IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-V

IA-153/2025

in

CP (IB)-254(PB)/2017

IN THE MATTER OF:

CENTRAL BANK OF INDIA

… FINANCIAL CREDITOR

VERSUS

NCML INDUSTRIES LIMITED

… CORPORATE DEBTOR

AND IN THE MATTER OF:

MR. GIAN CHAND NARANG
LIQUIDATOR
FOR NCML INDUSTRIES LIMITED

… APPLICANT

VERSUS

THE PRINCIPAL COMMISSIONER OF INCOME TAX
CENTRAL – 1, JHANDEWALAN EXTENSION, NEW DELHI

… RESPONDENT

CORAM:
SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

MS. REENA SINHA PURI
HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 08.09.2026

PRESENT:

For the Liquidator : Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Aanya Gupta, Advs.

ORDER

1. The present Application has been filed by the Liquidator of NCML Industries Limited under Sections 60(5)(b) and 60(5)(c), read with Sections 35(1)(b) and 35(1)(n), of the IBC[1], and Rule 11 of the NCLT Rules[2].

2. The Applicant seeks a direction to the Income Tax Department, Respondent to remit the income-tax refund amounting to Rs. 4,66,74,431 plus interest for Assessment Years 2015-16, 2016-17, 2017-18, 2018-19, 2019-20, 2020-21 and 2024-25 to the liquidation bank account of the Corporate Debtor. The other prayers are general and consequential.

3. The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor commenced by order dated 07.11.2017. By order dated 08.03.2019, the Corporate Debtor was directed to be liquidated and the Applicant was appointed as Liquidator.

4. The Applicant issued the public announcement in Form B on 12.03.2019 and 13.03.2019, fixing 07.04.2019 as the last date for submission of claims. The Respondent was separately informed of the liquidation by letter dated 14.03.2019.

5. On 03.04.2019, the Respondent submitted its claim in Form C for Rs. 18,94,43,437, comprising principal tax demand, interest and penalty relating to Assessment Years 2008-09 to 2014-15. Against the column requiring particulars of any 'mutual credit, mutual debts, or other mutual dealings ... which may be set-off against the claim', the Respondent expressly stated 'NIL'. The Applicant admitted the Respondent's claim for Rs.

[1] Insolvency and Bankruptcy Code, 2016
[2] National Company Law Tribunal Rules, 2016

18,94,43,437 and informed the Respondent of such admission by email dated 06.05.2019.

6. The Applicant states that income-tax returns filed for the Corporate Debtor resulted in refunds, including interest, aggregating to Rs. 4,66,74,431 as follows:

S. No.	Assessment Year (AY)	Date of intimation u/s 143(1)	Refund (Rs)
1.	2015-16	30.12.2017	2,54,72,679
2.	2016-17	23.03.2018	78,75,042
3.	2017-18	25.05.2018	52,96,680
4.	2018-19	17.05.2019	47,95,980
5.	2019-20	08.07.2020	21,01,820
6.	2020-21	29.03.2021	10,94,280
7.	2024-25	05.10.2024	37,950
	TOTAL		**4,66,74,431**

7. The contemporaneous material relied upon by the Applicant shows the following adjustments under Section 245 of the Income-tax Act, 1961: Rs 2,54,72,679 for AY 2015-16 on 16.01.2018; Rs 78,75,042 for AY 2016-17 on 23.03.2018; Rs 52,96,680 for AY 2017-18 on 29.05.2018; Rs 45,94,304 for AY 2018-19 on 20.06.2019; and Rs 21,01,820 for AY 2019-20 on 9.05.2020 and Rs 10,94,280 for AY 2020-21 under the intimation dated 29.03.2021. These adjustments aggregate to Rs. 4,64,34,805.

8. The refund determined for AY 2018-19 was Rs. 47,95,980, whereas the adjustment established by the contemporaneous correspondence was Rs.

45,94,304, leaving a difference of Rs. 2,01,676. For AY 2024-25, the intimation shows a net amount refundable of Rs. 37,950 and does not record an adjustment in the relevant row. These two amounts aggregate to Rs. 2,39,626.

9. The Applicant addressed objections and grievances to the Respondent from 15.11.2019 onwards, asserting that the refunds had been unlawfully appropriated against old tax demands, despite the Respondent's claim having been admitted in liquidation.

10. Notice was issued in the present Application. By order dated 30.05.2025, the Respondent was proceeded ex parte. On 06.11.2025, the Applicant was permitted to file written submissions and judicial precedents. The written submissions reiterate that the adjustments are in direct contravention of the waterfall mechanism prescribed under Section 53 of the IBC.

