IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-1, AHMEDABAD

ITEM No.303
IA 601 of 2019
In
CP(IB) 5 of 2017

Under Section 14, 20, 74(2) 2016 r.w 60(5) IBC of 2016
IN THE MATTER OF:

Kedararam R Laddha Authorised Representative and
Erstwhile Liquidator of
M/s Eqidem Dealers Pvt. Ltd.

...Applicant

V/s

Deendayal Port Authority (D.P.A) & Ors.

...Respondents

Order delivered on: 06/05/2026

CORAM:
MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

— SD —

SANJEEV SHARMA
MEMBER (TECHNICAL)

— SD —

SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT–I, AHMEDABAD

IA/601(AHM) 2019
In
CP(IB) No.5/7/NCLT/AHM/2017

[An application under section 14, 20, 74(2) r/w section 60(5) of the Insolvency and Bankruptcy Code, 2016]

In the matter of

Kedararam Laddha, Authorised
Representative and Erstwhile liquidator
of M/s. Equidem Dealers Private Limited.
Having office at: B-1002, Mondeal Square,
Near Prahaladnagar Garden, S.G.Highway
Ahmedabad- 380015.

....Applicant

VERSUS

1. Deendayal Port Authority (D.P.A)
The Traffic Manager,
Traffic Department (Open Plot Section)
Gandhidham, Kutch,
Gujarat-3700201.

2. Sea Freight Shipping & Logistics Ltd
1-2, 3rd Floor, Emerald House,
Plot No. 195, Sector-1/A
Gandhidham, Kutch,
Gujarat-3700201

3. Bank of Baroda
Commercial Finance Branch,
1st Floor, Bank of Baroda Building,
Near Law Garden, Ellisbridge,
Ahmedabad- 380006.

4. State Bank of India
Stresses Assners Management Branch,
2nd Floor, Param Sadhi Complex,
Opp. VS. Hospital, Ellisbridge,
Ahmedabad-380006.

5. Mr. Rasikhhai
Ashirwad Global
Office No. 4, First Floor, Plot No 305,
Ward 12/B, Gandhidham, Kutch,
Gujarat- 3700201.

6. Bhavya Shipping
Address B, Plot No. 368, 369 and 377,
Ward 3 /B, Adipur, Kutch-370205
E-mail id : info@bhavyashipping.com/
bhavyaship@gmail.com.

... Respondents

Order Pronounced On: 06.05.2026

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E:

For Applicant : Ms. Natasha D. Shah, Adv.

For Respondent : Mr. Dhaval D Vyas, Adv. a.w. Ms Yukta Pandey, Adv. R-1,
None for R-2,
Ms. Nalini Lodha, Adv. for R-3 & R-4,
R-5 already Ex- Parte,
None for R-6.

O R D E R

(Per: BENCH)

1. This application is filed by **Kedararam Laddha,** Authorised representative and erstwhile liquidator of M/s. Equidem Dealers Private Limited (hereinafter referred as "Applicant"), against Deendayal Port Authority, wherein amendment was carried out vide order dated 24.11.2025 through I.A. No. 1191 of 2025 in IA 601 of 2019 in C.P.(I.B) No. 5 of 2017, under Section 14, 20, 74(2) of the Insolvency and Bankruptcy Code, 2016 read with Section 60(5) of National Company Law Tribunal Rules 2016 seeking the following prayers:

a. Your Lordship may be pleased to allow the present application;

b. Your Lordship may be pleased to quash and set aside the sale of 142 pieces of variant sized heavy steel structures of the corporate debtor held at the premises of ***Deendayal Port Authority*** *as on the date of commencement of corporate insolvency resolution process of the corporate debtor, the sale of which has been undertaken by Respondent No 2 and Respondent No. 5 for it being in contravention to provisions of Insolvency and Bankruptcy Code, 2016;*

c. Your Lordship may be pleased to direct SFSAL for the reversal of transactions against the disposal of the goods which belong to the corporate debtor company and in light of the provisions envisaged under Section 14 and 20 along with Section 60(5)

of the Insolvency and Bankruptcy Code, 2016 and other applicable provisions for the time being in force;

OR

d. *Your Lordship may be pleased to direct Respondent No. 2 and Respondent No. 5, jointly or severally to deposit an amount of Rs.21,16,15,439/-into the bank account of the corporate debtor bearing A/c No. 08490200002082 towards reimbursement/making good the loss suffered due to illegal and unlawful sale of goods of corporate debtor;*
e. *Your lordship may be pleased to direct and restrict the respondent no. 1, 2 and 4 or any other party to which the goods have been sold, for creation of any rights to the third party in terms of the goods/cargo in consideration.*
f. *Your Lordship may be pleased to pass such other and further orders as may be deemed appropriate under Section 67 of the Insolvency and Bankruptcy Code, 2016;*
g. *Your lordship may be pleased to grant any other relief or reliefs as may be deemed fit in the interest of justice;"*

2. The Applicant has placed the **facts** through the I.A. dated 29.12.2025 vide inward dairy no. D 8791 and documents in the following manner: -

2.1. The present Application has been filed by the Resolution Professional ("RP") of the Corporate Debtor, namely Steel Konnect (India) Pvt. Ltd., under Section 60(5) of the Insolvency and Bankruptcy Code,

2016, seeking appropriate directions against the Respondents named in the Memo of Parties.

2.2. It is submitted that this Adjudicating Authority, vide order dated 19.04.2017, admitted a petition under Section 7 of the Code filed by Hero Fincorp Limited and initiated Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor. Smt. Ritu Rastogi was appointed as Interim Resolution Professional ("IRP"). Copy of the said order has been annexed as **Annexure-A** of the application.

2.3. It is further submitted that an application under Section 12 of the Code for extension of CIRP period was allowed vide order dated 10.10.2017, whereby the CIRP period was extended by 90 days. Copy thereof has been annexed as **Annexure-B** of the application.

2.4. Thereafter, upon an application under Section 27 of the Code moved by the Committee of Creditors ("CoC") through Bank of Baroda, this Tribunal vide order dated 02.11.2017 replaced the erstwhile RP and appointed the present Applicant, namely *Mr. Ramchandra D. Choudhary*, as Resolution Professional. It is stated that the Applicant was appointed after expiry of 198 days of CIRP period. Copy of the said order is annexed as **Annexure-C** of the application.

2.5. The Applicant submits that after assuming charge on 04.11.2017, he took custody of the assets of the Corporate Debtor and control of its bank accounts by issuing communications to banks and local authorities informing them of his appointment and commencement of CIRP.

2.6. It is stated that during February–March 2017, i.e., prior to commencement of CIRP, the Corporate Debtor had brought 203 pieces of heavy steel structures of varying sizes to Deendayal Port Authority for export to Girison General Trading LLP. The invoice value of the said goods was Rs. 47,11,07,995/-. The Corporate Debtor had engaged Sea Freight Shipping and Logistic Private Limited ("SFSAL") for handling the export services. List of goods has been annexed as **Annexure-D Colly** of the application.

2.7. After appointment of the Applicant, a letter dated 10.11.2017 was received from the Deputy Traffic Manager of Deendayal Port Authority calling upon the Applicant to remove the material lying in the storage area. Thereafter, letters dated 17.11.2017 and 11.12.2017 were sent by the Applicant informing the Port Authority regarding commencement of CIRP and operation of moratorium under Section 14 of the Code. Same are annexed as **Annexure-E** of the application.

2.8. On 13.12.2017, the Applicant deputed his authorised representative, Mr. Roger Choudhary, to inspect the cargo at the Port. The representative submitted a letter dated 12.12.2017 enclosing relevant Tribunal orders, duly acknowledged by the Traffic Manager. Same is annexed as **Annexure-F** of the application.

2.9. The Applicant states that he was thereafter contacted by Mr. Kumar Prasad, who provided a proforma bill dated 01.01.2018 for Rs. 1,41,44,680/- towards expenses allegedly incurred in relation to the cargo. Same is annexed as **Annexure-G** of the application.

2.10. It was represented by said Mr. Kumar Prasad that continued storage at the Port would attract heavy rent and in default the goods might be auctioned by the Port Authority for recovery of charges.

2.11. The RP convened meetings with stakeholders including CoC members, Mr. Kumar Prasad and Mr. Kiran Kumar. Bank of Baroda opined that SFSAL's claim was excessive and suggested independent quotations.

2.12. Pursuant thereto, quotations were invited for transportation of the goods outside the Port area. The lowest quotation received was from Kutchh Carrier Pvt. Ltd. for Rs. 22 Lakhs, to which SFSAL agreed. Quotations and minutes dated 06.03.2018 are annexed as **Annexure-H Colly** of the application.

2.13. Since export was cancelled, SFSAL informed that customs formalities such as cancellation of shipping bills and permission for "back to town" movement were required. Accordingly, the RP issued a letter dated 28.02.2018 to the Assistant Commissioner of Customs, Kandla. Same is annexed as **Annexure-I** of the application.

2.14. In a meeting held on 17.05.2018 attended by CoC members, SFSAL representatives and Mr. Rasikbhai, it was disclosed by Mr. Rasikbhai that 136 pieces of the cargo had already been removed from the Port area without permission of the RP or intimation to stakeholders and stored in private premises.

2.15. It is submitted that Mr. Rasikbhai was introduced in the said meeting by Mr. Kiran Kumar. Minutes are annexed as **Annexure-J** of the application.

2.16. The Applicant submits that the RP and bankers were shocked by the unauthorised removal of goods and demanded full details, failing which strict legal action was threatened. Email dated 18.05.2018 forwarded by Mr. Kumar Prasad is annexed as **Annexure-K** of the application.

2.17. In the same meeting, it was proposed that SFSAL's earlier claim of Rs. 1,41,47,680/- be settled at Rs. 63,00,000/- and Rs. 21,00,000/- be paid for transport charges. It was also agreed that goods

would be stored at premises of Mr. Rasikbhai on rent of Rs. 5,000/- per month. Revised proforma invoices dated 23.05.2018 were issued by SFSAL and annexed as **Annexure-L** of the application.

2.18. The RP thereafter addressed letter dated 30.05.2018 to the CoC requesting release of payment as decided in the meeting. Same is annexed as **Annexure-M** of the application.

2.19. It is submitted that since public sector banks were involved and payment amount was substantial (Rs.84 Lakhs), approvals from Head Office were sought. On 02.07.2018, State Bank of India deposited Rs. 48,58,596/- in the RP account, whereas Bank of Baroda did not release its share.

2.20. The Applicant repeatedly sought documents regarding storage location, ownership proof, rent agreement and proof of payments to Port Authority from SFSAL / Rasikbhai, but no satisfactory documents were furnished.

2.21. Despite reminders, Bank of Baroda did not release payment. The RP again emailed the Bank on 10.08.2018 requesting urgent release.

2.22. SFSAL sent reminders for payment. The RP responded that payment from SBI had been received but BOB's contribution was pending and payment

could be made only after full receipt. SFSAL was also asked to file Form-B as Operational Creditor.

2.23. The RP again sought details from SFSAL and Rasikbhai for execution of rent agreement, but no such documents were supplied. Thereafter no communication was received from them.

2.24. In Joint Lenders' Meeting dated 06.03.2019 held at Ahmedabad Zonal Office of Bank of Baroda, the RP raised concerns regarding non-payment of Port rent arrears. It was decided that officials of both banks would personally inspect the site at Deendayal Port Authority and thereafter consider remaining payment. Until then, all concerned were under the impression that removed goods were lying in the private godown of Mr. Rasikbhai. Minutes are annexed as **Annexure-N** of the application.

2.25. It is further stated that payment to SFSAL could not be processed due to non-payment by Bank of Baroda, which allegedly insisted that payment would be settled only after lifting of material and advised against legal action.

2.26. On 24.04.2019, officials of SBI and BOB along with RP representative Mr. Dhaval Mistry visited the site and office of SFSAL and prepared an inspection report. Same is annexed as **Annexure-O** of the application.

