

NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.202
IA/498(MP)2025
in
(MP) CP(IB) 7 of 2019

Order under Section Sec 25 r.w 60(5) & Rule 11

IN THE MATTER OF:

Gautam Mittal RP of Sanwaria Consumer Ltd
V/s
Chief Commisioner of Income Tax Bhopal & Anr

.....**Applicant**

.....**Respondent**

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 23/04/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

Sd/-

MAN MOHAN GUPTA
MEMBER (TECHNICAL)
Chandni-LRA

BRAJENDRA MANI TRIPATHI
MEMBER(JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH

I.A. No. 498 of 2025

In

C.P. (IB) No. 7 (MP) of 2019

[This is an Application Under Section 25 read with section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of NCLT, Rules 2016]

IN THE MATTER OF:

Gautam Mittal

Resolution Professional,
Sanwaria Consumer Limited,
R/O Aaa House, 64, Behind Modi Mill,
Okhla Phase III, Okhla Industrial Estate,
New Delhi-110020.

Versus

Chief Commissioner of Income Tax,

Aaykar Bhawan, Hoshangabad Road,
Bhopal-462026

..... Respondent No. 1

Deputy Commissioner of Income Tax,

Aaykar Bhawan, Hoshangabad Road,
Bhopal-462026

..... Respondent No. 2

CORAM:

SHRI. BRAJENDRA MANI TRIPATHI, HON'BLE MEMBER (JUDICIAL)
SHRI. MAN MOHAN GUPTA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant: Mr. Ritesh Kumar Sharma, Adv.

For the Respondent: None

ORDER

(Delivered on 23.04.2026)

1. That the present Application has been filed by the Applicant, in his capacity as the Resolution Professional of the Corporate Debtor, under Section 25 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016. The Applicant seeks appropriate directions from this Hon'ble Tribunal against the Respondents for refund of the Income Tax Refund amounts which have been illegally adjusted/set-off during the subsistence of the Corporate Insolvency Resolution Process (CIRP), in contravention of the provisions of the Code.

2. That the Corporate Insolvency Resolution Process against the Corporate Debtor was initiated pursuant to the order dated 29.05.2020 passed by this Hon'ble Tribunal in Company Petition under Section 9 of the Code. Consequent to the admission of the petition, a moratorium under Section 14 of the Code came into

effect from the said date, prohibiting, inter alia, institution or continuation of proceedings, recovery of any property, or enforcement of any claim against the Corporate Debtor during the CIRP period.

3. That initially, an Interim Resolution Professional was appointed, who was subsequently replaced by the present Applicant as the Resolution Professional vide order dated 04.09.2020. The Applicant has since been discharging his statutory duties in accordance with the provisions of the Code, including taking control and custody of the assets of the Corporate Debtor and managing its affairs as a going concern.
4. That during the course of CIRP, various creditors, including statutory authorities, were invited to submit their claims before the Resolution Professional. In this regard, the Income Tax Department, being a statutory authority, submitted its claim in respect of outstanding tax dues pertaining to the Corporate Debtor, which was duly considered and admitted in accordance with law as an operational debt under Section 5(21) of the Code.
5. That it is pertinent to note that during the subsistence of the CIRP and the moratorium period, the Respondent Income Tax

Department proceeded to adjust and set-off the Income Tax Refunds due to the Corporate Debtor for Assessment Years 2021–2022, 2022–2023, and 2023–2024 against alleged outstanding tax demands pertaining to the years prior to the commencement of CIRP, i.e., pre-CIRP dues.

6. That the details of such adjustments are as follows: an amount of ₹9,17,650/- for Assessment Year 2021–2022, ₹9,18,650/- for Assessment Year 2022–2023, and ₹11,80,490/- for Assessment Year 2023–2024, aggregating to a total sum of ₹30,16,790/-. The said adjustments were carried out on various dates during the continuation of CIRP, as communicated through intimation notices issued under Section 245 of the Income Tax Act, 1961.
7. That the Applicant submits that the aforesaid Income Tax Refund amounts constitute assets of the Corporate Debtor and form part of the insolvency estate. The unilateral adjustment/set-off of such amounts by the Respondent during the moratorium period is in direct contravention of Section 14 of the Code, which expressly prohibits any form of recovery or appropriation of assets of the Corporate Debtor during CIRP.

