IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH–I, CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **25.08.2026** THROUGH VIDEO CONFERENCING

CORAM: **HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)**
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF **:** Larsen & Toubro Ltd.
Vs
Hallmark Living Space Pvt. Ltd.

MAIN PETITION NUMBER **:** CP/577/IB/2017

(IA/MA) APPLICATION NUMBERS

IA(IBC)/1895(CHE)2025, IA(IBC)/805(CHE)/2026

COMMON ORDER

IA(IBC)/1895(CHE)2025

Present: Shri. S. Sathish, Ld. Counsel for the Applicant/Liquidator.
None for the CGST.

Vide separate order pronounced in the Open Court, application is dismissed.

IA(IBC)/805(CHE)/2026

Present: Shri. S. Sathish, Ld. Counsel for the Applicant/Liquidator.
Shri. Siddharth, Ld. Counsel for the Respondent.

Vide separate pronounced in the Open Court, application is dismissed as no further action is called for.

Sd/-	**Sd/-**
[VENKATARAMAN SUBRAMANIAM]	**[SANJIV JAIN]**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

VS

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI

IA(IBC)/1895(CHE)/2025
IN
CP/577/IB/2017

(filed under Section 60(5) R/w Section 35(1)(n) of Insolvency & Bankruptcy Code, 2016 & Rule 11 of NCLT Rules. 2016)

In the matter of ***Hallmark Living Space Private Limited***

S. Dhanapal,
Liquidator of Hallmark Living Space Private Limited
Suite No. 103, First Floor, Kaveri Complex,
96/104, Nungambakkam High Road,
Nungambakkam, Chennai – 600 034

... Applicant / Liquidator

Vs

Joint Commissioner,
Office of the Deputy Commissioner of GST and Central Excise,
Range – II, Thyagaraya Nagar Division,
Chennai South Commissionerate,
No. 692, MHU Complex, Nandanam,
Chennai – 600 035.

... Respondent

Present:

For Applicant : *Karthik Seshadri, Advocate*
S. Satish, Advocate

For Respondent : *Sai Srujan Tayi, Advocate*
Pooja Jain, Advocate

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 25th August, 2026

ORDER

(Heard through Hybrid Mode)

1. This application IA(IBC)/1895(CHE)/2025 has been filed by the Liquidator of the Corporate Debtor under Section 60(5) r/w Section 3(1)(h) of IBC, 2016 & Rule 11 of NCLT Rules, 2016 seeking the following reliefs: -

   i. *To direct the Respondent to refund the sanctioned Transition Credit available in Electronic Credit ledger of Rs.3,03,88,828/- along with interest of 18% per annum till the date of refund and remit the refund to the liquidation Current Account of the Corporate Debtor namely M/s. Hallmark Living Space Private Limited (in Liquidation).*

   ii. *To provide any other relief which may be found suitable to facilitate the Applicant to discharge his functions effectively and such further orders be passed or directions be given as your Lordships may deem fit and proper.*

2. Briefly the facts are that during the CIRP of the Corporate Debtor, the RP noticed an amount of Rs. 5,60,27,287/- appearing under the asset side of the balance sheet for FY 2016-17 as Service Tax Input Credit. He made mail correspondences with the erstwhile Promoters for furnishing

the documents towards the Service Tax Input Credit, filing of Form GST – TRAN 1 relating to transition credit from Service Tax to GST. He however received few documents and information. Consequent to passing of the liquidation order on 17.08.2018, the Liquidator sent an intimation letter dated 27.08.2018 to the Principal Commissioner GST and Central Excise Office and Principal Secretary / Commissioner of Commercial Tax and filed TRAN – 1 application on 30.11.2022. He received a notice whereby Superintendent GST and Central Excise asked him to appear for hearing on 20.02.2023 and 21.02.2023 and submit supporting documents in connection with TRAN – 1 application. Subsequently, he received TRAN – 1 order dated 27.02.2023 regarding sanction of refund amount of Rs. 3,03,88,828/- out of the claimed amount of Rs. 5,44,68,179/- having been credited to the Electronic Credit Ledger in terms of the provisions of Section 140 of the CGST Act, 2017. The Applicant wrote numerous letters to the GST and Central Excise requesting for refund of the sanctioned transition credit lying in the electronic ledger but the GST Department rejected the request. It is alleged that the rejection is in violation of principal of promissory estoppel.