2.27. As per said report, SFSAL informed that approximately 142 pieces out of total 203 pieces had been sold against their dues and that they had approached the RP for clearance of outstanding dues.

2.28. The Applicant contends that since July 2018 there had been no communication from SFSAL / Rasikbhai regarding status of goods allegedly stored privately, nor any documentary proof of such sale was ever furnished.

2.29. During the same visit, the officials also visited the Deputy Traffic Manager, Deendayal Port Authority. SFSAL had allegedly informed them that Customs House Agent Bhavya Shipping had surrendered the cargo to DPA. However, Port officials informed that no such surrender had been made.

2.30. It is submitted that only 61 pieces out of 203 pieces were found lying on the ground at the Port premises. Port officials called the CHA agent for identification of goods, but no representative attended, compelling RP and bankers to inspect themselves.

2.31. Thereafter, on 02.08.2019, the Applicant furnished clarification to the Joint Lenders' Forum regarding unauthorised removal of Corporate Debtor's goods from DPA. Same is annexed as **Annexure-P** of the application.

2.32. The Applicant asserts that neither the RP nor any banker had authorised DPA, SFSAL or any third party to remove, transport or dispose of the goods belonging to the Corporate Debtor.

2.33. On 04.05.2019, the Applicant lodged complaint before the Police Inspector, Kandla Marine Police Station, seeking registration of FIR against SFSAL and Mr. Rasikbhai for theft, sale and disposal of goods without permission of RP or CoC. Further complaints dated 02.08.2019 were also submitted. Same are annexed as **Annexure-Q Colly** of the application.

2.34. However, by letter dated 03.08.2019, the Police authorities informed that upon inquiry they found that goods had been removed legally and sold after informing the Applicant, and accordingly the dispute was being closed, leaving parties to approach the competent legal forum. Same is annexed as **Annexure-R** of the application.

2.35. The Applicant denies the said findings and reiterates that neither RP nor bankers had granted any authority for removal or sale of goods. Thereafter, show cause notices dated 12.09.2019 and 13.09.2019 were issued respectively to Deendayal Port Authority and SFSAL calling upon them to

explain the status of goods within five days. Same are annexed as **Annexure-S Colly** of the application.

2.36. The Applicant also approached the Superintendent of Police, Gandhidham-Kutchh, by written complaint dated 13.09.2019 requesting reconsideration of the matter and registration of FIR, considering the substantial public money involved. Same is annexed as **Annexure-T** of the application.

2.37. On the aforesaid facts and circumstances, the Applicant has approached this Adjudicating Authority seeking appropriate reliefs and directions against the Respondents.

GROUNDS

i. The applicant submits that the corporate debtor company is under the process of Corporate Insolvency Resolution Process (CIRP) and moratorium period under Section 14 of the Insolvency and Bankruptcy Code, 2016 is in effect by way of order dated 19.04.2017 passed by the National Company Law Tribunal, Ahmedabad Bench.

ii. The applicant submits that the Resolution Professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor as stated under Section 20 of the Insolvency and Bankruptcy Code, 2016.

iii. The applicant submits that the DPA, Respondent No. 1 herein has no authority to allow the removal of goods, to SFSAL or any authority whatsoever, which is lying at the premises of DPA, without the permission of the Resolution Professional being the custodian of the goods in terms of compliance of the order passed by this Tribunal.

iv. The applicant submits that the disposal of goods by the SFSAL and Mr. Rasikbhai which belong to the corporate debtor company is specifically restricted under Section 14(1)(b) of the IBC Code and against the spirit of the provisions of moratorium as given under the IBC Code. Furthermore, the applicant has also informed them to submit their claims as prescribed under the Code, to the RP.

v. The applicant submits that the Respondent herein has violated the provisions of Section 14 of the Code, knowingly and wilfully even after the knowledge of the effect of moratorium as informed by the applicant at various occasions and to the effect the respondents shall be punished for the contravention of moratorium as prescribed under Section 74(2) of the Code.

vi. The applicant submits that the DPA has never been authorized for this arbitrary act of allowing the goods to move out from the premises of DPA without the approval of the RP. Moreover, the applicant has never

been informed by the SFSAL / Mr. Rasikbhai about the disposal of the goods which belong to the corporate debtor.

vii. The applicant submits that Respondent No. 1, 4 and 5, by performing certain activities as mentioned in this application, are hereby preventing the Resolution Professional, the applicant herein from efficiently discharging his duties.

3. That the **Affidavit in reply** in behalf of Respondent No. 3 and 4 was received dated 14.06.2021 vide inward dairy no. 4751. Wherein made following submission:-

3.1. That the present Affidavit-in-Reply on behalf of Bank of Baroda and State Bank of India, member banks of the lending consortium of the Corporate Debtor and secured financial creditors, being members of the Committee of Creditors ("CoC"). The said banks held voting shares of 49.95% and 44.40% respectively, along with other creditors including Hero FinCorp Ltd., Reliance Commercial Finance Ltd. and HDFC Bank.

3.2. At the outset, it is submitted that delay in filing the present reply occurred due to transfer of the account from ARM/ZOSAR Branch to SAM Branch, shifting of records to another premises, time consumed in collecting complete records/instructions, and annual

closing formalities. It is prayed that such delay be condoned in the interest of justice.

3.3. It is further submitted that it is necessary to place on record certain facts concerning loss/misappropriation of charged securities of the lenders. This Adjudicating Authority, vide order dated 19.04.2017, admitted the petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 against Steel Konnect (India) Pvt. Ltd., appointed Ms. Ritu Rastogi as Interim Resolution Professional, and declared moratorium under Section 14 of the Code.

3.4. The promoters of the Corporate Debtor preferred Company Appeal (AT) (Insolvency) No. 51/2017 before the Hon'ble NCLAT, which came to be disposed of on 29.08.2017. During pendency thereof, no meaningful records/documents were shared by the Corporate Debtor. Thereafter, vide order dated 10.10.2017 in IA 322/2017, the CIRP period was extended by 90 days.

3.5. Subsequently, Mr. Ramchandra D. Chaudhary came to be appointed as Resolution Professional by order dated 02.11.2017 in IA 289/2017 moved through CoC. It is submitted that three Special Civil Applications being SCA Nos. 1541/2018, 1554/2018 and 4360/2018 were filed by various stakeholders including promoters, proposed resolution applicant

and employee representative. All came to be disposed of on 05.12.2018, whereupon the interim stay operating since 30.01.2018 also stood vacated.

3.6. The present controversy pertains to disappearance/loss of 142 out of 203 pieces of fabricated structural material and other cargo aggregating approximately 4068.25 MT lying at Kandla Port/Deendayal Port, which formed part of charged securities of BoB and SBI. As per valuation obtained during CIRP, the estimated value of the said material was around Rs.10.20 Crores, though the actual value is believed to be higher.

3.7. It is submitted that the export cargo was intended for sale to Girisons General Trading LLC, Dubai, under invoices aggregating approximately Rs.47.11 Crores. However, the export transaction appears to have been cancelled and the material continued to remain at Port premises since March 2017.

3.8. Though the Resolution Professional appears to have corresponded with Port Authorities from November 2017 onwards, complete details regarding the cargo lying at Port were not disclosed to the CoC in a timely manner.

3.9. By communications dated 17.11.2017, 11.12.2017 and 12.12.2017, the RP requested Port Authorities not to take coercive action against the cargo and

informed that one Mr. Rojar Chaudhary had been authorised to identify and take custody of the materials.

3.10. By e-mail dated 15.12.2017, the RP informed the lenders that physical verification had been carried out and valuers would be appointed urgently. Thereafter, a valuation report dated 26.12.2017 assessed the goods lying at Kandla Port at approximately Rs.10.20 Crores and quantity at about 4068.215 MT. However, the said valuation was shared with the lenders much later.

3.11. It further appears that on 27.02.2018 and 28.02.2018, the RP initiated steps before Customs authorities for removal of fabricated structural steel from Port area "Back to Town" and for cancellation of Export Orders / Shipping Bills.

3.12. The records indicate inconsistencies regarding the number of shipping bills and quantum of cargo. Earlier communications referred only to two Shipping Bills covering 203 pieces, whereas later references were made to ten Shipping Bills, indicating that the cargo lying at Port was substantially larger and not confined to 203 pieces alone.

3.13. The RP's visit report dated 24.08.2018 concerning inspection on 09.06.2018 records that out of 203 pieces, 136 pieces had already been removed from

Kandla Port to a private plot through Sea Freight Shipping and Logistics Pvt. Ltd. and associated parties, while only 67 pieces remained at Port premises.

3.14. Thereafter, upon receiving notice dated 19.09.2018 from Port Authorities demanding dues and threatening auction, the RP requested the Port not to proceed against the cargo.

3.15. Officials of BoB and SBI, accompanied by representative of the RP, visited Kandla Port on 24.04.2019 and found substantial materials missing from the Port premises. Immediate communication dated 15.06.2019 was sent to the RP recording such discrepancies. It is respectfully submitted that the charged securities of the lenders were removed, lost and/or disposed of without safeguarding the interests of secured creditors, causing grave prejudice to the consortium lenders.

3.16. In the aforesaid circumstances, this Tribunal may be pleased to take the said facts on record and pass appropriate orders for protection, recovery, investigation and accountability in respect of the missing secured assets.

"At the time of inspection, there were only 61 pieces of structures but in your visit Report dated 09.06.2018 and subsequent valuation of the same you have reported that there were total 203 pes. (67 pes. at KPT and 136 pes. at private plot by Ashirwad Global and $FSAL) structures in

your possession, Kindly inform the status of the 203 structures / goods whether these are in your possession or not. CoC has taken serious view regarding missing goods and it has been resolved to take appropriate Civil / Criminal Action against the person/ responsible for the same. "

3.17. The officials of the answering Respondent Banks sought clarification regarding disappearance of the charged assets. The Resolution Professional ("RP") furnished a reply vide letter dated 02.08.2019; however, the contents thereof are incomplete, unsatisfactory and leave several material issues unanswered.

3.18. In particular, no proper explanation has been furnished regarding disappearance of 142 out of 203 pieces of Fabricated Structural Materials, constituting valuable secured assets of Bank of Baroda and State Bank of India.

3.19. Except referring to an application before Kandla Marine Police Station and a letter addressed to the DGP, no effective civil or criminal action appears to have been taken by the RP for tracing, recovery or protection of the said securities.

3.20. In the aforesaid background, the following aspects deserve consideration of this Tribunal:

a. The RP has consistently stated that there was no cooperation from the suspended management during CIRP.

b. No inventory appears to have been prepared at the time of taking charge of assets, including materials allegedly supplied by the Corporate Debtor to MBC Agro Industries LLP and MJ Agro Industries LLP, both stated to be related parties.
c. From the letter dated 19.09.2017 of Traffic Manager, Kandla Port, read with letters dated 28.02.2018 addressed by the RP to Customs Authorities, it appears that there were eight additional Shipping Bills apart from the two Shipping Bills concerning 203 pieces. This discrepancy remains unexplained.
d. Despite being informed as early as June 2019 to initiate legal proceedings for unauthorized sale/loss of securities, the RP did not ensure registration of FIR or pursue effective follow-up action.
e. By citing threat of auction by Port Authorities, the RP permitted Sea Freight Shipping and Logistics Pvt. Ltd. and Ashirwad Global to shift substantial material to a private plot.
f. The RP allegedly misinformed the lenders regarding the quantum of demurrage/port dues without adequate verification.
g. Quotations were invited for shifting material; though SFSAL was H1, negotiations were allegedly undertaken thereafter without transparency, contrary to accepted procurement norms, and without proper bifurcation of demanded amounts.
h. Initially, the RP introduced one Mr. Kumar Prasad from SFSAL as CHA, whereas the actual CHA was M/s. Bhavya Shipping.
i. During inspection dated 09.06.2018, 136 pieces of fabricated structural steel were found lying in an open private plot without adequate security arrangements.
j. Upon CoC resolving for liquidation on 04.01.2018, the RP ought to have approached this Hon'ble Tribunal for directions regarding preservation of valuable securities lying at Port, instead of

proceeding unilaterally and placing pressure upon lenders for payments.