8. That Section 14 of the Code provides a statutory bar against institution or continuation of proceedings, as well as any action to recover or enforce any claim against the Corporate Debtor. The moratorium is intended to preserve the assets of the Corporate Debtor and ensure equitable treatment of all creditors. The act of set-off by the Respondent effectively amounts to recovery of its dues in preference to other creditors, thereby defeating the very object and scheme of the Code.
9. That the Applicant further submits that permitting such set-off during CIRP results in granting preferential treatment to one creditor, namely the Income Tax Department, to the detriment of other similarly placed creditors. This is violative of the fundamental principle of equitable distribution and the pari passu treatment envisaged under the Insolvency and Bankruptcy Code, 2016, particularly in light of the waterfall mechanism provided under Section 53 of the Code.
10. That upon discovering the aforesaid illegal adjustments while reviewing the books of accounts of the Corporate Debtor, the Applicant promptly took steps to address the issue. The Applicant addressed a formal communication dated 12.06.2025 to the

Respondent, requesting reversal of the set-off and refund of the amounts so adjusted during the CIRP period.

11. That despite the said representation, no corrective action was taken by the Respondent. Consequently, the Applicant was constrained to file an online grievance on the Income Tax Department's portal on **21.08.2025**, seeking redressal of the issue. However, even thereafter, no relief has been granted to the Corporate Debtor, compelling the Applicant to approach this Hon'ble Tribunal by way of the present Application.
12. That it is a settled position of law that statutory authorities, including the Income Tax Department, fall within the definition of operational creditors under the Code and are bound by the provisions of the Code, including the moratorium under Section 14 of Code.
13. The Respondent cannot, therefore, bypass the CIRP mechanism by resorting to unilateral adjustment of refunds, which effectively amounts to recovery of dues outside the framework of the Code.
14. That various judicial pronouncements have consistently held that any debit, appropriation, or set-off carried out during the

moratorium period is impermissible and liable to be reversed. The Hon'ble Appellate Tribunal and the Hon'ble Supreme Court have emphasized that such actions violate the moratorium and undermine the insolvency resolution process by reducing the asset pool available for distribution among creditors.

15. That the Applicant, being under a statutory obligation under Section 25 of the Code to preserve and protect the assets of the Corporate Debtor, is duty-bound to seek restoration of the amounts unlawfully appropriated by the Respondent. The failure to do so would adversely impact the interests of all stakeholders and frustrate the objectives of the CIRP.
16. That in view of the aforesaid facts and circumstances, the Applicant respectfully submits that the actions of the Respondent in adjusting the Income Tax Refund amounts during the CIRP period are illegal, arbitrary, and contrary to the provisions of the Insolvency and Bankruptcy Code, 2016, and are therefore liable to be set aside by this Hon'ble Tribunal.
17. That the Applicant respectfully submits that the issue involved in the present case is no longer res integra and stands conclusively settled by a catena of judgments passed by the Hon'ble Supreme

Court, Hon'ble National Company Law Appellate Tribunal (NCLAT), and various benches of the Hon'ble National Company Law Tribunal, wherein it has been consistently held that any adjustment, appropriation, or set-off carried out during the subsistence of the moratorium period is impermissible in law and is liable to be reversed.

18. That in the matter of ***Interim Resolution Professional vs. ICICI Bank [(2018) 5 SCC online NCLAT 2193]***, ICICI Bank was ordered to deposit the money it had debited during the moratorium back into the Corporate Debtor's Account. ***In another case, State Bank of India vs. Devashish Nanda (Company Appeal (80) (Ins) No. 49 of 2018-order dated 21.03.2018)***, the Hon'ble NCLAT prevented the Bank from debiting amounts during the moratorium from the Corporate Debtor's Account. The same has been reiterated in various judgements passed by the NCLT, Mumbai, such as ***Bank of Baroda (Erstwhile Dena Bank) v. RSAL Steel Private Limited (IA No. 3933 OF 2023 IN CP(IB)/2985/MB/C-II/2018)*** vide order dated 09.01.2024 and in ***Skylark Highway Solutions Limited v. M/S Topworth Infra Pvt. Ltd. (IA No. 1365 OF 2022 IN Company Petition No. 2231/I&BP/2019) vide order dated 31.07.2024.***

19. Hence, the Applicant is seeking directions to the Respondent for refunding the Income Tax Refund amount of Assessment Years 2021-2022, 2022-2023 and 2023-2024, which cumulatively amounts to Rs. 30,16,790/-, which has been set-off against the Outstanding demands of the Corporate Debtor for a period prior to CIRP.