3. It is stated that in response to his letter dated 15.03.2023 and 18.04.2023, he received a letter dated 27.04.2023 from the GST where GST stated that his request to refund the sanctioned Transition Credit cannot be granted. He sent another communication dated 10.05.2023 but the GST maintained the same stand that the Corporate Debtor is not entitled to get refund.

4. It is stated that the office while letter dated 31.05.2023 stated bluntly "*their hands are tied*". Although, he cited the legal provisions referring Section 238 of IBC interalia that if the Company is in liquidation, the GST Department is not legally permitted to hold the refund by virtue of non-obstante clause contained in Section 238 of IBC which overrides the CGST Act, 2017 including the provisions quoted in the letter dated 31.05.2023 and requested for refund followed by reminder dated 05.03.2024 stating that the same can no longer be adjusted in the future transactions as the Corporate Debtor is under liquidation and the assets of the Corporate Debtor are to be sold through e-auction for better realization. It is stated that the Respondent / GST Department ignored the order passed by Hon'ble Supreme Court in *Union of India Vs. Slovak India Trading Co. Ovt. Ltd., CC/476/2007 dated 25.01.2007*, quoting that the

case pertains to legacy regime and restricted to that assessee who goes out of Modvat scheme or when the Company is closed. It is stated that GST Department cannot withhold the transition credit and it is to be refunded to the Corporate Debtor.

5. It is stated that the Liquidator has been performing his duties in line with provision of Section 35 of IBC. The transition credit amount forms part of the liquidation estate of the Corporate Debtor. In terms of Section 36(3)(b) of IBC, the assets which the Corporate Debtor is entitled to, constitute part of the liquidation estate and hence the said amount does not belong to the GST Department which is to be distributed in terms of Section 53 of IBC.

6. <u>The Respondent / GST and Central Excise filed the reply</u> stating that on the order of Hon'ble Supreme Court in the case of *Union of India Vs. Filco Trade Centre Pvt. Ltd., SLP(C) Nos. 32709-32710 /2018,* the Central Board of Indirect Taxes and Customs (CBIC), GST Policy Wing issued a circular dated 09.09.2022 enabling the taxpayers to belatedly file or revise TRAN-1/TRAN-2 forms during the period from 01.10.2022 to 30.11.2022 due to transitional difficulties during the advent of GST.

Taking this opportunity, the Corporate Debtor in liquidation though not in a position to utilize TRAN 1 Credit, filed a TRAN – 1 application dated 30.11.2022 claiming transitional credit of Rs. 5,44,68,179/- pertaining to the closing balance of the last filed ST-3 return for June 2017 under Sections 140(1), 140(4)(a) and 140(9) of the CGST Act, 2017. After verification, Superintendent, Range – II passed the order dated 27.02.2023 whereby an amount of Rs. 3,03,88,828/- was credited into the Electronic Credit Ledger of the Corporate Debtor on 01.03.2023 which was eligible to be transferred from CENVAT from the Central Excise / Service Tax Registration. It is stated that this was not a refund order but merely a transfer of earlier CENVAT credit into the Electronic Ledger in the GST regime for use towards future liabilities if any which is wrongly projected by the Liquidator as a refund granted by the Superintendent. It is stated that the case referred by the Applicant does not pertain to GST regime. It was regarding refund of CENVAT credit.

7. It is stated that as per Section 142 of the CGST Act, 2017, once duty / tax paid under the existing law shall be carried forward under the CGST Act, no refund shall be allowed of any amount of CENVAT credit. The statutory provisions do not permit sanction of refund except in

accordance with Section 54 of CGST Act, 2017. It is stated that the Liquidator has already been conveyed that the refund of the transactional credit is not permissible under the provisions of the CGST Act except in accordance with Section 54 thereof. It is stated that the funds of unutilized ITC are allowed under Section 54(3) of the CGST Rule r/w Rule 89 of the CGST Rules, 2017 but only in specific cases like zero-rated supplies (exports or supplies to SEZs), inverted duty structure or deemed exports. As per CBIC circular dated 18.11.2019, TRAN – 1 credit does not qualify as "Net ITC" for refund calculations in cases of zero-rated supplies without payment of integrated tax as it originates from pre-GST duties / taxes. It remains in the ledger for future set off, otherwise it lapses if unused. There is no provision for cash refund of the remaining / unutilized TRAN – 1 credit.