3.21. Save and except what is expressly admitted herein, all averments, allegations and contentions in the Application are denied. Non-specific denial shall not be construed as admission.

3.22. In reply to paragraph 1, it is submitted that the RP ought to have approached this Hon'ble Tribunal immediately upon learning of loss/removal of goods constituting securities of the answering Banks.

3.23. In reply to paragraph 2, it is submitted that Hero FinCorp Ltd. is a Financial Creditor and not an Operational Creditor. It is further submitted that the original proceedings were under Section 7 of the Insolvency and Bankruptcy Code, 2016, and not under Section 9.

3.24. In reply to paragraphs 3 to 14, the answering Respondents reiterate paragraph 3 and 4 of the present affidavit and deny anything contrary thereto.

3.25. In reply to paragraphs 15 to 20, it is submitted that the contents themselves reveal that no complete documents were produced regarding:

a. Exact location where goods were stored,
b. Ownership details of such premises,
c. Rent/lease arrangements,
d. Proof of payment to Port Authorities, and
e. Lawful custody arrangements.

In absence thereof, approval for payment could not be granted by the Banks.

3.26. It is further submitted that the RP has also not clarified whether SFSAL filed Form-B as an Operational Creditor while simultaneously demanding payment from secured lenders.

3.27. In reply to paragraph 21, it is submitted that minutes of meeting dated 06.03.2019 record, inter alia, that:

a. Joint inspection of assets with valuers in presence of RP would be conducted by BoB and SBI;
b. Inventory would be prepared;
c. Refund of Rs.48,58,596/- deposited by SBI on 02.07.2018 was considered; and
d. Statutory audit report for FY 2018 was to be provided.

3.28. In reply to paragraph 22, it is denied that Bank of Baroda was agreeable to settle with SFSAL after lifting of material or that it insisted no legal action be taken.

3.29. In reply to paragraphs 23 and 24, it is submitted that site reports themselves demonstrate that SFSAL was in possession/control of relevant information concerning the shifted material, requiring proper scrutiny.

3.30. In view of the foregoing facts, the Application deserves to be considered only after fixing accountability for disappearance of secured assets

and after full disclosure by the RP and concerned parties.

> *"they have sold the approximate 142 pes out of total 203 pes againss their dues. They informed us that they have approached banks and RP to make their outstanding dues (on telephone Mr. Kishore from CFS branch, BoB, has informed that no such mail has ever been receivea to Branch). Despite our repeated query said agent failed to inform us regarding the quantum of the dues and amount received from the sale of 142 pcs of the steel structures."*

3.31. It is submitted that during the site visit, representatives of Sea Freight Shipping and Logistics Pvt. Ltd. ("SFSAL") stated that ground rent had been paid to Kandla Port Trust up to July 2018 and assured that complete details would be furnished by e-mail on the same day. However, no such communication or supporting details were received.

3.32. It further emerged from the site visit report that there were serious discrepancies regarding the remaining structures/materials. SFSAL claimed that 142 pieces out of 203 pieces had been sold, whereas the representative of the Resolution Professional, Mr. Dhaval Mistry, stated that 67 pieces ought to have remained as per the CHA's earlier communication after removal of 136/137 pieces.

3.33. In reply to paragraph 25, it is submitted that SFSAL claimed during inspection that 141/142 pieces had been sold towards alleged dues, but failed to disclose:

a. exact quantum of dues,

b. basis of such dues,
c. authority to sell, and
d. amount realized from such sale.

3.34. It is further submitted that in the presence of the Dy. Traffic Manager, Kandla Port Trust, conflicting stands were taken regarding possession of cargo. SFSAL stated it was not associated with possession, while reference was made to alleged surrender of cargo by M/s. Bhavya Shipping. However, the Dy. Traffic Manager stated that no such cargo had been surrendered to Port Authorities. In view thereof, officials of the answering Banks decided to personally inspect the remaining goods.

3.35. In reply to paragraphs 26 and 27, it is submitted that the clarification sought to be given by the RP to the Joint Lenders' Forum vide letter dated 02.08.2019 must be appreciated in light of the aforesaid discrepancies and omissions.

3.36. In reply to paragraphs 28 and 29, it is submitted that the letter dated 03.08.2019 issued by Kandla Marine Police Station, consigning the complaint to record, itself raises serious concerns regarding the RP's role and supervision in removal and sale of goods from Port premises.

3.37. In reply to paragraph 30, it is specifically denied that Bank of Baroda or State Bank of India ever permitted Kandla Port Trust, SFSAL, Mr. Rasikbhai, or any

third party to transport, remove, dispose of, or deal with the charged goods.

3.38. In reply to paragraph 31, it is submitted that although the RP admittedly became aware of sale/removal of goods on or before 24.04.2019, show cause notices were issued only on 12.09.2019 and 13.09.2019 to concerned parties. No disclosure has been made as to whether any replies were received or further action was taken.

3.39. In reply to paragraph 32, it is submitted that although the RP had knowledge of the police communication dated 03.08.2019 by around mid-August 2019, a further letter to the Superintendent of Police was addressed only on 13.09.2019. There was thus unexplained delay in initiating timely action.

3.40. In reply to paragraph 33, it is submitted that the grounds urged in the IA are required to be examined in light of the facts set out hereinbefore, particularly disappearance of secured assets and lack of prompt remedial steps.

3.41. In reply to Ground (i), the contents are matters of record. In reply to Ground (ii), it is submitted that the averments concern duties of the RP under Section 20 of the Insolvency and Bankruptcy Code, 2016. However, the RP failed to protect and preserve the

value of the assets/property of the Corporate Debtor, including securities charged to the answering Banks.

3.42. In reply to Ground (iii), it is submitted that Kandla Port Trust had no authority to permit removal of goods lying in its premises without permission and supervision of the RP, who was custodian of the assets. However, the police communication dated 03.08.2019 records that goods were removed under authority/letter of the RP.

3.43. In reply to Ground (iv), it is submitted that while statutory restrictions under Section 14(1)(b) are acknowledged, the RP was simultaneously insisting upon payments to SFSAL and Mr. Rasikbhai despite no formal claims having been filed before him.

3.44. In reply to Ground (v), the allegations against the answering Respondents are denied. On the contrary, the RP failed to take adequate action regarding loss of substantial securities of the Banks. In reply to Grounds (vi) and (vii), the answering Respondents reiterate the earlier contents of this reply and deny anything inconsistent therewith.

3.45. In view of the foregoing facts and further submissions at the time of hearing, this Tribunal may be pleased to grant appropriate reliefs and pass necessary orders in the interest of justice. In reply to paragraph

VI, the contents relate to payment of application fees and require no reply.

4. That the **Affidavit in reply** on behalf of Respondent No. 1 was received dated 30.01.2020 vide inward dairy no. 106. Wherein made following submission:-

4.1. At the outset, KPT contends that the present Application, insofar as it alleges contravention of the moratorium declared vide order dated 19.04.2017, is wholly misconceived and not maintainable against KPT.

4.2. It is submitted that KPT is neither the Corporate Debtor, nor a creditor of the Corporate Debtor, nor a party to the transactions which resulted in initiation of CIRP proceedings before this Adjudicating Authority.

4.3. KPT further states that in absence of records of the main proceedings or collateral proceedings being supplied to it, it is not in a position to specifically admit deny or otherwise controvert allegations made in the present Application.

4.4. It is submitted that the Board of Trustees of Port at Kandla is a statutory body corporate constituted under Section 3 of the Major Port Trusts Act, 1963,

and discharges statutory duties and functions under the said enactment.

4.5. Under the statutory scheme of the Major Port Trusts Act, 1963, all properties, assets, funds and rights to levy rates vest in the Port Trust, and the Port Authority is empowered to levy charges at notified rates from time to time.

4.6. It is further submitted that inward and outward cargo is permitted to be stacked in open spaces near the waterfront and within port premises upon payment of statutory charges.

4.7. The cargo belonging to Steel Konnect (India) Pvt. Ltd. was stacked within the port premises for export to a Dubai-based company under 10 Shipping Bills. However, the said cargo could not be exported for commercial reasons and continued to remain stacked near the waterfront within port premises since March 2017.

4.8. KPT submits that despite repeated notices and reminders calling upon the Corporate Debtor, its agents and the Resolution Professional to pay outstanding charges and remove the cargo, no effective steps were taken for payment of dues or removal of the cargo.

4.9. It is specifically contended that permission for temporary stacking of outward-bound export cargo under the scheme of the Major Port Trusts Act, 1963 and the Customs Act, 1962 cannot be construed as letting, leasing or granting occupation rights in favour of the Corporate Debtor over port land.

4.10. KPT further states that the Resolution Professional, vides two letters dated 28.02.2018, requested cancellation of the Export Order and Shipping Bills and also sought permission for removal of fabricated structural steel goods from port premises on "Back to Town" basis from the Customs Authorities.

4.11. The Customs Authorities granted such permission vide order dated 05.04.2018. Thereafter, pursuant to the said request and customs permission, and upon forwarding of the relevant documents by the Customs House Agent under cover letter dated 17.04.2018, KPT allowed removal / taking back of the goods subject to compliance with procedure contemplated under the Customs Act, 1962 and Major Port Trusts Act, 1963.

4.12. Copies of communications dated 28.02.2018 and customs permission dated 05.04.2018 are stated to be annexed as **Annexure R/1.** It is further submitted that the above position was already clarified by KPT

to the Resolution Professional vide letter dated 19.10.2019, annexed as **Annexure R/2**.

4.13. In the aforesaid factual background, KPT submits that the present Application has been filed on an erroneous premise alleging contravention of the moratorium provisions under the Insolvency and Bankruptcy Code and seeking restraint against creation of rights over cargo allegedly belonging to the Corporate Debtor.

4.14. KPT denies any illegality and specifically contends that none of its acts amount to transfer, encumbrance, alienation or disposal by the Corporate Debtor of any of its assets, legal rights or beneficial interests.

4.15. It is thus the stand of KPT that actions taken by it were purely statutory, procedural and in discharge of obligations under the governing port and customs laws, and not in violation of the moratorium under the Code. KPT also relies upon minutes of meeting dated 18.05.2018 (Page 59 of the record), which according to it support its defence and factual stand.

> *"... He informed that the material was lying at Export Area for long and since there was no response from the Company (SKIPL), they have at their own cost, shifted the material from export area to Storage area. Because the rent at export area was very high and calculated on daily basis.*
> .....
> *Mr. Rasikbhai informed that there was tremendous pressure from Kandla Port Trust to remove the material*

outside KPT and their existing business of export was affected due to this Cargo. He informed that after discussion by Mr. Kumar Prasad and assurance of payment by banks they have removed 136 Pcs of Cargo outside the Kandla Port and kept at the private place of Rasikbhai.

.....

RP informed Mr. Rasikbhai to provide detail of place along with proof and KYC of owner so as he can execute a rent agreement for storage of material and also informed to provide details of security arrangement at the premises. RP also objected on security issue of the material stored at private place in that Mr. Rasikbhai replied the place is having boundary wall and other type of material also lying there. The place is type of godown and secured.

.....

Bank of Baroda and SBI informed that they will pay the same at earliest once their respective higher authority approves the same. Rasikbhai informed that they will pay the ground rent for one more month till both the banks get approval and amount as agreed is paid to them. Banks and RP agreed on the same and also informed that such rent paid to KPT for next month is already included in Rs.84 Lakh and no any extra amount shall be paid over and above Rs.84 Lakh."

4.16. By communication dated 13.05.2018 RP had represented to the Committee of Creditors pointing out as under:

"Due to cancellation of the export order, the material was lying at Kandla Port in the Export Area. Due to heavy charges for material lying at Export Area, the materials had been shifted from export area to cargo area at Kandla Port. All the aforesaid procedures including rent, charges for transfer of material from export area to cargo area had been done by Sea Freight Shipping and Logistics Pvt. Ltd."

