

NATIONAL COMPANY LAW TRIBUNAL

COURT-V, MUMBAI BENCH

2. IA/3782/2025 C.P. (IB)/2607(MB)2019

IN THE MATTER OF

Oriental Bank Of Commerce

... Petitioner

Vs

Panache Exports Pvt Ltd

... Respondent

U/s 7 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 07.07.2026

CORAM:

SH. ASHISH KALIA
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant:

For the Respondent:

ORDER

IA/3782/2025- The above IA is listed for pronouncement of order. The same is pronounced in open Court, vide a separate order.

Sd/-
ASHISH KALIA
Member (Judicial)

//Avdhesh//

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

**Case Citation: (2026) ibclaw.in 2664 NCLT
NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - V**

I.A. 3782/2025

IN

C.P. NO. 2607(IB)/MB/2019

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the NCLT Rules, 2016.

Indojewel Jewellery Private Limited

Through its Authorised Person – Mr. Naresh Wadhawa

Having its address at:

Unit-001, Multistoried Building, Andheri East, Seepz-sez, Mumbai, Maharashtra - 400096.

Email: indojewel@gmail.com

... Applicant

Versus

1. Multistoried IT & Gems Commercial Premises Cooperative Society Limited

Having its address at:

Units Nos. 505-508, Multistoried Building SEEPZ SEZ, Andheri (East), Mumbai, Maharashtra - 400096.

... Respondent No. 1

2. Ajit Gyanchand Jain

Erstwhile Liquidator of Panache Exports Private Limited

Having address at:

204, Wall Street-I, Ellisbridge, Near Gujarat College, 204, Wall Street-1, Ellisbridge, Near Gujarat College, Ahmadabad, Gujarat - 380006.

... Respondent No. 2

IN THE MATTER OF:

Oriental Bank of Commerce

... Financial Creditor

Versus

Panache Exports Private Limited

... Corporate Debtor

Order Pronounced on: 07.07.2026

Coram:

Ashish Kalia

Charanjeet Singh Gulati

Member (Judicial)

Member (Technical)

Appearances:

For Applicant: Adv Manoj Mishra (VC)

For Respondent: Adv. Rohit Gupta i/b. Adv. Vaishali Bhilare a/w. Adv
Somesh Talla (PH)

For Respondent: Adv. Ramesh Singh (R1)

ORDER

1. The present Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") read with Rule 11 of the National Company Law Tribunal Rules, 2016 ("**NCLT Rules**") with following prayers:

- a) *To pass an Order declaring that the demand raised by the Respondent No. 1 vide demand letter dated 16.01.2024 (enclosed in Exhibit-"E") for an amount of Rs. 96,77,048/- (Rupees Ninety Six Lakhs Seventy Seven Thousand and Forty Eighty Only) along with any interest accruing thereon, together with all consequential actions, as illegal, void & in violation of Section 53 of IBC, 2016, since the said amount arises prior to Liquidation Date on 23.09.2022 and hence is not liable to be paid by the Applicant;*
- b) *To pass an Order directing extinguishment of all claims and liabilities of Respondent No. 1 against the Applicant and its Scheduled Property (given in Schedule-I of this Application)*

arising prior to 23.09.2022 i.e., the date of liquidation of the Corporate Debtor;

- c) To pass an Order directing Respondent No 1 to give NOC in the name of “M/s. Indojewel Jewellery Private Limited” (Applicant) in respect of the old dues of the Scheduled Property (given in Schedule-I of this Application) arising prior to Liquidation Date on 23.09.2022;*
- d) Pending hearing and disposal of the instant Application, pass an Order granting stay on recovery of outstanding amount arising prior to Liquidation Date on 23.09.2022, as claimed by Respondent No.1 against the Applicant and its Scheduled Property (given in Schedule-I of this Application);*
- e) To pass any such other or further order(s) as may be deemed fit by this Hon’ble Adjudicating Authority, in the interest of justice and equity*

Brief Facts as per the Application:

- 2. This Tribunal vide order dated 25.11.2019 admitted Panache Exports Private Limited (“**Corporate Debtor**”) into the Corporate Insolvency Resolution Process (“**CIRP**”). Thereafter, Liquidation was initiated against the Corporate Debtor vide order dated 23.09.2022 (“**Liquidation Order**”), and Mr. Ajit Gyanchand Jain (“**Respondent No. 2**”) was appointed as the Liquidator of the Corporate Debtor.
- 3. It is submitted that the Respondent No. 1 (Multistoried IT & Gems Commercial Premises Cooperative Society Limited) as an unsecured operational creditor has already lodged its claim amounting to Rs. 70,60,252/- with the Respondent No. 2 on 14.03.2023.
- 4. It is submitted that the Respondent No. 2 (Liquidator) published an Auction Notice for the sale of under mentioned asset of the Corporate Debtor on 05.06.2023, inviting bids for E-Auction to be conducted on 05.07.2023.