Reply of respondent:

20. That the Respondent has filed the present Reply in response to the Interlocutory Application preferred by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, and at the outset, denies each and every allegation, submission and averment made therein, save and except those which are specifically admitted herein.
21. That the Respondent submits that the present Application has been filed seeking directions for refund of amounts aggregating to ₹30,16,790/-, which have been adjusted against the outstanding tax dues of the Corporate Debtor. The Respondent submits that such adjustment pertains to duly crystallized and legally enforceable tax demands relating to the pre-CIRP period.

22. That it is respectfully submitted that the outstanding demand of the Respondent, to the extent of approximately ₹15 Crores, has already been admitted in the CIRP by the Resolution Professional himself. In view of such admission, the Respondent contends that the adjustment of refunds against such admitted dues is justified and does not give rise to any illegality.
23. That the Respondent further submits that no coercive recovery proceedings have been initiated against the Corporate Debtor during the subsistence of CIRP. It is stated that the adjustment of refunds has been carried out through the centralized processing mechanism of CPC, Bangalore, and does not amount to coercive recovery or enforcement action as contemplated under Section 14 of the Code.
24. That the Respondent submits that prior to effecting the adjustment of refunds, due intimation was provided to the Applicant/Corporate Debtor through the Income Tax e-filing portal as well as through email communications. The Applicant was duly informed about the proposed adjustment of refunds against outstanding tax demand and was granted a period of 21 days to submit its response.

25. That it was specifically indicated in the said intimation that in the event no response is received within the stipulated period, the refund would be adjusted against the outstanding demand. The Respondent submits that despite such opportunity being granted, the Applicant failed to submit any response, including filing any objection or disagreement with the outstanding demand.
26. That in the absence of any response from the Applicant within the prescribed period, the CPC, Bangalore proceeded with the adjustment of refunds in accordance with the applicable procedure under the Income Tax Act, 1961. The Respondent submits that the said process is automatic and system-driven, and not a result of any targeted or deliberate recovery action.
27. That it is further submitted that the jurisdictional office of the Respondent, i.e., the office of the Assistant Commissioner of Income Tax (Central)-2, Bhopal, did not independently initiate or propose any adjustment of refunds in the case of the Corporate Debtor. The Respondent contends that the adjustment was effected through CPC as per standard procedure and therefore cannot be attributed to any conscious violation of the moratorium

28. That the Respondent submits that the Applicant had adequate opportunity at the relevant time to contest the proposed adjustment by submitting an appropriate response through the prescribed mechanism. However, having failed to avail such opportunity, the Applicant is now seeking to challenge the adjustment belatedly by way of the present Application.
29. That in view of the aforesaid facts and circumstances, the Respondent submits that the present Application is devoid of merit, and the reliefs sought therein are liable to be rejected.

OBSERVATION AND ANALYSIS

30. We have heard the learned counsel appearing on behalf of the Applicant/Resolution Professional and the Respondent/Income Tax Department and have carefully perused the pleadings and material placed on record.
31. The singular and determinative question that falls for consideration before this Tribunal is whether the adjustment of Income Tax refunds aggregating to ₹30,16,790/-, effected during the subsistence of the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016, against the pre-CIRP outstanding tax dues of the Corporate Debtor, constitutes a

violation of Section 14 of the Code and is liable to be refunded to the corporate debtor.

32. Before proceeding to examine the issue on merits, this Tribunal notes that the following foundational facts are not in dispute:

- i. That CIRP against the Corporate Debtor was initiated vide order dated 29.05.2020 and moratorium under Section 14 came into force from the said date.
- ii. That the Respondent has an admitted claim in respect of pre-CIRP tax dues of the Corporate Debtor.
- iii. That Income Tax refunds aggregating to ₹30,16,790/- were adjusted against such pre-CIRP dues.
- iv. That the said adjustment was effected during the subsistence of the CIRP and moratorium.