4.17. Vide representation dated 02.08.2019 RP had pointed out as under:

"20. Meanwhile, on the Deputy Traffic Manager with the officer of Bank of Baroda had personally visited the plot of the private ownership as well as the goods stored at Kandla

Port and inspected the goods and verified the same and during such inspection, all such goods were found to be in order. Copies of photographs are attached herewith.

21. Thereafter, the SFSAL sent some emails regarding release of payment as decided in the meeting dated 17.05.2018. The undersigned replied that payment from State Bank of India was received but the payment from Bank of Baroda is yet to be received. He will make the payment once the Bank of Baroda release the payment. The bank of Baroda has asked supporting documents of payments and expenditure incurred by SFSAL. Copy of KYC of owner of Land, address proof of land where the material shifted has been stored. Deputy Traffic Manager also asked the detail from Rasikbhai and SFSAL to execute rent agreement for storage of material. However, the SFSAL and Rasikbhai never provided such information.

22. It is respectfully submitted that thereafter on 13.03.2019 a meeting between the Deputy Traffic Manager and the Lender Banks took place wherein it was decided that the officials of both the Banks would personally visit Kandla Port Trust and make a site inspection of the goods lying over there and thereafter to take up the issue of making the remaining payment. Till then, the petitioner and the officers of the Lender Banks were under the impression that the goods brought out from the custody of Kandia Port and stored in a private plot would be lying over there. It is respectfully submitted that thereafter, the Deputy Traffic Manager, through is representative Mr. Dhaval Mistry, a Chartered Accountant by profession, made a site visit along with representative of State Bank of India and Bank of Baroda to Kandla Port Trust on 24.04.2019 to inspect the goods of the Company lying there and also prepared a report thereof. It is respectfully submitted that it is clear from the aforesaid report that when they visited the office of M/s. Sea Freight Shipping and Logistics Private Limited, they were informed that "they have sold the approximate 142 Pcs out of total 203 Pcs against their dues". They were also informed that "they have approached banks and RP to make their outstanding dues". It is respectfully submitted that thereafter the representative of the petitioner along with other officials visited the office of Deputy Traffic Manager, Kandla Port Trust wherefrom it has been learnt that though the Logistic Agent CHA informed them that they have surrendered the Cargo to KPT but the Deputy Traffic Manager of KPT informed that no such cargo has been surrendered to KPT. It is further clear from the said Site Report dated 24.04.2019 that only 61 Pcs out of 203 Pcs of

the structures were lying there on ground." But, as per our office record 67 Pcs are lying at the Port.

4.18. It is submitted by Deendayal Port Trust that the allegation of contravention of moratorium is wholly misconceived and founded upon suppression of material facts, namely the letters dated 28.02.2019 issued by the Resolution Professional and the permission granted by the Customs Authority on 05.04.2019.

4.19. It is further submitted that the removal of goods from the Port premises to a privately owned godown by the Customs House Agent of the Corporate Debtor was undertaken under instructions of the Resolution Professional and pursuant to statutory permission granted by Customs Authorities. Hence, no act of KPT can be construed as violation of Section 14 of the Insolvency and Bankruptcy Code, 2016.

4.20. It is stated that the remaining cargo continues to lie stacked at a strategic space near the waterfront within the Port premises and unpaid statutory charges payable to the Port had accumulated to Rs.23,04,469/- as on 02.12.2019. Statement of dues is annexed as **Annexure R/3.**

4.21. KPT submits that the Resolution Professional of Steel Konnect (India) Pvt. Ltd. was obliged to ensure

payment of statutory dues and arrange removal of the cargo, which has not been done.

4.22. It is contended that dues, rates and expenses payable under the Major Port Trusts Act, 1963 carry an overriding statutory right of recovery and the Port enjoys paramount lien over the cargo. Enforcement of such lien under the Major Port Trusts Act, 1963 and Customs Act, 1962 is stated to be unaffected by the moratorium under Section 14 of the Code.

4.23. It is further submitted that the cargo has continued to occupy Port premises on chargeable basis due to the impasse arising from the moratorium and circumstances attributable to creditors and management of the Corporate Debtor, for which KPT is not responsible. KPT is therefore entitled to restitution of charges for the said period.

4.24. Without prejudice, KPT states that it has no objection if the cargo is removed from the Port premises upon payment of outstanding statutory dues. It is lastly contended that the Applicant cannot seek directions contrary to the statutory scheme of the Customs Act, 1962 and the Major Port Trusts Act, 1963. Accordingly, the present Application deserves to be dismissed with costs.

5. That the **Affidavit in reply** in behalf of Respondent No. 6 was received dated 30.11.2023 vide inward dairy no. D 4752. Wherein made following submission:-

5.1. The Deponent states that the Deponent is a licensed Custom House Agent carrying on business in the name and style of M/s. Bhavya Shipping, holding CHA Licence No. KDL/CHA/R/21/2012 in the name of Mr. Insaf M. Qureshi, having office at Adipur, Kutch, Gujarat.

5.2. It is submitted that the Deponent was approached through M/s. Samudra Marine Services Private Limited on behalf of Steel Konnect (India) Pvt. Ltd. for customs clearance of export cargo intended for Dubai. Pursuant thereto, by communication dated 08.03.2017, the Corporate Debtor appointed the Deponent only as Custom House Agent for filing Shipping Bills/Bills of Entry and representing before Customs and allied authorities.

5.3. It is submitted that all communications from the Corporate Debtor were routed through the said intermediary. The Deponent arranged documentation for entry of 203 pieces of fabricated/heavy steel structures at Kandla Port for export. Subsequently, the export order stood cancelled and the cargo remained lying at Port premises.

5.4. It is further submitted that during the said period, CIRP proceedings came to be initiated against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016.

5.5. The Deponent states that the Port Authorities thereafter issued repeated notices dated 19.09.2017, 10.11.2017 and subsequent communications directing removal of cargo lying beyond permissible period and threatening action under the Major Port Trusts Act. Upon request of the Corporate Debtor, the Deponent sought extensions from the Port Authorities, which were granted from time to time.

5.6. It is submitted that thereafter, on instructions of the Corporate Debtor, the Deponent processed documentation for cancellation of "Let Export Order" and obtaining "Back to Town" permission for removal of cargo from the Port area. The Deponent also paid requisite customs fees/challans towards cancellation of Shipping Bills/LEO as requested by the Corporate Debtor.

5.7. The Assistant Commissioner of Customs, Kandla, by communication dated 05.04.2018, granted permission for removal of the said goods.

5.8. The Deponent states that out of 203 pieces, 136 pieces were removed from the Port area, while 67 heavy pieces continued to remain inside Port

premises requiring heavy vehicles/equipment for transportation. Despite repeated requests, the shipper/Corporate Debtor did not respond nor clear dues.

5.9. Accordingly, by letter dated 15.09.2018, the Deponent informed the Port Authorities that the Deponent relinquished title/liability as handling agent and requested the Port to proceed in accordance with law, including auction/recovery proceedings, if so advised.

5.10. It is respectfully submitted that the Deponent's role was strictly limited to customs documentation, obtaining statutory permissions for inward entry/export/back-to-town clearance. The Deponent had no role whatsoever in transportation, storage, sale, disposal, custody or destination of the cargo after lawful clearance from Port/Customs.

5.11. The Deponent states that the transport arrangements were understood to be handled by Sea Freight Shipping & Logistic Ltd. / other agencies, and not by the Deponent.

5.12. It is submitted that the allegations made in the present Application against the Deponent are vague, baseless and unsupported by any material. No illegal act has been attributed to the Deponent except lawful

discharge of CHA functions pursuant to written instructions of the Corporate Debtor itself.

5.13. It is further submitted that even the complaint allegedly lodged before Kandla Marine Police was directed against other parties and not against the Deponent. The Deponent has never been found involved in any theft, misappropriation or unauthorized sale of goods.

5.14. Without prejudice, the present Application under Section 60(5) of the Code is not maintainable against the Deponent, as no CIRP-related actionable relief survives against a customs broker performing ministerial/statutory functions.

5.15. It is further submitted that no substantive relief has been sought against the Deponent, and no cause of action is disclosed against the Deponent. In view of the aforesaid facts and circumstances, the present Application, insofar as it concerns the Deponent, deserves to be dismissed with costs.

6. That the **Affidavit in reply** in behalf of Respondent No. 2 was received dated 22.08.2024 vide inward dairy no. D 6474. Wherein made following submission:-

6.1. The contents of paragraphs 1 to 5 are matters of record/fact and hence require no specific reply. In

paragraph 6, it is submitted that the contents are admitted only to the limited extent of contractual arrangements between the parties.

6.2. In reply to paragraph 7, it is submitted that the Applicant has itself admitted receipt of letter dated 10.11.2017 issued by Dy. Traffic Manager, Kandla Port Trust, calling upon removal of cargo lying in storage area. However, the Applicant has deliberately failed to annex the said communication, which would disclose the true nature of correspondence between the Port Authorities and the Resolution Professional. The omission is intentional and misleading.

6.3. In reply to paragraph 8, the answering Respondent has no personal knowledge of the facts stated therein and hence offers no comments.

6.4. In reply to paragraph 9, it is denied that the Respondent contacted the Resolution Professional. In fact, one Mr. Roger Chaudhary visited the Respondent's office at Gandhidham representing himself to be an authorised person seeking information regarding export cargo of Steel Konnect (India) Pvt. Ltd. lying at Kandla Port. He informed that the export order stood cancelled and cargo was required to be shifted back.

6.5. It is submitted that the Respondent informed the said person that expenses to the tune of

Rs.1,41,44,680/- had already been incurred by M/s. Sea Freight Shipping and Logistics Pvt. Ltd. towards cargo handling/storage and related operations over the preceding 15 months. Upon request, a Proforma Bill dated 01.01.2018 was issued in the name of the Corporate Debtor.

6.6. Paragraph 10 contains matters of fact and calls for no detailed reply. In reply to paragraph 11, the allegations are false and misleading. The Applicant has intentionally mixed two distinct Proforma Invoices, namely:

i. Charges already incurred by Respondent No.2 under the original contract; and
ii. Estimated charges for shifting export cargo "Back to Town", i.e. movement of cargo outside port premises upon cancellation of export order, amounting to approximately Rs.1.04 Crores.

6.7. Paragraph 12 contains matters of record. In reply to paragraph 13, it is submitted that the minutes of CoC meeting dated 06.03.2018 annexed by the Applicant itself record submission of two separate Proforma Invoices. The Respondent, being C&F Agent, was responsible for cargo handling, transport and related logistics. The Applicant has deliberately intermingled the two invoices to create a false case.

6.8. Paragraph 14 is a misrepresentation of facts and is denied. In reply to paragraph 15, the contents are admitted only to the extent of existence of Proforma Invoices. All remaining allegations are denied. In reply to paragraph 16, the Respondent was not party to the communication referred therein and hence cannot comment.

6.9. In reply to paragraph 17, it is admitted that payment was deposited by SBI and not deposited by BOB, to the extent stated. The Respondent has no knowledge of remaining averments. The Applicant again seeks to confuse the two separate invoices. Paragraph 18 contains matters of fact.

6.10. In reply to paragraph 19, the allegation that the Applicant requested Respondent No.2 to file Form-B as Operational Creditor is specifically denied. No proof of such assertion has been produced. Paragraph 20 is denied for want of proof and supporting material.

6.11. In reply to paragraph 21, the Respondent was not party to the meetings referred therein and therefore does not admit the averments. In reply to paragraph 22, the Respondent was not party to communications between the Resolution Professional and Bank of Baroda and hence cannot admit the same.

6.12. In reply to paragraphs 23 and 24, it is denied that the Resolution Professional ever visited the Respondent's office. The averments are false and misleading. The contents of paragraphs 25 and 26 are not within the knowledge of the Respondent and hence are neither admitted nor denied.

6.13. Paragraph 27 is general in nature and requires no reply. Paragraphs 28 to 32 contain vague and generalized allegations seeking to implicate the present Respondent and are denied in toto.