5. The Applicant expressed its interest in participating in the e-auction of the Corporate Debtor for bid for Asset given in "Option A1" being Unit No. 3, Ground Floor, Multi-storied Building SEEPZ, Marol Industrial Area, Andheri (East), Mumbai – 400096, vide Application Form dated 16.06.2023.
6. The e-auction of above said Property was conducted on 05.07.2023 on the e-auction portal and the Applicant emerged as the Successful Auction Purchaser at the price of Rs. 5,31,00,000/-.
7. The Applicant had deposited pre-requisite EMD of Rs. 53,10,000/- with the Respondent No. 2 through NEFT on 30.06.2023. Subsequently, the Applicant had paid the remaining amount of Rs. 4,77,90,000/- on 19.07.2023, being the entire bid and sale consideration.
8. It is further submitted that the claim for a sum of Rs. 70,60,252/- was submitted by the Respondent No. 1 with the Respondent No. 2, and the same was reflected in the List of Stakeholders as on 26.07.2023, as unsecured operational creditor. Therefore, the Respondent No. 1 held 1.17% share in the total amount of admitted claims and thus was also a part of the Committee of Stakeholders Consultation Committee ("SCC").
9. It is submitted that the Respondent No. 2 issued Certificate of Sale dated 16.08.2023 in respect of the above said property, which was conducted via "Sale of Assets on Parcel basis" as per Section 35(1)(f) of the Insolvency and Bankruptcy Code, 2016 r/w. Regulation 32(d) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, which was sold on "as is where is basis", "as is what is basis", "whatever there is basis" and "no recourse basis" along with available licenses, permits, approvals and recourse basis" along with available licenses, permits, approvals and registrations to the extent they are transferable under the applicable law.
10. It is submitted that pursuant to the Certificate of Sale dated 16.08.2023, the Applicant purchased an allotment of unit, being a

registered under Sub-Lease dated 03.12.2010, from sub-lessor President of India, through the Development Commissioner, SEEPZ Special Economic Zone for a period of 95 years having possession with effect from date 17.01.2008. Thus, vide the Sale Certificate, all the right, title, interest, privileges, liberties, easements, leases, obligations, claim and demand of the Corporate Debtor over the said Property has been absolutely and forever been transferred, assigned and conveyed unto the Applicant by the Respondent No.2 for the remaining period of Lease. Thereafter, the Respondent No. 2 vide letter dated 02.11.2023, intimated to the Respondent No. 1 of acquisition of said Property by the Applicant.

11. It is submitted that the Corporate Debtor was dissolved by virtue of order dated 04.03.2025 (“**Dissolution Order**”), passed by this Tribunal. The Respondent No. 1 had already filed its claim before the Liquidator, and the entire claim was duly admitted. The claim was thereafter dealt with and settled by the Liquidator in accordance with Section 53 of the Code, following which the Corporate Debtor was dissolved. In these circumstances, Respondent No. 1 cannot seek recovery from the Applicant of any dues arising prior to the Acquisition Date. Having participated in the liquidation process and obtained settlement of its claim under the Code, Respondent No. 1 cannot simultaneously pursue separate proceedings for recovery of the same amount. Further, Respondent No. 1 was a member of the Stakeholders' Consultation Committee (SCC) holding a 1.17% share of the total admitted claims and was therefore aware of the distribution carried out by the Liquidator among all stakeholders in accordance with Section 53 of the Code. Accordingly, the Applicant seeks appropriate directions from this Tribunal.