11. The Applicant submits that every refund is an asset of the Corporate Debtor and forms part of the liquidation estate under Section 36. Reliance is placed upon the overriding effect of Section 238 of the Code and Section 178(6) of the Income-tax Act, 1961. The Applicant cites, inter alia, *Principal Commissioner of Income Tax v. Monnet Ispat and Energy Ltd*[3]; *Devarajan Raman v. Principal Commissioner of Income Tax*[4]; *Om Prakash Agrawal, Liquidator v. Chief Commissioner of Income Tax (TDS)*[5]; and *Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs*[6].

[3] *Principal Commissioner of Income Tax v. Monnet Ispat and Energy Ltd* (2018) 18 SCC 786
[4] *Devarajan Raman v. Principal Commissioner of Income Tax, Company Appeal (AT) (Insolvency) No. 977 of 2023*
[5] *Om Prakash Agrawal, Liquidator v. Chief Commissioner of Income Tax (TDS), Company Appeal (AT) (Insolvency) No. 624 of 2020*
[6] *Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs, (2023) 1 SCC 472*

Analysis and Findings

12. There is no response on merits. Nevertheless, an ex parte proceeding does not dispense with the Applicant's obligation to establish the relief claimed from the documents on record.

13. The questions for determination are:

    (i) whether the adjustments made during the CIRP are sustainable;

    (ii) whether the post-liquidation adjustments satisfy the requirement of 'mutual dealings' under Regulation 29 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016; and

    (iii) the assessment-year-wise relief that can be granted on the material placed on record.

14. Section 14(1) prohibits proceedings and action for recovery against the Corporate Debtor during CIRP. Section 14(4) makes the moratorium operative from the insolvency commencement date until approval of a resolution plan or passage of a liquidation order. Section 238 gives the IBC overriding effect over inconsistent provisions of any other law.

15. In *Bharti Airtel Ltd. v. Vijaykumar V. Iyer*[7], the Hon'ble Supreme Court drew a clear distinction between CIRP and liquidation. It held that Regulation 29 applies to liquidation and not to CIRP, and that statutory set-off or insolvency set-off under Regulation 29 cannot ordinarily be applied during CIRP. The limited exceptions are a contractual set-off effective before or on commencement of CIRP and a closely connected transactional set-off satisfying the conditions stated in paragraphs 46 to 50 of the judgment.

16. The adjustments for AYs 2015-16, 2016-17 and 2017-18 were made between 16.01.2018 and 29.05.2018, after commencement of CIRP on 07.11.2017 and before the liquidation order dated 08.03.2019. They constitute appropriation towards recovery of pre-CIRP tax demands during

[7] *Bharti Airtel Ltd. v. Vijaykumar V. Iyer, (2024) 4 SCC 668*

the Section 14 moratorium. Neither a contractual set-off nor a closely connected transactional set-off is pleaded or established. The adjustments aggregating to Rs. 3,86,44,401 therefore cannot be sustained.

17. The position after the liquidation order is governed by Regulation 29, which provides that where there are 'mutual dealings' between the Corporate Debtor and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable. The existence of cross-demands is not, by itself, sufficient; the statutory condition of 'mutual dealings' must first be satisfied.

18. In paragraphs 37 and 38 of *Bharti Airtel (supra)*, the Hon'ble Supreme Court explained that 'mutuality' requires commonality of identity between the parties acting in the same right and capacity. Although the reciprocal claims may arise from distinct transactions, the relationship and apposite identity of the parties must be such that it would offend fairness or justice to enforce one without regard to the other.

19. Para 39 of *Bharti Airtel (supra)* is directly material. It holds that the relationship and nature of identity of the Corporate Debtor undergo a change on commencement of CIRP and that dues payable by the Corporate Debtor for a period prior to commencement of CIRP cannot be set off against dues payable to the Corporate Debtor post commencement of CIRP. Thus, the point of time at which the reciprocal dues became payable, and the capacity in which they arose, are integral to 'mutuality'.

20. The Respondent's admitted claim comprises tax demands for AYs 2008-09 to 2014-15 and is indisputably a pre-CIRP claim. In contrast, every refund in the present Application was determined by an intimation issued after commencement of CIRP. The Application also states that returns for AYs subsequent to 2017-18 were filed by the Resolution Professional or the Liquidator and that the corresponding refunds accrued during CIRP or liquidation. The pre-CIRP tax demands and the refunds which became

payable after commencement of CIRP therefore do not possess the temporal and juridical mutuality required by paragraph 39 of *Bharti Airtel (supra)*.

21. There is an additional and independent infirmity. When the Respondent submitted Form C on 03.04.2019, it expressly declared 'NIL' mutual credits, mutual debts or other mutual dealings capable of set-off. No amended claim asserting set-off was submitted thereafter. The Respondent nevertheless appropriated the refunds unilaterally under Section 245 of the Income-tax Act.