6.14. It is further submitted that the Respondent was kept under the impression that some bank had taken over affairs of the Corporate Debtor and that the person interacting was a Chartered Accountant representing such bank. At no point did the Applicant formally disclose in writing that he was acting as Resolution Professional or that CIRP/moratorium was in force.

6.15. Therefore, throughout the relevant period, the Respondent had no knowledge of CIRP proceedings concerning the Corporate Debtor. Consequently, the allegations now raised are baseless, frivolous and afterthoughts. The grounds taken in the Application are devoid of substance, false and untenable in law.

6.16. In view of the above, no relief, including interim relief, can be granted against the answering

Respondent, and the present Application deserves to be dismissed qua Respondent No.2.

7. That vide order dated 03.01.2024, it is recorded that despite due service to respondent No.5 chose not to appear in the matter, hence Respondent No.5 is proceed as ***Ex- Parte***.

8. Furthermore, Synopsis on behalf of the Applicant was received dated 14.02.2024 in compliance of order dated 03.01.2024. The same taken on record.

9. That the Affidavit in **Rejoinder** in Response to the Reply filed by Respondent No. 6 was received dated 13.02.2024 vide inward dairy no. D 1217. Wherein made following submission:-

9.1. In reply to paragraphs 1 and 2 of Respondent No. 6's affidavit, it is submitted that the same are formal in nature and require no specific response. In reply to paragraphs 3 to 8, it is submitted that the factual statements contained therein are not disputed.

9.2. In reply to paragraph 9, it is admitted that quotations were invited from various parties for removal of goods from Port premises owing to repeated notices/extensions sought from Port Authorities. The same is evident from CoC minutes dated 06.03.2018.

9.3. In reply to paragraph 10, it is submitted that the Resolution Professional ("RP") was in communication with Respondent No. 5 for removal of goods and was simultaneously inviting quotations from other parties. However, no intimation was ever given to the RP that goods had been removed and stored at private premises of Mr. Rasikbhai. Neither Respondent No. 6 nor any other party disclosed:

1. Quantity of goods removed,
2. Place of storage,
3. Transportation details, or
4. Supporting paid challans at the relevant time.

9.4. In reply to paragraph 11, it is submitted that although permission dated 05.04.2018 may have been granted by Customs authorities, the same was never communicated either by Port Authorities or by Respondent No. 6 to the RP, despite earlier letters dated 17.11.2017 and 11.12.2017 informing commencement of CIRP and appointment of RP.

9.5. In reply to paragraphs 12 and 13, the factual contents are not denied. However, upon receipt of notice dated 25.02.2019 from Port Authorities, the RP along with CoC members conducted a site visit, which led to discovery that **142 out of 203 pieces** had been removed from Port premises.

9.6. In reply to paragraph 14, it is submitted that the letter dated 15.09.2018 relied upon by Respondent

No. 6 was received by Kandla Port Trust only after removal of 142 pieces. Further, the stock statement of Respondent No. 6 disclosed removal of only 136 pieces, whereas the site inspection dated 24.04.2019 revealed only 61 pieces remained, thereby confirming that 142 pieces had been removed. The stock statement was therefore false and misleading.

9.7. In reply to paragraph 15, the objection to maintainability under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 is denied. On the contrary, repeated requests for complete details were made, yet Respondent No. 6 concealed the actual quantity removed and failed to furnish:

1. Removal details,
2. Transport charges,
3. Storage location, and
4. Authority under which removal was effected.

Removal of goods without consent/intimation of the RP during CIRP is illegal and squarely falls within jurisdiction of this Tribunal.

9.8. In reply to paragraph 16, it is denied that Respondent No. 6 had only a limited CHA role and no further responsibility. Having applied for and obtained permissions for removal of assets of the Corporate Debtor, Respondent No. 6 was duty bound to inform and obtain consent of the RP/CoC.

9.9. It is further submitted that as recorded in CoC meeting dated 17.05.2018, goods removed from Port were directly shifted to private godown/premises of Mr. Rasikbhai of Ashirwad Global without consent or approval of the RP/CoC.

9.10. Thus, Respondent No. 6 actively facilitated removal/transfer of assets without disclosing:

1. True quantity removed,
2. Place of storage,
3. Transportation terms, and
4. Custody arrangements,

thereby contributing to alienation and loss of assets of the Corporate Debtor.

9.11. In reply to paragraph 17, it is denied that Respondent No. 6 had no concern with destination of cargo after obtaining "Back to Town" permissions. Once permissions were procured for assets under CIRP, Respondent No. 6 was under obligation to report the same to RP/CoC.

9.12. It is further submitted that the Forensic Audit Report records that **Sea Freight Shipping and Logistics Limited** sold goods of the Corporate Debtor estimated at 1500 MT to 2000 MT at approximately Rs.15,000/- per MT.

9.13. The actual fabricated structures weighed approximately 4068 MT and had average value of

about Rs.1,15,802/- per MT, aggregating approximately Rs.47.11 Crores. The goods were therefore disposed of at gross undervalue/scrap rates.

9.14. It further appears from ledger entries of SFSAL that invoices aggregating Rs.1,45,56,657/- were raised upon NR Brothers Multitrade LLP in relation to such sale transactions between 08.08.2018 and 12.08.2018.

9.15. The fact that Respondent No. 6 has now filed reply for the first time itself indicates material involvement requiring adjudication. Accordingly, the Application is maintainable against Respondent No. 6.

9.16. In reply to paragraph 18, it is denied that Respondent No. 6 bears no responsibility. Merely because Respondent No. 6 acted as CHA does not absolve it from duty to inform RP/CoC regarding removal of assets of the Corporate Debtor during CIRP.

9.17. In reply to paragraphs 19 to 21, it is denied that Respondent No. 6 played no role or that no relief can be granted against it. During CIRP, the RP was independently seeking quotations for lawful removal of goods vide letter dated 28.02.2018. Despite this, Respondent No. 6 obtained permissions and enabled removal without informing RP/CoC of:

1. Charges,
2. Mode of transport,
3. Quantity shifted, and
4. Location of storage.

9.18. The stark contradiction between the quantities disclosed by Respondent No. 6 and those found during site inspection clearly establishes concealment and necessitates inquiry.

9.19. In view of the foregoing, the reply of Respondent No. 6 deserves rejection and the Application deserves to be allowed with appropriate directions against Respondent No. 6 and other concerned parties.

10. That the Affidavit in **Rejoinder** in Response to the Reply filed by Respondent No. 2 was received dated 27.09.2024 vide inward dairy no. D 7379. Wherein made following submission:-

10.1. In reply to paragraphs 1, 2 and 3 of the affidavit of Respondent No. 2, it is submitted that the same are formal in nature and require no specific response. In reply to paragraphs 4, 5, 7, 11, 15, 16, 17, 18, 21, 22, 24 and 25, it is submitted that the said paragraphs contain no substantive allegations or additional material facts against the Applicant and therefore do not warrant any detailed reply.

10.2. In reply to paragraph 6, it is specifically denied that the Applicant deceitfully failed to annex letter dated 10.11.2017. It is submitted that the Dy. Traffic Manager, Traffic Department of Respondent No. 1 had addressed letter dated 10.11.2017 to the Resolution Professional regarding goods/material of the Corporate Debtor lying at Port premises and calling upon removal of the same from the storage area.

10.3. It is further submitted that the substance and contents of the said communication already stood incorporated in the Applicant's reply letters dated 17.11.2017 and 11.12.2017, wherein the Applicant informed the Port Authorities regarding:

1. Commencement of CIRP,
2. Appointment of Resolution Professional, and
3. Operation of moratorium under the Insolvency and Bankruptcy Code, 2016.

10.4. The Applicant had also specifically narrated in the main Application the steps taken pursuant to the said notice, including visits to the office of Respondent No. 1 and repeated correspondence seeking protection of assets of the Corporate Debtor. Without prejudice to the above, the Applicant craves leave to annex a copy of the letter dated 10.11.2017 as Annexure-I to the present rejoinder.

10.5. In reply to paragraph 8, it is denied that Respondent No. 2 had no contact whatsoever with the Resolution Professional. It is submitted that Respondent No. 2 had been appointed as C&F Agent/handling agency by the suspended management of the Corporate Debtor for handling cargo and materials of Steel Konnect (India) Pvt. Ltd.

10.6. By virtue of such engagement and in terms of customs/shipping practice, Respondent No. 2 was actively concerned with handling, movement, storage, transport coordination, liaison and related operational aspects of the cargo. In the circumstances, Respondent No. 2 cannot now disclaim knowledge of or interaction with the RP concerning removal, custody, transportation and status of goods lying at Port premises.

10.7. The stand taken by Respondent No. 2 is evasive, contradictory and contrary to contemporaneous records, and is therefore denied. Save as expressly admitted herein, all contrary averments made by Respondent No. 2 are denied.

10.8. It is submitted that Respondent No. 2, being the appointed C&F Agent of the Corporate Debtor prior to CIRP, was duty bound to render handling, forwarding, storage, transport coordination and allied services in respect of the cargo of **Steel Konnect (India) Pvt. Ltd.**.

10.9. Since the export order stood cancelled and the material remained at Port premises, Respondent No. 2 was the party actively dealing with Port Authorities and was fully aware of the status, custody and movement of the cargo lying at the storage area of Respondent No. 1.

10.10. This is evident from the Proforma Invoice dated 01.01.2018 for approximately Rs.1.41 Crores raised by Respondent No. 2, charging inter alia for:

1. Agency charges,
2. Cargo unloading in export area,
3. Loading from export area to storage plot,
4. Unloading at storage plot,
5. Storage charges, and
6. Security charges.

10.11. It is further submitted that after the notice dated 10.11.2017 issued by Port Authorities, Mr. Kumar Prasad, Director/representative of Respondent No. 2, came in contact with the Resolution Professional ("RP") and/or his staff regarding details of cargo.

10.12. The RP informed Respondent No. 2 about the notice received from Port Authorities and sought particulars of expenses allegedly incurred. Thereafter, the RP requested submission of Proforma Invoice and further advised Respondent No. 2 to lodge any pre-CIRP claim in **Form B** in accordance with law.

10.13. Despite the same, Respondent No. 2 did not follow the statutory claims process and instead proceeded to deal with assets of the Corporate Debtor in violation of the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016.

10.14. In reply to paragraph 9 of the Respondent's affidavit, it is submitted that the evasive stand taken by Respondent No. 2 warrants adverse inference, and liability under Section 74 of the Code deserves consideration.

10.15. In reply to paragraph 10, it is denied that the Application is false or misleading. There were **two separate invoices/quotations**, namely:

a. Proforma Invoice dated 01.01.2018 for Rs.1.41 Crores towards alleged past expenses while goods remained at Port; and

b. Separate quotation of approximately Rs.1.04 Crores for shifting goods from Port premises to another location.

10.16. Since the Port Authorities had threatened auction for non-removal of cargo, the RP invited quotations from various parties, including Respondent No. 2, for lawful transportation/removal of goods.

10.17. As the quotation of Respondent No. 2 was not acceptable to the Committee of Creditors ("CoC"), fresh quotations were invited from other transporters.

10.18. The lowest quotation was received from **M/s. Kutch Carrier Private Limited** for approximately Rs.22 Lakhs. Thereafter, upon negotiations in CoC meeting dated 17.05.2018, it was resolved that Respondent No. 2 would undertake shifting work for Rs.21 Lakhs.

10.19. These facts are recorded in CoC minutes and contemporaneous records. Hence, the allegation that the Applicant is mixing two invoices is baseless.

10.20. In reply to paragraph 12, while Respondent No. 2 may have acted as C&F Agent prior to CIRP, after commencement of CIRP management vested in the RP. Consequently, no cargo could be shifted, transported, alienated or dealt with without express approval of RP/CoC.

10.21. Respondent No. 2 and Respondent No. 5 were fully aware of CIRP proceedings, having been informed by the RP and having participated in discussions concerning quotations and transport of goods.