33. At the outset, it is apposite to examine the scope of Section 14 of the Insolvency and Bankruptcy Code, 2016 is a cornerstone provision of the insolvency framework, intended to preserve the assets of the Corporate Debtor and maintain status quo during the resolution process. Upon commencement of CIRP, the moratorium comes into force by operation of law and prohibits, inter alia, the institution or continuation of proceedings against

the Corporate Debtor, as well as any action to recover or enforce any security interest or claim in respect of pre-CIRP dues.

34. The embargo under Section 14(1)(a) and (c) is wide in its amplitude and is not confined merely to coercive or adversarial proceedings. The legislative intent is to ensure that no creditor, whether financial, operational, or statutory, is permitted to unilaterally recover its dues during the moratorium period, so as to maintain the Corporate Debtor as a going concern and to facilitate an equitable resolution.
35. The moratorium operates in rem and binds all stakeholders, including statutory authorities. It is automatic, absolute in its application, and does not depend upon notice, knowledge, or participation of the concerned creditor. Any action which has the effect of diminishing the assets of the Corporate Debtor or conferring an advantage upon a particular creditor is prohibited during the moratorium. The said statutory prohibition applies equally to all creditors, including statutory authorities such as the Income Tax Department.
36. In this context, an Income Tax refund determined as payable to the Corporate Debtor constitutes an asset of the Corporate Debtor

and forms part of the insolvency estate. Such asset is required to be preserved and made available for the benefit of all stakeholders in accordance with the scheme of the Code.

37. The adjustment or set-off of such refund against pre-CIRP tax dues, in substance and effect, results in appropriation of the Corporate Debtor's asset towards discharge of antecedent liabilities. Such appropriation is nothing but recovery of pre-CIRP debt and falls squarely within the prohibition contained in Section 14(1)(a) and (c) of the Code. Such adjustment, in substance and effect, constitutes recovery of a pre-CIRP debt by appropriation of an asset of the Corporate Debtor during the moratorium period.
38. The Respondent has contended that the adjustment was carried out through a system-driven mechanism by CPC, Bangalore, after prior intimation and in the absence of any response from the Applicant. This Tribunal finds the said defence to be misconceived. The moratorium under Section 14 operates by force of statute and is not dependent upon any intimation, response, or procedural compliance.
39. The mere fact that the adjustment was effected through an automated or system-driven process does not alter its legal

character. The effect of the action remains the same, namely recovery of pre-CIRP dues during the moratorium, which is expressly prohibited under Section 14 of the Code.

40. In view of the above, this Tribunal is of the considered opinion that the adjustment of Income Tax refunds during the subsistence of moratorium amounts to a clear violation of Section 14 of the Insolvency and Bankruptcy Code, 2016 and cannot be sustained in law.

41. Accordingly, this Tribunal holds that:

- i. The moratorium under Section 14 was in force at the time of the impugned adjustment.
- ii. The adjustment of ₹30,16,790/- constitutes recovery of pre-CIRP dues during moratorium and is in violation of Section 14(1)(a) and (c).

The adjustment of refunds amounts to appropriation of the assets of the Corporate Debtor and constitutes recovery of pre-CIRP dues during the moratorium, which is impermissible in law.

ORDER

42. In view of the above observations and findings, the present Application is hereby **ALLOWED**. Accordingly, it is directed as follows:

- The adjustment of Income Tax refunds aggregating to ₹30,16,790/- is declared to be in violation of Section 14 of the Insolvency and Bankruptcy Code, 2016 and unenforceable in law and is accordingly set aside.
- The Respondent is directed to forthwith reverse the said adjustment and refund the amount to the Corporate Debtor within thirty (30) days.

43. In view of the foregoing, the Application **IA (I.B.C)/498 /MP/2025** **is allowed and disposed of.**

Sd/-

Sd/-

MAN MOHAN GUPTA
MEMBER (TECHNICAL)
Chandni-LRA

BRAJENDRA MANI TRIPATHI
MEMBER(JUDICIAL)