8. It is stated that this Tribunal lacks jurisdiction under IBC to order refund of tax credits such as transition credit from the electronic credit ledger as GST refund matter falls under the exclusive domain of GST Authorities under the GST laws. It is stated that the case *SICPA India Pvt. Ltd. Vs. Union of India supra* quoted by the Applicant has been set aside in appeal in W.A. No. 02 of 2025 where it was held that refund is subject to Section

54(3) of the Act. An appeal is pending before Hon'ble Supreme Court in SLP (C) No. 035395 of 2025.

9. We have heard Ld. Counsel appearing for the parties and perused the written synopsis.

10. Ld. Counsel for the Applicant reiterated what has been stated in the application. Ld. Counsel stated that a sum of Rs. 3,03,88,828/- was sanctioned by the Superintendent, CGST vide order dated 27.02.2023. Later, the GST Department vide letter dated 31.05.2023 stated that "*Department understands the compulsion faced by Liquidator to explore the possibility of monetizing the input tax refund amount of Rs. 3,03,88,828/- but the extant laws do not allow the Department to sanction any refund by ignoring the provisions of Section 54 of the CGST Act, 2017.*" Ld. Counsel submits that while Section 54 does provide for refund in two situations viz., Zero Rated Supplies and Inverted Rate Structure but it does not address a situation as to what will happen to the sanctioned amount if the company is in liquidation as in the present case, only the assets are sold and not the business unlike in CIRP. The GST Department cannot unjustly enrich itself by stating that there is no specific provision under

the GST Act. There is an overriding provision under Section 238 of IBC whereby Tribunal can exercise the jurisdiction giving directions to GST to release the payment in the liquidation account for distribution to the Creditors.

11. As regards contention that the Applicant should approach the Appellate Authority under GST laws to seek refund, Ld. Counsel submits that Section 60(5) of IBC vests the Tribunal the power and jurisdiction when it comes to applications and proceedings by or against a Corporate Debtor covered by the Code. The residuary jurisdiction under the provision is wide enough to adjudicate question of law or fact arising from or in relation to the insolvency resolution proceedings. The Applicant is not challenging the quantum but only seeking refund already sanctioned.

12. Ld. Counsel for the Respondent per contra argued on the lines of the reply stating that prayer for cash refund is barred by second proviso to Section 142(3) of CGST Act which provides that once credit under the existing law (Service Tax) has been carried forward and sanctioned as transitional credit under the GST regime, no refund shall be allowed of

any such CENVAT credit in cash as per Section 142. As per Section 142(4), every claim filed after the appointed date for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law: provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse: provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act. Section 49(6) states that ECL balance can be refunded in accordance with Section 54 which permits refund of ITC only in two circumstances. In this case, refund is sought for CENVAT credit balance that was transitioned and carried forward under CGST Act. The refund is barred under Section 143 of CGST Act. The Corporate Debtor claim does not fall in either of the above categories. CGST Act does not permit cash refunds of unutilized credit at liquidation. Hon'ble Supreme Court in the case of *Union of India Vs. VKC Footsteps (India) Pvt. Ltd., (2022) 2 SCC 603* has held that Section 54(3) is restrictive and refund of unutilized ITC is permissible only in the two specified situations. The Applicant's reliance on the judgment of *SICPA India Pvt. Ltd. supra in WP (C) No. 035395 of 2025* is misplaced. Further, SLP is pending before Hon'ble Supreme Court. Ld. Counsel submits that ECL does not represent money deposited with the Government. It represents a statutory credit which can be utilized only in the manner prescribed under the CGST Act. Thus the amount lying in ECL cannot form part of the liquidation estate as a realizable cash asset. Further, refund under a taxing statute is not a matter of equity of statutory entitlement. Since the CGST Act does not provide for cash refund of the credit lying in the ECL on account of liquidation, the Applicant cannot claim such relief by invoking equitable consideration or the provisions of IBC. Ld. Counsel submits that GST is a special enactment which came into force after IBC, 2016 was enacted. Special provisions of a later special law prevails over the general non-obstante clause of an earlier general law. The character of ECL amount is determined by the CGST Act. Under the CGST Act, credit is not a liquid asset, cash deposit or debt due from the Government. Eligibility for a tax refund falls within the exclusive domain of CGST Act. Hon'ble Madras High Court in W.P. No. 22505 of 2022 vide order dated 24.02.2026 has held that the NCLT while exercising IBC powers, cannot assume the role of a tax authority under specific tax statutes. Ld. Counsel submits that refund rejection order dated 27.04.2023 has become final under CGST Act as no appeal was filed within the time period.