1. Despite repeated demands, Respondent Nos. 2 and 5 failed to disclose the exact location where goods were shifted and stored.
2. Their conduct therefore amounts to deliberate breach of moratorium and unauthorized dealing with assets of the Corporate Debtor.
3. In reply to paragraph 13, it is denied that the Applicant has intermingled invoices. Adequate clarification has already been provided.

4. In reply to paragraph 14, it is denied that the Applicant has misrepresented facts. Documentary evidence, including e-mails dated 16.05.2018 and 18.05.2018, records that:

   a. Respondent No. 5 was taking care of the goods; and
   b. 136 pieces had been removed from Port premises and shifted to private property of Respondent No. 5 without prior approval of RP/CoC.

10.22. In reply to paragraph 19, it is denied that the statement regarding filing of Form B is false. E-mail dated 26.12.2017, forming part of the forensic/audit material already on record, clearly required Respondent No. 2 to submit claim in Form B.

10.23. Respondent No. 2 is merely attempting to evade liability by taking contradictory stands. In reply to paragraph 23, it is denied that the RP never visited the office of Respondent No. 2. The site report dated 24.04.2019 (Annexure-O) records that the RP and CoC representatives visited Respondent No. 2 at 10:00 AM and were informed that some materials of the Corporate Debtor had been sold against alleged dues.

10.24. Further, the forensic records and ledger extracts indicate that Respondent No. 2 sold goods of the Corporate Debtor for approximately Rs.1,45,56,657/-.

10.25. In reply to paragraph 26, Respondent No. 2 has failed to show why the present Application should not proceed against it, especially when documentary

evidence indicates joint involvement of Respondent Nos. 1, 2, 5 and 6 in unauthorized sale/disposal of assets of the Corporate Debtor.

10.26. In reply to paragraphs 27 and 28, the plea of ignorance of CIRP is denied in toto. The same is an afterthought. Apart from direct communications from the RP, Respondent No. 2 was aware of CoC deliberations relating to transportation and quotations. Public announcement of commencement of CIRP had also been made in accordance with law.

10.27. Accordingly, Respondent No. 2 cannot claim ignorance to escape liability for unauthorized removal, sale and concealment of assets of the Corporate Debtor. In view of the foregoing, the defence raised by Respondent No. 2 deserves rejection and the Application deserves to be allowed with appropriate consequential directions.

11. That the **Additional Affidavit** on behalf of the Applicant was received dated 24.01.2025 vide inward dairy no. D 464. Wherein made following submission.

11.1. That the present affidavit is being filed in compliance with the order dated 27.11.2024 passed by this Hon'ble Authority, whereby time was granted to file an additional affidavit placing on record further documents.

11.2. The Applicant submits that the present application arises on account of the Respondents having, in contravention of the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016, sold the goods of the Corporate Debtor lying at the premises of Respondent No. 1, pertaining to an export order placed by M/s. Girisons General Trading LLC.

11.3. It is submitted that pursuant to queries raised by this Authority on 27.11.2024, the Applicant is placing on record export invoices dated 27.02.2017, 28.02.2017, 07.03.2017, 08.03.2017, 18.03.2017, 21.03.2017, 23.03.2017, 24.03.2017 and 27.03.2017 along with the ledger of the Corporate Debtor pertaining to M/s. Girisons General Trading LLC as **Annexure-I (Colly).**

11.4. The Applicant submits that no document evidencing cancellation of the export order by M/s. Girisons General Trading LLC is available in the records handed over to the Resolution Professional or the Applicant. It is further submitted that despite email dated 14.06.2017 issued by the Resolution Professional seeking details of orders in hand from the promoters/suspended management, no such information has been furnished till date. Copies of such correspondence evidencing non-cooperation are annexed as **Annexure-II**.

11.5. It is submitted that the Let Export Order came to be cancelled by the Resolution Professional after

Respondent No. 1 issued notice for removal of goods from the port. Thereafter, vide letter dated 28.02.2018, the Resolution Professional sought permission from the Assistant Commissioner of Customs, Kandla for removal of goods to back-to-town, stating that the shipping bills stood cancelled. Subsequently, the Office of the Commissioner of Customs, vide letter dated 05.04.2018, permitted Bhavya Shipping (CHA Agent) and Respondent No. 6 to remove goods covered under the specified shipping bills, as already on record in **Annexure-R1 to the reply of Respondent No. 1**.

11.6. With respect to the source of documents relating to sale of goods as scrap to N.R. Brothers Multitrade LLP, it is submitted that the Applicant personally visited the office of Respondent No. 2, where Mr. Kumar Prasad handed over the sale letter, offer letter, weightment statement and ledger during pendency of the present proceedings.

11.7. Without prejudice, it is submitted that removal of 136 pieces from the port stands admitted by Mr. Kumar Prasad and is borne out from the minutes of the CoC meeting dated 17.05.2018, site visit report dated 24.04.2019 and letter dated 17.09.2020, forming part of the record including the Audit Report filed on 13.06.2023.

12. That the **Sur- Rejoinder** on behalf of Respondent No.2 was taken on record dated 06.03.2025 vide inward dairy no. D 1519. Wherein made following submission.

12.1. It is submitted that the Applicant has deliberately suppressed material facts and misrepresented the record before this Hon'ble Tribunal. The allegation of violation of the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 is wholly misconceived and untenable.

12.2. It is submitted that the Corporate Debtor had, by its own acts of omission and non-compliance with contractual and statutory obligations, effectively abandoned the goods in question, thereby compelling Respondent No. 2 to act in mitigation of losses.

12.3. It is further submitted that the erstwhile Interim Resolution Professional, Mr. Ramchandra D. Choudhary, has failed to place on record any communication evidencing that Respondent No. 2, i.e., M/s. Sea Freight Shipping & Logistics Pvt. Ltd. (SFSAL), was ever informed about the initiation of CIRP or the imposition of moratorium under Section 14 of the Code. At no point was any notice, letter, or official intimation issued to Respondent No. 2 apprising it of the legal status of the Corporate Debtor.

12.4. In the absence of such communication, Respondent No. 2 remained completely unaware of the CIRP proceedings and was not provided Form B by the Resolution Professional. Consequently, Respondent No. 2 was deprived of the opportunity to file its claim as an Operational Creditor within the prescribed timeline, resulting in grave prejudice and exclusion from the list of creditors due to procedural lapses attributable to the Resolution Professional.

12.5. It is further submitted that the Resolution Professional misrepresented himself before Respondent No. 2 as a Chartered Accountant rendering consultancy services to banks and induced Respondent No. 2 to believe that he would facilitate recovery of its dues through lending institutions such as State Bank of India and Bank of Baroda. Such misrepresentation led Respondent No. 2 to rely upon him instead of pursuing independent remedies, thereby causing financial prejudice and obstructing timely assertion of its claims within CIRP. The said conduct is beyond the scope of the Resolution Professional's statutory role and has resulted in irreparable harm to Respondent No. 2.

12.6. It is submitted that Respondent No. 2 has not derived any benefit from the alleged sale of the material. It is further submitted that the allegation that Respondent No. 2 did not seek permission for removal of goods is incorrect and misleading. On the contrary, the

Resolution Professional himself, vide email (Annexure R/1), expressly authorized Respondent No. 2 to take possession of the goods, remove them from the port premises, and shift them to a private plot.

12.7. Further, the Resolution Professional, vide letter dated 05.03.2018, appointed Respondent No. 2 as a forwarding agent and authorized it to undertake necessary formalities for cancellation of Let Export Orders and movement of cargo back to town, which clearly demonstrates that the actions of Respondent No. 2 were undertaken with due authorization and in furtherance of the CIRP process. The said letter explicitly stated as follows : -

> *"We have provided you a letter dated 05.03.2018 regarding the cancellation of Let Export Orders and moving the cargo back to town. In this regard, we hereby authorize M/S. SEA FREIGHT SHIPPING AND LOGISTICS PVT LTD as a forwarding agent for the following activities:*
> *1. Coordinating with Custom Broker M/S. Bhavya Shipping for the cancellation of shipping bills from Customs.*
> *2. Coordinating with Custom Broker M/S. Bhavya Shipping for obtaining Back to Town permission from Customs.*
> *3. Completing the necessary procedures from Kandla Port Trust for receiving the cargo.*
> *4. Transporting and handling the goods from Kandla Port Trust to a private warehouse.*
> *5. Storage of goods in a private warehouse.*
> *We request you to proceed further and take the cargo into your custody to avoid the auction process by Kandla Port Trust.*
> *Your immediate action in this matter will be highly solicited."*

12.8. It is submitted that the sale proceeds arising from disposal of 138 pieces were not received by Respondent No. 2 in any personal capacity. The entire proceeds were duly credited to Kandla Port Trust (KPT) and M/s. Ashirwad Global. In support thereof, Respondent No. 2 has annexed the relevant ledger reflecting the flow of funds as Annexure R/2.

12.9. It is further submitted that Respondent No. 2 acted bona fide and in the interest of the Corporate Debtor, with the sole objective of safeguarding its assets and preventing auction of the material by KPT, thereby avoiding substantial penalties and demurrage charges. The same is borne out from the record, including the letter issued by the Resolution Professional to the Joint Lenders Forum dated 02.08.2019 (Annexure P to IA, pages 75–80).

12.10. It is submitted that the costs incurred towards "Back to Town" movement were duly paid by Respondent No. 2 to Mr. Rasikbhai of M/s. Ashirwad Global (Respondent No. 5), and various statutory and port-related charges were paid to Kandla Port Trust (Respondent No. 1). The details of such payments are duly recorded in the ledger annexed as Annexure R/2.

12.11. It is further submitted that Respondent No. 2, despite financial constraints, made genuine and continuous efforts to secure the cargo and mitigate losses.

Respondent No. 2 consistently communicated its financial limitations and requested adherence to the agreed payment mechanism from concerned stakeholders, as evidenced from the communication record.

12.12. In this regard, reliance is placed on email dated 06.07.2018 titled "RE: Back to Town Permission/ Update Status of Cargo" sent by Mr. Nitin Kanaliyalal Chauhan, representative of State Bank of India, to Mr. Kumar Prasad and others, with copies marked to the Resolution Professional and officials of Bank of Baroda and Respondent No. 2, wherein the position regarding the cargo and related obligations was clearly acknowledged.

> *"We have already made payment of our share to Bank of Baroda on 02/07/2018."*
> *Furthermore, an earlier email in the same thread, dated July 6, 2018, at 5:35 PM, was sent by Kumar Prasad (kumar@sfsal.in), addressing Nitin Kanaliyalal Chauhan and copying the same recipients. The email contained the following:*
> *"Dear Sir,*
> *Please kindly find the attached KPT receipts as required by you. As per our discussion in the joint meeting with the bank along with the other creditors, the bank has agreed to make payment before 30th May. Till date, we don't have any update regarding the payment. Please try to understand our situation-we have borrowed money from various financial institutes and have already paid a lot of interest to save this cargo by paying all the penalties to the authorities on your behalf. Now, the creditors are coming to our doorsteps for collection of money. Request you to please kindly make full and final payment as per the settlement amount of 63 lakh rupees before 10th July; else, we have to surrender the cargo to the custodians, as we don't have any more money to pay against this cargo."*

12.13. It is submitted that the aforesaid correspondence clearly establishes that Respondent No. 2 had consistently requested the banks to adhere to the agreed settlement plan and had highlighted the financial burden undertaken by it to safeguard the cargo. Despite bona fide efforts, delays on part of financial institutions and stakeholders in honoring their commitments placed Respondent No. 2 under severe financial strain. In such circumstances, Respondent No. 2 cannot be faulted and any attempt to fasten liability is wholly unjustified.

12.14. It is further submitted that the Applicant has failed to demonstrate any direct involvement of Respondent No. 2 in the alleged wrongful disposal of goods. The communications between the Liquidator/Resolution Professional and authorities, including Customs and Port Authorities, do not attribute any wrongdoing to Respondent No. 2.

12.15. It is submitted that reliance placed on emails and correspondence is misconceived, as the same merely reflect routine official communications and do not constitute any admission of liability or evidence of misconduct on part of Respondent No. 2.