Reply by Respondent No. 1

12. It is submitted that the Respondent No. 1 is governed by the Maharashtra Co-operative Societies Act, 1960 (MCS Act), Maharashtra Co-operative Societies Rules, 1961, The Special Economic Zones Act,

2005 (SEZ Act) and Special Economic Zone Rules, 2006 (SEZ Rules). The society issues monthly maintenance bill to every unit holder and the unit holder has to pay the said amount, which in turn is to be paid to the SEZ Authorities.

13. It is submitted that the Corporate Debtor as a Unit holder since 2016, paid regular maintenance till September, 2018. However, there is a default towards the said property for a sum of Rs. 70,60,252/- for the period from October, 2018 till September, 2022 with interest @ 18% p.a. is on the records of the SEZ Authorities and there was a delay in filing of claim by the Respondent No. 1, which was filed on 16.06.2023 in Form C for a sum of Rs. 70,60,252/- and the same was admitted by the Respondent No. 2.
14. The Respondent No. 1 society has issued Demand Letter dated 16.01.2024 addressed in the name of the Corporate Debtor, demanding payment of outstanding dues totaling to Rs. 1,02,33,813/- in respect of the said Property. The Applicant paid amount of Rs. 5,56,765/- on 03.02.2024, towards the charges after date of liquidation on 23.09.2022, for period from 01.10.2023 to 31.03.2024 and submitted that once Certificate of Sale is issued, then he is not liable to pay the dues prior to Liquidation Date
15. It is contended that as per Section 47 of the MCS Act, by which the Respondent No. 1 is governed, the outstanding dues of the society are required to be paid in priority and the statute does not exempt Auction Purchaser. In this regard reliance has been placed on the judgment of Hon'ble Bombay High Court in WP No. 8631 of 2025 in *Tanvi's Diamonda Cooperative Housing Society Ltd. Vs. State of Maharashtra & Ors.*
16. It is stated that after adjusting the amount received from the Applicant, there is outstanding amount of Rs. 1,18,96,416/-, which the Applicant is liable to pay.

17. It is contended that the Respondent No. 1 lodged their claim with the Respondent No. 2 on 16.06.2023 and the property was sold to the Applicant thereafter. Hence, the Applicant was aware about the outstanding dues of this Respondent and the present IA is liable to be dismissed.

Analysis and Findings

18. We have heard the Ld. Counsel for the parties and perused the documents available on record and appreciated the legal position. It is relevant to take note of the order passed by this Tribunal on 24.02.2026, wherein it observed as under:

“This IA has been filed by Indojewel Jewellery Private Limited against two Respondents. Respondent No.2 is a Liquidator. Counsel for the Liquidator submits that the liquidation process is complete and Corporate Debtor has even been dissolved and accordingly seeks discharge from the present proceedings. Ld. Counsel for the Applicant submits that he has no objection in this regard. Accordingly, Respondent No.2 is discharged.”

19. It is the case of the Applicant that all dues and charges arising after the Date of Liquidation, i.e., 23.09.2022, have been duly paid. The Applicant further submits that pursuant to the Certificate of Sale dated 16.08.2023, the assets were sold on a parcel basis, "as is where is", "as is what is", "whatever there is", and "no recourse" basis. Accordingly, the Applicant cannot be held liable for the outstanding amount of Rs. 96,77,048/- pertaining to the period prior to the Date of Liquidation. The Applicant further contends that, since Respondent No. 1 had already filed its claim, which was duly admitted and settled through the liquidation process in accordance with Section 53 of the Code, Respondent No. 1 is precluded from initiating separate proceedings to recover the same dues from the Applicant.

20. On the other hand, the Respondent No. 1 contends that it has submitted its claim with the Respondent No. 2 on 16.06.2023 and the

property was sold to the Applicant thereafter. Hence, the Applicant was well aware about the outstanding dues of this Respondent and the same are required to be paid in priority as per Section 47 of the MCS Act. Further, it is stated that the Applicant cannot be included in the membership register unless such dues are paid.

21. Based on the rival contentions raised by the parties, the sole issue that arise for our consideration in the present case is:

“Whether the Applicant as a successful auction purchaser of an asset of the Corporate Debtor is liable to pay the outstanding dues claimed by the society, which pertain to the period prior to the Liquidation Order or not ?”.