13. We have given our thoughtful consideration to the rival contentions and perused the documents and gone through the case laws.

14. Consequent to Hon'ble Supreme Court order dated 22.07.2022 in *SLP (C) No. 32709-32710 / 2018 in the matter of Union of India Vs. Filco Trade Centre Pvt. Ltd,* CBIC, GST Policy Wing issued a circular No. 180/12/2022-GST dated 09.09.2022 to enable the tax payers to file new Tran - 1 / Tran -2 from 01.10.2022 to 30.11.2022. The Liquidator of the Corporate Debtor filed TRAN – 1 application dated 30.11.2022 claiming Rs. 5,44,68,179/- pertaining to closing balance of last filed ST – 3 returns of June 2017 under Section 140 of CGST Act, 2017. Section 140 of CGST Act, 2017 reads as under:

> *140(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit [of eligible duties] carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law [within such time and] in such manner as may be prescribed.*

15. The Superintendent of GST & Central Excise, Range – II, Chennai South, Commissionerate vide order dated 27.02.2023, after verification from ACES portal / copies of ST3 returns submitted by the assessee for the said period found that the assessee is eligible as credit in TRAN – 1 for an amount of Rs. 3,03,88,828/-. He accordingly sanctioned the amount out of the amount claimed in TRAN – 1 to the Corporate Debtor in liquidation to be credited to the Electronic Credit Ledger in terms of the provisions of Section 140 of the CGST Act, 2017. No appeal was preferred against the said order and it has become absolute. The Liquidator accordingly sought transfer / refund of the transitional credit available in the Electronic Credit Ledger. It was responded by the Joint Commissioner that the refund of ITC available in credit ledger can be sanctioned under the provisions of Section 54(3) of the CGST Act, 2017 r/w Rule 189 of the CGST Rules, 2017. Section 54(3) provides that a registered person may claim refund of any unutilized input tax credit at the end of any tax period. It provides that no refund of any unutilized input tax credit shall be allowed in cases other than zero rated supplies made without payment of tax or where the credit has been accumulated because of inverted rate of duty. Reference is also made of para 8 of

circular No. 37/11/2018-GST dated 15.03.2018 where it was clarified as under.

> *"8. Refund of transitional credit: Refund of unutilized input tax credit is allowed in two scenarios mentioned in sub-section (3) of section 54 of the CGST Act. These two scenarios are zero rated supplies made without payment of tax and inverted tax structure. In sub-rule (4) and (5) of rule 89 of the CGST Rules, the amount of refund under these scenarios is to be calculated using the formulue given in the said sub-rules. The formulae use the phrase 'Net ITC' and defines the same as 'input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both". It is clarified that as the transitional credit pertains to duties and taxes paid under the existing laws viz., under Central Excise Act, 1944 and Chapter V of the Finance Act. 1994, the same cannot be said to have been availed during the relevant period and thus, cannot be treated as part of 'Net ITC'."*

16. The request for sanction of refund was accordingly declined. In response to the letter of the Liquidator dated 10.05.2023, the Joint Commissioner vide detailed reply dated 31.05.2023 referred Section 142, Section 54 and Rule 89 and stated that the Department understands the compulsion faced by Liquidator to explore the possibility of monetizing the input tax refund amount of Rs. 3,03,88,828/- but the extant laws do not allow the Department to sanction any refund ignoring the provision of Section 54. It was stated that the case of *Slovak India Trading Company supra* pertains to Service Tax regime and has no direct bearing on this

case which is ITC availed through TRANS – 1. The case of *Nichiplast India Pvt Ltd supra* pertains to legacy regime and restricted to that assessee who goes out of the Modvat scheme or when the Company is closed. Their hands are tied as far as the current demand is concerned.