12.16. It is further submitted that Respondent No. 2's conduct has been transparent and bona fide, as evident from the fact that it voluntarily furnished complete payment details to the Resolution Professional upon request.

Such conduct negates any allegation of illegality or concealment.

12.17. It is also submitted that Respondent No. 2 did not undertake the physical movement of the cargo. The transportation and storage of the material from the port to the outside storage plot were carried out by M/s. Ashirwad Global. The same is evident from email dated 17.05.2018 (Annexure K, pages 62–66 and Annexure L, pages 67–68 of the I.A.), duly communicated to the Resolution Professional, wherein Ashirwad Global addressed the concerned authorities, including Bank of Baroda, confirming its role in handling the said operations.

> *"Refer to our meeting held on 17.05.2018 in the conference hall of Bank of Baroda office, Ahmedabad, in the presence of Mr. R.D. Choudhary Sahib and bank officers.*
> *The material removal summary till date is as under:*
>
> *Total No. of Packages Stored Inside: 203*
> *Packages Removed: 136*
> *Balance Packages: 67*
> *No. of Trucks Used: 36 (Port area, Kandla)*
>
> *A truck-wise removal report along with copies of gate passes will be sent to you by courier. As agreed in the meeting by our Mr. Rasikbhai, we are ready to undertake the transportation and storage of the material from inside the port area to the outside storage plot. However, this can only be resumed upon clearance of our long-outstanding dues towards handling, clearing, and storage/demurrage charges incurred over the last 15 months, which remain payable by you against this material.*
>
> *Your early response can safeguard the material from heavy demurrages and penalties imposed by the port. We are not in a position to pay any further dues to the port. Therefore,*

we urge you to take up the matter with the concerned authorities and the bank on a priority basis."

12.18. It is submitted that despite clear and unequivocal communications, the Resolution Professional failed to take necessary steps to clear outstanding dues or discharge its obligations, thereby imposing financial and logistical burdens upon Respondent No. 2 and exposing the goods to further demurrage and penalties. The entire chain of email correspondence evidencing the same is annexed as Annexure R/3.

12.19. It is further submitted that the email correspondences relied upon by the Applicant do not attribute any culpability to Respondent No. 2; rather, they demonstrate the failure of the Resolution Professional to furnish requisite information in a timely manner, leading to procedural complications. The Applicant has been grossly negligent in safeguarding the assets of the Corporate Debtor, and the inordinate delay of several months in raising objections indicates that the present claim is an afterthought, motivated by extraneous considerations.

12.20. It is reiterated that Respondent No. 2 has acted strictly in compliance with applicable legal and regulatory requirements and there has been no willful violation of the moratorium. All actions were undertaken in due course and in accordance with law.

12.21. It is submitted that the doctrine of business efficacy squarely applies in the present case, as the goods had lost their utility and inaction would have resulted in greater financial loss. In the absence of any mala fide intent, and in view of the delay and inaction on the part of the Resolution Professional/Liquidator, Respondent No. 2 cannot be held liable for the alleged loss.

13. That the **compilation of the judgements** were placed on record on behalf of Applicant was received dated 17.04.2026 vide inward dairy no. D 3328. Wherein relied upon the judgement :-

1. ***Sundaresh Bhatt Liquidator of AGB Shipyard vs. Central Board of Indirect Taxes and Customs; Supreme Court of India*** Civil Appeal No.: 7667 of 2021
2. ***Paschimanchal Vidyut Vitran Nigam Limited vs Raman Ispat Pvt. Ltd.*** (2023) 10 SCC 60
3. ***MSC Meditteranean Shipping Company S.A vs. CA Kannan Tiruvengadam, RP of BRG Iron & Steel Co. Pvt. Ltd. And Another*** 2021 SCC OnLine NCLAT 643
4. ***Shri Baiju Trading and Investment P. Ltd. vs. Arihant Nenawati and Others*** (2023) 22 Comp Cas-OL 654

14. That the Written Submission on behalf of the Applicant was received on 17.04.2026 vide inward dairy no. D 3328

and Respondent No.6 was received dated 22.04.2026 vide inward dairy no. D 3512. The same was taken into record.

15. We have heard Ld. Counsel for the Applicant, Ld. Counsel for the appearing Respondents, and have carefully examined the pleadings, affidavits, reply, annexures, and the oral arguments advanced by both sides. The following Issues are framed for determination: -

i. **Issue No. 1:** Whether the removal and subsequent sale of 142 steel structures belonging to the Corporate Debtor during the Corporate Insolvency Resolution Process is in contravention of the moratorium declared under Section 14 of the Insolvency and Bankruptcy Code, 2016?

ii. **Issue No. 2:** Whether Respondent Nos. 2 and 5 had any lawful authority to remove, store and dispose of the assets of the Corporate Debtor without the consent or approval of the Resolution Professional and/or the Committee of Creditors?

iii. **Issue No. 3:** Whether the unauthorized sale of the said goods can be attributed to the acts or omissions of the Respondents, and if so, who is liable for the loss caused to the Corporate Debtor?

iv. **Issue No. 4:** Whether the Applicant is entitled to the reliefs as prayed for, including setting aside of the impugned sale transactions and/or recovery of the value of the goods from the concerned Respondents?

16. Brief facts of the case are stated below:

i. 203 pieces of variance sized heavy steel structures were brought to Kandla port by the Corporate Debtor

for export purpose in February- March 2017. However, export order was cancelled.

ii. Corporate Debtor was admitted into CIRP on 08.03.2017.

iii. RP namely Ramchamdra D. Choudhary was appointed on 02.11.2017.

iv. The RP became aware of material lying in the Kandla Port Trust and asking for removal of the material from storage area (10.11.2017).

v. SFSAL, Respondent No. 2 provided a proforma invoice of Rs 1,41,44,680 for the expenditure incurred.

vi. On 05.04.2018, RP granted permission to R-6 (CHA) for removal of goods.

vii. 24.04.2019: The Representative of RP and banks visited SFSAL and found that 142 pieces out of 203 were sold as against their dues.

viii. 04.05.2019 and 02.08.2019: RP lodged compliant against Respondent No. 2 and 5 for theft of the material and sale.

ix. 03.08.2019: Applicant received a letter from Kandla Police Station that after investigation it has found that the goods were removed legally and under trust of RP and sold the material after informing RP and police is closing this dispute.

x. 25.09.2019: IA was filed.

OBSERVATION OF THE TRIBUNAL:-

17. **Issue No. 1:-** Whether the removal and subsequent sale of 142 steel structures belonging to the Corporate Debtor during the Corporate Insolvency Resolution Process is in contravention of the moratorium declared under Section 14 of the Insolvency and Bankruptcy Code, 2016?

17.1. Section 14 of the IBC, 2016 is been reproduced herein below:-

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 institutionJ2 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;
(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession ofJ3 the corporate debtor.
*1[*Explanation.-*For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the*

condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]
(2) The supply of essential goods or services to the corporate debtor as may be specified *shall not be terminated or suspended or interrupted during moratorium period.*
[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]
(3) The provisions of sub-section (1) shall not apply to —
(a) such transactions, agreements or other arrangements as may be notified4 by the Central Government in consultation with any financial sector regulator or any other authority;]
(b) a surety in a contract of guarantee to a corporate debtor.]
(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.*

17.2. It is an admitted and undisputed position that the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor commenced vide order dated 19.04.2017, whereby moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 came into force. It is further borne out from the record that at the time of commencement of CIRP, 203 pieces of

fabricated steel structures belonging to the Corporate Debtor were lying within the premises of Deendayal Port Authority.

17.3. From the material available on record, particularly the minutes of meetings, site inspection report dated 24.04.2019 (Annexure-O), and correspondence exchanged between the parties, it clearly emerges that out of the said 203 pieces, 136 pieces had been removed from the port premises and subsequently, approximately 142 pieces were sold by Respondent No. 2 (Sea Freight Shipping and Logistics Limited) against alleged dues. The said fact has not been effectively denied and stands substantiated by the inspection report as well as admissions recorded during interactions with the representatives of Respondent No. 2. The crucial aspect which emerges is that such removal and sale of goods was undertaken without prior approval or consent of the Resolution Professional or the Committee of Creditors, who were the lawful custodians of the assets of the Corporate Debtor during CIRP.

17.4. The defence raised by the Respondents that the goods were removed pursuant to "Back to Town" permission granted by the Customs Authorities and was as per direction of the Resolution Professional. The Respondent has claimed that the Petitioner never informed about the ongoing CIRP and he used to

represent as a chartered accountant and representing banks. The claim of the Respondent No. 2 that it was unaware of the CIRP proceedings is not tenable in view of the documentary evidence on record which indicates that communications regarding commencement of CIRP and imposition of moratorium were duly issued, and the Respondent had participated in meetings concerning handling and transportation of the goods.

17.5. It is also pertinent to note that no material has been placed on record by the Respondents to demonstrate any lawful authority, contractual right or statutory permission permitting them to sell the goods of the Corporate Debtor. There is complete absence of documentation regarding the manner of sale, valuation of goods, identity of purchasers, or utilisation of sale proceeds. On the contrary, the record reflects inconsistencies in the quantity of goods removed and sold, and the forensic material placed on record further indicates that the goods were disposed of at significantly undervalued rates, thereby causing substantial loss to the Corporate Debtor.

17.6. At this juncture, it is apposite to refer to the law laid down by the Hon'ble Supreme Court in ***Sundaresh Bhatt v. Central Board of Indirect Taxes and Customs***, **(2022) ibclaw.in 103 SC**

Civil Appeal No. 7667 of 2021 Decided on 26-Aug-22 wherein it has been held that once moratorium under Section 14 is in force, no authority or third party can deal with, appropriate or dispose of the assets of the Corporate Debtor outside the framework of the Insolvency and Bankruptcy Code, and any such action would defeat the very object of the Code. Paragraph 36 of the order is reproduced below:

"Section 14 of the IBC prescribes a moratorium on the initiation of CIRP proceedings and its effects. One of the purposes of the moratorium is to keep the assets of the Corporate Debtor together during the insolvency resolution process and to facilitate orderly completion of the processes envisaged under the statute. Such measures ensure the curtailing of parallel proceedings and reduce the possibility of conflicting outcomes in the process."

"From the above, it can be seen that one of the motivations of imposing a moratorium is for Section 14(1)(a), (b), and (c) of the IBC to form a shield that protects pecuniary attacks against the Corporate Debtor. This is done in order to provide the Corporate Debtor with breathing space, to allow it to continue as a going concern and rehabilitate itself. Any contrary interpretation would crack this shield and would have adverse consequences on the objective sought to be achieved."

17.7. The contention of Respondent No.1 regarding statutory lien under the Major Port Trusts Act, 1963 is noted. However, in view of the overriding effect of Section 238 of the Insolvency and Bankruptcy Code, 2016, the provisions of the Code shall prevail. The Port Authority may determine dues but cannot

enforce recovery through sale or disposal of assets during moratorium.

17.8. In view of the aforesaid facts and settled legal position, this Adjudicating Authority is of the considered opinion that the sale of 142 steel structures belonging to the Corporate Debtor, carried out during the subsistence of moratorium and without authorization of the Resolution Professional or the Committee of Creditors, squarely falls within the ambit of "transfer" and "disposal" of assets as prohibited under Section 14(1)(b) of the Code. The said acts are therefore illegal, unauthorized and in clear contravention of the moratorium provisions of the Insolvency and Bankruptcy Code, 2016.

18. **Issue No. 2:-** Whether Respondent Nos. 2 and 5 had any lawful authority to remove, store and dispose of the assets of the Corporate Debtor without the consent or approval of the Resolution Professional and/or the Committee of Creditors?

18.1. At the outset, it is trite to note that upon commencement of CIRP, the management of the affairs of the Corporate Debtor vests with the RP, and the RP is duty bound under Section 20 of the Insolvency and Bankruptcy Code, 2016 to preserve and protect the assets of the Corporate Debtor. Consequently, any dealing with such assets without

the knowledge and approval of the RP would be dehors the statutory scheme of the Code.