22. In this context it is important to note that, Respondent No. 1 is a society registered under the Maharashtra Co-operative Societies Act, 1960. Under Section 47 of the said Act, in the event of any outstanding demands or dues, the society has the first charge upon such asset/property. The relevant extract of the said Section is as follows:

“47. Prior claim of society.—

(1) Notwithstanding anything in any other law for the time being in force, but subject to any prior claim of Government in respect of land revenue or any money recoverable as land revenue and to the provisions of sections 60 and 61 of the Code of Civil Procedure, 1908 (V of 1908), —

(a) any debt or outstanding demand, owing to a society by any member or past member or deceased member, shall be a first charge,

...

(b) any outstanding demands or dues payable to a society by any member or past member or deceased member, in respect of rent, shares, loans or purchase money or any other rights or amounts payable to such

society, shall be a first charge upon his interest in the immovable property of the society.

...

(2) No property or interest in property, which is subject to a charge under the foregoing sub-section, shall be transferred in any manner without the previous permission of the society; and such transfer shall be subject to such conditions, if any, as the society may impose.

(3) Any transfer made in contravention of sub-section (2) shall be void.

...”

Bare reading of the above provisions that under the MCS Act, any outstanding demands/dues payable in respect of the property, creates a statutory first charge on the property itself and any transfer made in contravention to the prior liabilities shall be subject to the conditions imposed by the society.

23. The significant portion of maintenance charges collected by the Society are payable to the SEZ Authorities. Therefore, the dues claimed by Respondent No.1 are not merely personal claims against the Corporate Debtor but are liabilities attached to the property and protected by a statutory first charge under Section 47 of the MCS Act. Further, any default in payment of amounts payable to the SEZ Authorities is recoverable as arrears of land revenue in accordance with the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Section 7 of the said Act empowers the Estate Officer to assess and determine the arrears payable, while Section 14 provides the mechanism for recovery of such arrears, including recovery as arrears of land revenue.

24. In this regard, it is important to take note of the judgment of Hon’ble High Court of Calcutta in ***Cotton Casuals India Pvt. Ltd. & Ors. Vs. State of West Bengal & Ors. WPO 1235 of 2024***, wherein it has held that

*“40. Where a **statutory first charge** is created on the property, such as in respect of property tax under Section 232 of the Kolkata Municipal Corporation Act, 1980, the municipal authority is **entitled to enforce such charge independently** in accordance with the statutory mechanism provided therein. In such a situation, there is no inconsistency between the provisions of the IBC and the KMC Act, and, therefore, the overriding effect of Section 238 of the IBC is not attracted.*

*41. Where a statutory charge is created on the property, as in the case of property tax under the KMC Act, the Respondent corporation **may either submit its claim before the Official Liquidator under the IBC or enforce the charge independently through the statutory mechanism.** In such cases, there is no inconsistency between the IBC and the KMC Act, and Section 238 of the IBC is not attracted.”*

[Emphasis Supplied]

In the aforesaid judgment, the Hon’ble High Court considered the interplay between the provisions of the IBC and a statutory first charge created under Section 232 of the KMC Act, 1980. The Court held that where a statute creates a first charge on the property itself, the authority in whose favour such charge exists is not confined only to the remedy of lodging its claim before the Liquidator under the IBC. Such authority may either submit its claim in the liquidation process or independently enforce the statutory charge in accordance with the mechanism provided under the concerned statute. The rationale is that a statutory charge attached to the property constitutes an encumbrance running with the property and is distinct from a mere personal claim against the Corporate Debtor, and that there is no inconsistency between the enforcement of such statutory charge and the provisions of the IBC, and therefore the overriding effect of Section 238 of the Code is not attracted.

25. Applying the aforesaid principle to the facts of the present case, Section 47 of the MCS Act, 1960 creates a statutory first charge in favour of the Society in respect of its outstanding dues. Once such a charge comes into existence, the Society is entitled to enforce the same against the property, notwithstanding that it had also lodged its claim before the Liquidator. Accordingly, the mere fact that Respondent No. 1 participated in the liquidation process does not result in extinguishment of the statutory charge created under Section 47 of the MCS Act, nor does it preclude the Society from seeking enforcement of the charge against the property.

