtor on 01.11.2021. It is clear that the Moratorium under section 14 has ceased to have effect from 26.03.2023 and a fresh Moratorium in terms of Section 33(5) of IBC came into place on the passing of the Liquidation Order.
18. In this regard, it is pertinent to refer to the decision of Hon'ble NCLAT New Delhi in the case of *Avil Menezes Liquidator of Sunil Hitech and Engineers Ltd. Vs. Principal Chief Commissioner of Income Tax, Mumbai* [Company Appeal (AT) (Insolvency) No. 258 of 2024] in regards to Section 14 and 33 of IBC, 2016, where it was observed that:

"A close examination of these two statutory provisions would reveal that both these sections are however entirely distinct in their sweep and application. In terms of the language employed in Sections 14 and 33 of IBC, while Section 14 prohibits both institution and continuation of pending suits or proceedings against the Corporate Debtor, Section 33(5) of IBC is only a bar on the institution of new suits during the liquidation process though the proviso to Section 33(5) further provides that if a fresh suit or legal proceeding is to be instituted, the Liquidator is required to obtain specific permission and prior approval of the Adjudicating Authority. There is however clearly no mention of any bar or embargo on continuation of pending suits or proceedings during the process of liquidation."

19. It is evident that the Speaking Order No. 04/2023 (KVK) issued on 09.05.2023 is the outcome of a newly initiated legal proceeding passed during the moratorium period imposed under Liquidation period. The Applicant themselves submitted that the Custom Duty imposed is the result of the sale of FDD to the foreign buyer in the year 2023 and is not the result

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of any action of the CD during the pre-CIRP period for it to be considered as a continuing liability and a pending legal proceedings. Therefore, it is clear that the said Speaking Order Dt: 09.05.2023 is in violation of the Moratorium imposed under Section 33(5) of the IB Code, 2016.

20. In light of the aforementioned observations and findings, we are of the view that the claim submitted by the Applicant cannot be considered as part of the Liquidation process. Hence, IA(IBC)/253/2023 is dismissed.
21. In view of our observations in IA(IBC)/253/2023, we are of the view that custom duty liability cannot be imposed on CD under these current circumstances and hereby direct the Respondent i.e. the Customs Department in IA(IBC)/261/2023 to refund the amount of INR 6,39,26,500/- Customs Duty paid under protest (by the Liquidator) to the Applicant. Hence, the IA(IBC)/261/2023 is partly allowed.
22. Accordingly, the IA(IBC)/253/2023 & IA(IBC)/261/2023 in TCP(IB)/28/7/AMR/2019 are disposed of.



SANJAY PURI
Member (Technical)



RAJEEV BHARDWAJ
Member (Judicial)

Minisha Jilludimudi