18.2. Wherein, Section 20 of IBC, 2016 is been read as:-

> **Section 20- Management of operations of corporate debtor as going concern.**
>
> *(1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.*
> *(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority—*
> *(a) to appoint accountants, legal or other professionals as may be necessary;*
>
> *(b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;*
> *(c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property:*
> *Provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.*
> *(d) to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and*
> *(e) to take all such actions as are necessary to keep the corporate debtor as a going concern.*

18.3. From the material available on record, including the minutes of meeting dated 17.05.2018 (Annexure-J) and subsequent communications, it is evident that Respondent No. 2 had removed 136 pieces of the goods from the port premises and stored the same at a private location belonging to Respondent No. 5 (Rasiklal). The shifting of the goods from the port premises to private store yard of Rasiklal was fully known to the Applicant. Permission was granted only for removal ('Back to Town') and not for sale or disposal of goods by customs authorities on 05.04.2018 as the export order was cancelled and the port chart for storing were very high. The said sale came to light only when the Respondent No.2 informed that they have sold 142 pieces to realise their due.

18.4. The contention of Respondent No. 2 that it acted as a C&F agent and incurred expenses towards handling and storage of cargo cannot justify the unilateral removal and subsequent disposal of the goods. The Code provides a specific mechanism for recovery of dues by operational creditors through submission of claims before the RP. In the present case, instead of following the prescribed statutory mechanism, Respondent No. 2 has sought to justify its actions on the ground of recovery of alleged dues, which is impermissible in law.

18.5. It is further observed that no documents have been produced by Respondent Nos. 2 and 5 to establish the terms of storage, ownership of the premises, execution of any rent agreement, or safeguards for preservation of the assets. The absence of such crucial documentation, despite repeated demands by the RP and lenders, coupled with the subsequent admission that approximately 142 pieces were sold, clearly indicates that the Respondents acted beyond any permissible authority. The inconsistencies in the quantity of goods removed and sold, and the failure to disclose details of sale transactions, further strengthen the inference that the actions of Respondent Nos. 2 and 5 were unauthorized.

18.6. In this regard, it is pertinent to note that the Hon'ble Supreme Court in ***Sundaresh Bhatt v. Central Board of Indirect Taxes and Customs (supra)*** held that the Insolvency and Bankruptcy Code, 2016 is a complete code in itself and, upon initiation of CIRP, all stakeholders including statutory authorities are bound by its framework. The Resolution Professional is vested with exclusive control and custody over the assets of the Corporate Debtor, and no authority can exercise independent control or take actions dehors the provisions of the Code. The Hon'ble Supreme Court in paragraph 54 observed that:

Para...54 *"Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act."*

18.7. In view of the foregoing, this Adjudicating Authority is of the considered opinion that Respondent Nos. 2 and 5 had no lawful authority to dispose of the assets of the Corporate Debtor without the consent or approval of the Resolution Professional and/or the Committee of Creditors. The actions undertaken by th

18.8. em were unilateral, unauthorized and contrary to the provisions and spirit of the Insolvency and Bankruptcy Code, 2016.

19. Issue No.3:- Whether the unauthorized sale of the said goods can be attributed to the acts or omissions of the Respondents, and if so, who is liable for the loss caused to the Corporate Debtor?

19.1. It is an admitted factual position that out of 203 pieces of fabricated steel structures belonging to the Corporate Debtor, a substantial quantity, namely 142 pieces—stood sold during the subsistence of CIRP. The said position is corroborated by the site inspection report dated 24.04.2019 and

communications placed on record, wherein representatives of Respondent No. 2 acknowledged that such goods had been sold against alleged dues.

19.2. From the sequence of events and contemporaneous record, it clearly emerges that Respondent Nos. 2 played a central and active role in the sale goods. The minutes of meeting dated 17.05.2018 disclose that 136 pieces had already been shifted from the port premises to a private location belonging to Respondent No. 5 without prior knowledge or approval of the Resolution Professional or the Committee of Creditors. Thereafter, no satisfactory explanation or documentary evidence has been furnished by the said Respondents with regard to the custody, preservation or subsequent disposal of the goods. On the contrary, the material on record reflects that the goods were sold without disclosure of the terms of sale, valuation, identity of purchasers or accounting of proceeds. Such conduct clearly indicates unauthorized dominion and control exercised by Respondent No. 2 over the assets of the Corporate Debtor.

19.3. The defence sought to be raised by Respondent No. 2, inter alia, on the ground of recovery of alleged dues or lack of knowledge of CIRP, does not inspire confidence in light of the documentary evidence

showing its active involvement in meetings with the Resolution Professional and stakeholders.

19.4. At the same time, this Adjudicating Authority cannot overlook certain lapses on the part of the Resolution Professional in ensuring effective control and supervision over the assets of the Corporate Debtor. The record indicates that despite becoming aware of the cancellation of export order and after getting approval of the customs authorities for removal of goods to a safe place, the RP did not actively got involved in the safe removal and storage and subsequent sale of goods to realise the best value as the goods were fabricated steel structures and were likely to lose value due to deterioration of material. However, such omissions, though relevant for evaluating the overall conduct during CIRP, do not dilute or absolve the primary liability of those parties who actually sold the assets and appropriated the sale proceeds.

19.5. In view of the aforesaid facts and circumstances, this Adjudicating Authority is of the considered opinion that the unauthorized sale of the goods of the Corporate Debtor is directly attributable to the acts of Respondent No. 2. Consequently, Respondent No. 2 is primarily liable for the loss caused to the Corporate Debtor. The lapses on the part of the Resolution Professional, though noted, do not shift

the liability away from the Respondents who were in actual possession and control of the goods and who proceeded to dispose of the same in violation of the provisions of the Insolvency and Bankruptcy Code, 2016.

20. **Issue No. 4:-** Whether the Applicant is entitled to the reliefs as prayed for, including setting aside of the impugned sale transactions and/or recovery of the value of the goods from the concerned Respondents?

20.1. It has already been held while deciding the preceding issues that the sale of 142 steel structures belonging to the Corporate Debtor was carried out during the subsistence of moratorium and without the approval of the Resolution Professional or the Committee of Creditors, and that such acts were unauthorized and in contravention of the provisions of the Insolvency and Bankruptcy Code, 2016. Further, it has also been held that Respondent No. 2 was primarily responsible for the unauthorized sale of the said assets.

20.2. In light of the aforesaid findings, the logical consequence is that the impugned transactions, being in violation of Section 14 of the Code, cannot be sustained in the eyes of law. Any transaction which results in alienation or disposal of the assets of the Corporate Debtor during the moratorium

period, without the authority of the Resolution Professional or this Adjudicating Authority, is void ab initio being in contravention of Section 14(1)(b) of the Code. The Respondents, having dealt with the assets of the Corporate Debtor in an unauthorized manner, cannot be permitted to retain the benefit arising out of such illegal acts. The material on record also indicates that the Respondents have failed to disclose the details of the sale transactions, including the identity of purchasers, sale consideration received, or the manner in which such proceeds were appropriated, thereby causing substantial loss to the Corporate Debtor.

20.3. At the same time, this Adjudicating Authority is conscious of the fact that the goods in question have already been disposed of way back in 2019 and were movable and perishable in nature and must have been used by now by the purchaser and are not available for restoration in specie. In such circumstances, the appropriate relief would be to direct restitution by way of monetary compensation equivalent to the value of the goods unlawfully sold. The Applicant has claimed an amount of Rs. 21,16,15,439/- towards the loss suffered by the Corporate Debtor on account of such illegal sale.

20.4. The Hon'ble Supreme Court in ***Sundaresh Bhatt v. Central Board of Indirect Taxes and Customs***

(supra) has reiterated that the assets of the Corporate Debtor during CIRP form part of the insolvency estate and cannot be appropriated or dealt with dehors the mechanism of the Code, and any such action must be reversed to protect the value of the assets available to creditors. Applying the said principle to the facts of the present case, it is evident that the unauthorized sale of the assets has resulted in depletion of the insolvency estate, thereby prejudicing the interests of creditors.

20.5. In view of the above, this Adjudicating Authority is of the considered opinion that the Applicant is entitled to appropriate reliefs. The impugned sale transactions, having been carried out in violation of the moratorium, are liable to be declared illegal and set aside. Consequently, Respondent No. 2 , being the person responsible for such unauthorized sale is liable to make good the loss caused to the Corporate Debtor by depositing the value of the goods sold, as determined on the basis of the material available on record.

20.6. Accordingly, the Applicant is entitled to recovery of the value of the goods from the Respondent No.2.

21. Accordingly, it is hereby declared that the sale of 142 steel structures belonging to the Corporate Debtor during the subsistence of moratorium is illegal, unauthorized and in

contravention of Section 14 of the Insolvency and Bankruptcy Code, 2016.

22. The impugned sale transactions undertaken by Respondent No. 2 (Sea Freight Shipping & Logistics Ltd.) is liable to be set aside, however, for the reasons sated I the order, the sale value realised by the **Respondent Nos. 2 is directed to be paid to the Corporate Debtor.**

23. In the prayer, the Applicant has stated the figure of Rs. 21,16,15,439/- (Rupees Twenty-One Crores Sixteen Lakhs Fifteen Thousand Four Hundred Thirty-Nine only), for that we do not find any basis in the pleadings as the claim of Rs. 21,16,15,439/- is not supported by valuation reports, sale records, or any cogent documentary evidence on record. Hence, the same cannot be accepted. However, paragraph 15 of the Rejoinder of the Applicant to the Reply filed by Respondent No. 2 (SFSAL) refers to sale of goods of Rs 1,45,56,657 of the Corporate Debtor. This paragraph 15 is extracted below: -

15. With respect to the contents of Paragraph No 23, it is denied that the averment is sheer misrepresentation as the RP never visited the office of the Respondent. It is stated that the Applicant has placed on record the site report at Annexure-O for site visit conducted on 24.04.2019 wherein it is categorically stated that the RP visited the office of the answering Respondent at 10AM for enquiring about the pieces of goods of the corporate debtor which were lying at the port wherein the RP as well as the members of the CoC of the corporate debtor were informed that some of the materials of the CD have been sold against their dues. It is further stated that on perusal of the contents of the audit report and the documents annexed therein, especially the ledger at Page no. 108 onwards of the affidavit filed on 13.06.2023, it is evident that the answering respondent has sold the goods of the corporate debtor for an amount of Rs. 1,45,56,657/.

24. Therefore, the Respondent No.2 is directed to contribute **Rs 1,45,56,657/-** the assets of the Corporate Debtor within a period of **45 days** from the date of this order.

25. The Respondent No. 2 has taken a position that it had incurred expenses of Rs. 1,41,44,680/- and had furnished proforma invoices in support thereof. However, it appears that the Respondent No. 2 had not filed any claim before the Resolution Professional in Form B. Accordingly, the same cannot be considered in the present order, and the amount determined herein as payable shall attain finality for the purposes of the present Interlocutory Application.

26. The aforesaid amount **shall be payable along with interest @ 12% per** annum from the date of filing of the

present Interlocutory Application i.e, 25.09.2019 till its realization. In the event of non-compliance, the Applicant shall be at liberty to initiate appropriate execution proceedings before this Adjudicating Authority.

27. Insofar as Respondent No. 1 (Deendayal Port Authority) and Respondent No. 6 (Bhavya Shipping) are concerned, no direct relief is granted against them in absence of conclusive material establishing their involvement in the unauthorized sale; however, liberty is reserved to the Applicant to take appropriate remedies in accordance with law, if so advised. Though Respondent No.5 was involved in storage of goods, there is insufficient material to establish its direct role in sale of assets. Accordingly, no monetary liability is fastened; however, its conduct is noted.

28. Accordingly, the present Interlocutory Application being **IA/601(AHM) 2019** stands **allowed** in above terms. No order as to cost.

— SD —

SANJEEV SHARMA
MEMBER (TECHNICAL)
SS

— SD —

SHAMMI KHAN
MEMBER (JUDICIAL)