26. Further, it would be relevant to take note of the Auction notice dated 05.06.2023 and Certificate of Sale dated 16.08.2023. Given below is the relevant extract of the said documents:

Auction Notice dated 05.06.2023:

E -AUCTION - SALE OF ASSETS UNDER IBC, 2016					
Date and Time of Auction: 5 th July, 2023 (Wednesday) at 10:00 A.M. to 03:00 P.M. (with unlimited extension of 5 minutes each)					
E-Auction Sale of Assets by PANACHE EXPORTS PRIVATE LIMITED (In Liquidation) forming part of Liquidation Estate under section 35(f) of IBC 2016 read with Regulation 33 of Liquidation Process Regulations. E-Auction will be conducted on “ AS IS WHERE IS, AS IS WHAT IS, WHATEVER THERE IS AND NO RECOURSE BASIS ”. The Sale will be done by undersigned through e-auction service provider via National E- Governance Services Limited website https://www.nesl.co.in .					
(Amount in INR)					
Options.	Asset	Sq feet	Reserve Price	EMD Amount	Incremental Bid Amount
A.	Sale of Assets in parcels Date and Time of Auction: 5 th July 2023 at 10:00 A.M. to 12:00 P.M				
A1.	Unit No. 3, Ground floor, “Multi-storied Building” SEEPZ, Marol Industrial Area, Andheri (East), Mumbai – 400096	8,285.00	5,31,00,000	53,10,000	10,00,000

Certificate of Sale dated 16.08.2023:

*“i. “SAID PROPERTY” is sold and is further transferred, assigned and conveyed as “**AS IS WHERE IS BASIS**”, “AS IS WHAT IS BASIS”, “WHATEVER THERE IS BASIS” and “NO RECOURSE BASIS”.*

ii. “SAID PROPERTY” is otherwise free from any charges, mortgages, encumbrances, liability, litigation, lis pendens, claims, adverse claims etc.

iii. All costs of stamp duty, registration fees, additional stamp duty, fees, cess, charges, including all other racially and incidental charges, expenses and cost of transfer, assignment and conveyance of SAID PROPERTY shall be paid, remitted and borne by Purchaser over and above the consideration amount including but only limited to any Municipal Taxes, Dues, GST, TDS as may be applicable at present or way come into existence later on or any present period, presiding period or future in respect of SAID PROPERTY.

*iv. The Purchaser shall hence forth comply with all the obligation, covenants, discharges, rules and regulations **as are in existence** and/or as may be framed and directed by SEEPZ and also as guaranteed by the “Company in Liquidation in the said Registered Sub-Lease Deed”.*

27. That on perusal of the aforesaid auction notice, it is evident that the E-Auction was proposed to be conducted on “AS IS WHERE IS, AS IS WHAT IS, WHATEVER THERE IS and NO RECOURSE BASIS”. The Applicant was expected to conduct due diligence before submitting its bid and cannot subsequently claim ignorance of liabilities associated with the property.

28. In the aforesaid circumstances it is relevant to take note of the judgment of the Hon’ble Supreme Court in **K.C. Ninan Vs. Kerala State Electricity Board & Ors. (2023) 14 SCC 431**, wherein the Apex Court has observed as under:

*“146. To conclude, all prospective auction purchasers are put on notice of the liability to pay the pending dues when an appropriate “as is where is” clause is incorporated in the auction sale agreement. **It is for the intending auction purchaser to satisfy themselves in all respects about circumstances such as title, encumbrances and pending statutory dues***

in respect of the property they propose to purchase. In a public auction sale, auction purchasers have the opportunity to inspect the premises and ascertain the facilities available, including whether electricity is supplied to the premises. Information about the disconnection of power is easily discoverable with due diligence, which puts a prudent auction purchaser on a reasonable enquiry about the reasons for the disconnection. When electricity supply to a premises has been disconnected, it would be implausible for the purchaser to assert that they were oblivious of the existence of outstanding electricity dues.”

In the aforesaid judgment Hon’ble Supreme Court has observed that where a property is sold on an "as is where is" basis, the intending auction purchaser is under an obligation to conduct due diligence by inspecting the property and ascertaining all encumbrances, statutory dues and other liabilities attached to it.