17. The status of the Corporate Debtor is that it is in liquidation and the Applicant / Liquidator is the incharge of the Corporate Debtor in liquidation. He has been taking steps to realize the proceeds for distribution under Section 53 of IBC. Section 35 of IBC defines the powers and duties of the Liquidator which includes to take into custody or control of all the assets, property, effects and actionable claims of the Corporate Debtor, to take measures, to protect and preserve the assets and to sell the actionable claims by public auction with power to transfer etc.,. Section 36 defines the liquidation estate which includes any assets over which the Corporate Debtor has ownership rights including all rights and interest as evidenced in the balance sheet of the Corporate Debtor and all the proceeds of liquidation as and when they are realized.

18. A conjoint reading of Section 140 and Section 54 of CGST Act, 2017 provides that a registered person may claim refund of any unutilized input tax credit at the end of any tax period but it shall be allowed only in cases when zero rated supplies are made without payment of tax or where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies provided that no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty or if the supply of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies. A registered person, other than a person opting to pay tax under Section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit [of eligible duties] carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law [within such time and] in such manner as may be prescribed.

19. In the instant case, the Corporate Debtor is not a going concern. Its assets are being liquidated for distribution amongst the Creditors / Stakeholders. The amount of CENVAT credit allowed by an order

dated 27.02.2023 cannot be carried forward in the return. Accordingly, the amount of Rs. 3,03,88,828/- was credited into the Electronic Credit Ledger of the Corporate Debtor on 01.03.2023. We are in agreement with the contention of the Respondent / CGST that it was not a refund order but a transfer of earlier CENVAT credit into the Electronic Ledger in the GST regime for use towards future liabilities if any. As per Section 142, once duty / tax paid under the existing law has been carried forward under the CGST Act, no refund can be allowed of any amount of CENVAT credit except in accordance with Section 54 of the Act. It can be allowed in specific cases like zero rated supplies (exports or supplies to SEZs), inverted duty structure or deemed exports. The case of the Applicant / Liquidator does not fall in any of the above parameters. Further, the CBIC circular dated 18.11.2019 provides that TRAN-1 credit does not qualify as "Net ITC" for refund calculations in cases of zero rated supplies without payment of integrated tax as it originates from pre-GST duties / taxes. It remains in the ledger for future set off. Otherwise, it lapses, if unused. There is no provision for cash refund of the remaining / unutilized TRAN – 1 credit.

20. Though Section 238 of IBC provides that the provisions of the Code shall have effect notwithstanding any inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law but this non-obstante clause cannot override the CGST Act, 2017 which is the revenue statute to protect the interest of the State. Literal interpretation has to be given to protect the interest of revenue under the interpretation of statutes. The character of ECL amount is determined by the CGST Act which is not a liquid asset or cash deposit. Since the CGST Act does not confer any right to receive the balance in the ECL in cash, Section 238 of IBC cannot be invoked to create such a right.

21. The case of *SICPA India Pvt. Ltd supra* referred by the Liquidator has been set aside in W.A. No. 02 of 2025 where it was held that the refund is subject to Section 54(3) of the Act. An appeal is pending before Hon'ble Supreme Court. Second proviso to Section 142(3) and Section 143 of the CGST Act bar cash refund of unutilized credit at liquidation. This has been reaffirmed by Hon'ble Supreme Court in the case of *VKC Footsteps (India) Pvt. Ltd. supra* where it was held that where Section 54(3) is restricted, refund of unutilized ITC is permissible only in two

specified situations as referred above. Since ECL represents a statutory credit which can be utilized in the manner prescribed under the Act, so the amount lying in ECL cannot form part of the liquidation estate as a realizable cash asset. Hon'ble Madras High Court in W.P. No. 22505 of 2022 vide an order dated 24.02.2026 has held that the NCLT while exercising IBC powers, cannot assume the role of a tax authority under specific tax statutes.

22. For the aforesaid reasons and in view of the relevant provisions quoted supra and the cases referred supra, no such directions as prayed for in the application for refund of transition credit available in ECL cannot be issued. The application IA(IBC)/1895(CHE)/2025 is accordingly **dismissed** with no orders as to costs.

Sd/-	**Sd/-**
VENKATARAMAN SUBRAMANIAM	**SANJIV JAIN**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)