29. It is also relevant to take note of the judgment of the Hon’ble High Court of Calcutta in **Cotton Casuals India Pvt. Ltd. & Ors (Supra)**, has also taken similar view:

*“51. In view of the law laid down by the Hon’ble Supreme Court in the aforementioned cases, it is well-settled that a sale conducted on an **“AS IS WHERE IS”** basis entails that the purchaser acquires the asset along with all existing rights, liabilities, and obligations. **When property is sold on such a basis, any encumbrances or charges attaching to the property stand transferred to the purchaser at the time of sale.***

*55. In view of the detailed discussion herein above, this Court is of the considered view that the Petitioner, **being the auction purchaser of the premises in question, is liable to pay the outstanding property tax dues.** The Official Liquidator*

*through Sale Notice and EOI has made it very evident and clear that all the bidders are supposed to make their respective bids based on their own investigation and due diligence. As discussed herein above, the Hon'ble Supreme Court in Union of India (supra) and K.C Ninan (supra), **when assets are sold on 'as is where is basis', the purchaser acquires them with full knowledge that they are being sold without any warranties, representations, or indemnities, and that the purchaser alone bears the responsibility of verifying the condition, liabilities, and encumbrances attached to the assets.** Further Section 232 of the KMC Act makes the property tax dues as first charge on the property and hence make it an encumbrance attached to the property. Hence, the Petitioner is liable to make the payment towards the outstanding property tax dues for the pre- liquidation period also"*

[Emphasis Supplied]

The plain reading of the above judgment of Hon'ble Calcutta High Court transpires that when assets are sold during the liquidation on "as is where is" basis, the purchaser acquires the property along with existing liabilities and charges/encumbrances.

30. Moreover, the Respondent No. 2 issued Letter of Intent dated 07.07.2023 in favour of the Applicant as Successful Auction Purchaser. The relevant extract thereof is reproduced below:

*"The successful bidder/ Purchaser will also be responsible for evaluating completeness of applicability of taxes in India at the time of closure and will be responsible for paying all such taxes. **It is expressly stated that the Liquidator does not take or assume any responsibility for any dues, statutory or otherwise of the Company, including such dues, if any, which may affect transfer of the Liquidation assets in the name of the Successful Bidder and such dues, if any, will have to be borne/paid by the Successful Bidder.**"*

On perusal of the Letter of Intent dated 07.07.2023, the list of stakeholders dated 26.07.2023, and the Sale Certificate dated 16.08.2023, it is evident that the said property was sold on an “as is where is” basis. Since, the outstanding dues and liabilities attached to the property were reflected in the List of Stakeholder, hence, the Applicant was required to undertake its own due diligence prior to the purchase.

31. The Applicant further submitted that the entire claim of Respondent No. 1 has already been dealt with by the Liquidator in accordance with Section 53 of the Code. It was contended that Respondent No. 1 cannot seek recovery from the Applicant of any dues that arose prior to the Acquisition Date i.e. 23.09.2022. The Applicant argued that the demand raised by Respondent No. 1 is contrary to Section 53 of the Code and relied upon various judicial precedents to submit that, where the Corporate Debtor is sold as a “going concern”, the successful auction purchaser cannot be saddled with any dues, liabilities, or claims relating to the period prior to such sale.

32. In this regard it is relevant to take note of the judgment of the Hon’ble High Court of Calcutta in **Cotton Casuals India Pvt. Ltd. & Ors. (Supra)**, wherein it held that:

*“39. On the other hand, the IBC envisages that liquidation proceedings are to be carried out in accordance with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, which prescribe the procedure for submission of claims to the Liquidator, verification thereof, and distribution of the liquidation estate amongst the creditors. In such proceedings, creditors are ordinarily required to lodge their claims before the Liquidator, who, after collating and verifying the same, distributes the proceeds of the liquidation estate in the order of priority laid down **under Section 53** of the IBC. For this purpose, the Liquidator sells the assets of the Corporate Debtor and records the liabilities to the best of his knowledge. **However,***

since liquidation is not an exercise of revival but of realisation and distribution, it is possible that certain liabilities may not be fully known or disclosed at the time of sale. Consequently, assets are sold on an “as is where is, whatever there is” basis, meaning that the purchaser acquires the property along with such liabilities or encumbrances as may be attached to it, save and except where the terms of sale provide otherwise.

33. The Court drew a distinction between liquidation and resolution and observed that liquidation is a process of realization and distribution of assets. It further held that where assets are sold on an “as is where is” and “whatever there is” basis, the purchaser acquires the property along with the liabilities attached to it.

34. The Applicant further argued that he is not liable to pay the dues relating to the Corporate Debtor. Therefore, it is necessary to take note of Section 32A (2) of the Code, which deals with liability of a Corporate Debtor. Given below is the relevant extract of the said provision:

“32A. Liability for prior offences, etc

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not –

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of

the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Explanation.-For the purposes of this sub-section, it is hereby clarified that,-

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable”

[Emphasis Supplied]

A bare reading of the aforesaid provision makes it clear that no action can be taken against the property of the Corporate Debtor in relation to an “offence” committed prior to the commencement of the CIRP. Therefore, the immunity granted under this provision is limited to liability arising from such prior “offences” and does not extend to outstanding charges or dues, as involved in the present case.

35. The Applicant has relied on the following judgments to contend that the Successful Auction Purchaser is not liable to pay any dues arising prior to the Liquidation Date. These judgments are considered below:

- i. In the case of *Eastern Power Distribution Co. of A.P. Ltd. v. Maithan Alloys Ltd.*, (2023) 21 Comp Cas-OL 674 and *Chinar Steel Segments Centre (P) Ltd. v. Samir Kumar Agarwal*, 2023 SCC OnLine NCLAT 2593, the issue before the Hon’ble NCLAT was with regards to the recovery of electricity dues from the Successful Auction Purchaser who had purchased the Corporate Debtor ‘on a going

concern basis'. However, in the present case, the Respondent No. 1 has a statutory first charge over the said property for the unpaid statutory dues and 'asset' of the Corporate Debtor was sold on 'as is where is' basis after which dissolution order has been passed.

- ii. In the case of *State of Gujrat v. OL of kengold (India) Ltd.* reported in 2008 SCC OnLine Guj 309, the Hon'ble High Court of Gujarat, while dealing with sales tax dues and taking into consideration provisions contained in the Bombay Land Revenue Code, Companies Act, 1956 and Income Tax Act, 1961, held that dues of the secured creditors shall have precedence over the dues to the Government. In the present case, as noted above the Society had statutory first charge over the asset/said property.
- iii. In the case of *Melkar TTI Biofuels Limited v. Gulshan Kumar Gupta & Others* in ILA. 1040 OF 2023 in C.P.(IB) No. 977/MB/2019, the Corporate Debtor was sold as a going concern and issue for consideration before NCLT Mumbai, Bench -I, was with regards to the electricity and the sales tax dues, wherein, it was specified that the issue relating to the statutory lien was not before consideration. However, in the present case, the statutory first charge over the asset is duly considered.
- iv. Further, reliance is place on the judgment of NCLT Mumbai, Bench-II in *JSK Estate Private Limited v. Mr. Sundaresh Bhat, Liquidator of EMCO & Anr.* in Interlocutory Application No. 5330 of 2023, to contend that the successful bidder is at liberty to seek certain reliefs on the principle of clean slate. However, in the present case the 'asset' of the Corporate Debtor was sold on 'as is where is' basis and subsequently, the Corporate

Debtor was liquidated. Therefore, the Successful bidder of liquidation assets cannot be placed on a same footing as that the Resolution Applicant.

- v. Further, the Hon'ble High Court of Calcutta in *Rashidhan Sales (P) Ltd. v. Damodar Valley Corpn. & Ors.*, in WPA No. 12683 of 2022, specifically noted that the electricity dues do not pass with the property as a charge thereon and the principle of caveat emptor cannot be applied in the case of the auction purchaser in an asset sale because it is not possible for an auction purchaser to have a prior idea of any existing liability which, in any event, was not there. Whereas, in the present case, the first charge attached to the property has passed on the Applicant as a Successful Auction Purchaser of an asset on 'as is where is' basis.

36. In view of the above discussion and legal position, the R-1 Society has a statutory first charge over the property in question and the property was sold on "as is where is basis" meaning that, all the liabilities are to be borne by Auction Purchaser and the Applicant was well aware of the claim of R-1 society and Applicant never raised any objection before the Liquidator. Now, the Applicant cannot be allowed to take plea that he is not liable to pay the statutory dues of R-1 society. Therefore, we answer the question framed at para 21 in affirmative.

37. The present I.A. has no merit whatsoever and is liable to be dismissed. Hence, the same is **dismissed** and **disposed of** accordingly.

Sd/-

Ashish Kalia
Member (Judicial)

OmkarD.

Sd/-

Charanjeet Singh Gulati
Member (Technical)