22. In *Avil Menezes, Liquidator of Sunil Hitech and Engineers Ltd. v. Principal Chief Commissioner of Income Tax, Mumbai*[8], decided on 12.07.2024, the Hon'ble NCLAT held in paragraphs 25 to 30 that set-off is not prohibited in liquidation, but the Income Tax Department cannot recover its dues *suo motu* or execute its claim unilaterally by adjusting a refund outside the liquidation process. A claim for set-off must be submitted in the prescribed manner and the Department cannot place itself on a better footing by unilateral appropriation.

23. The decision in *Avil Menezes (supra)* must be read consistently with the prior and binding decision of the Hon'ble Supreme Court in *Bharti Airtel (supra)*. The former addresses the procedure and consequence of a unilateral tax adjustment during liquidation; it does not dispense with the anterior requirement that the reciprocal demands must constitute 'mutual dealings' under Regulation 29. In the present case that threshold is not met. Moreover, the Respondent filed a claim but expressly disclaimed any 'mutual dealings' capable of set-off.

24. A valid insolvency set-off is capable of reducing the liquidation estate and conferring priority upon the creditor to the extent of the set-off, as recognised in paragraphs 28 to 29 and 40 of *Bharti Airtel (supra)*. That

[8] *Avil Menezes, Liquidator of Sunil Hitech and Engineers Ltd. v. Principal Chief Commissioner of Income Tax, Mumbai, Company Appeal (AT) (Insolvency) No. 258 of 2024*

consequence is precisely why Regulation 29 cannot be invoked without strict satisfaction of 'mutuality'. Section 245 of the Income-tax Act does not create a security interest and cannot be used to bypass Sections 36 and 53 of the IBC. By virtue of Section 238 of the IBC and Section 178(6) of the Income-tax Act, an inconsistent unilateral appropriation must yield to the insolvency framework.

25. Accordingly, the post-liquidation adjustments for AYs 2018-19, 2019-20 and 2020-21, aggregating to Rs. 77,90,404, are also unsustainable. The tax demands belong to the pre-CIRP period; the refunds became payable after commencement of CIRP; no 'mutuality' within Regulation 29 is established; and no set-off claim was lodged before the Liquidator. The Respondent's admitted claim must be dealt with only in accordance with the distribution mechanism under Section 53 of the IBC.

26. However, the prayer contains numerical inconsistencies. Paragraph 22 of the Application[9] refers to Rs 4,67,44,051, whereas the tabular chart[10] and Prayer (b) claim Rs 4,66,74,431. For AY 2018-19, the tabular chart[11] claims Rs 47,95,980, but the letters[12] dated 15.11.2019 and 10.02.2021 of the Liquidator addressed to the Addl CIT, Income Tax Department, objecting to the adjustment of refunds, identifies an adjustment of Rs 45,94,304. For AY 2024-25, the intimation shows a net amount refundable of Rs 37,950 and does not show any amount adjusted in the relevant row[13].

27. The expression 'plus interest' in the prayer is also unquantified. The refund figures already include interest calculated in the respective intimations under section 143(1) of the Income-tax Act. The Applicant can therefore be granted only such further statutory interest as is payable under the Income-tax Act, after giving credit for interest already included.

[9] Page 12-13 of the Application
[10] Page 13 of the Application
[11] Page 13 of the Application
[12] Page 143-148 and Page 149-150 of the Application
[13] Intimation u/s 143(1) for AY 2024-25 -Page 127-130 of the Application

28. For the foregoing reasons, the Application is allowed and disposed of with the following directions:

a. The Respondent shall, within four weeks from receipt of this order, refund Rs. 4,64,34,805 to the liquidation account of the Corporate Debtor. This amount comprises Rs. 3,86,44,401 adjusted during CIRP and Rs. 77,90,404 adjusted after the liquidation order.

b. The Respondent shall, within the same period, release the balance sum of Rs. 2,39,626, comprising Rs. 2,01,676 for AY 2018-19 and Rs. 37,950 for AY 2024-25, if either amount has not already been credited to the Corporate Debtor. To the extent any part has already been credited, the Respondent shall furnish to the Liquidator the date, amount, mode and transaction reference of such credit within two weeks from receipt of this order.

c. The amounts directed to be refunded or released shall carry such further statutory interest, if any, as is payable under the Income-tax Act, 1961, until the date of actual payment, after giving credit for interest already included in the refund intimations.

d. Payment shall be remitted to Bank of India, New Delhi Large Corporate Banking Branch, Account No. 605920110000299, IFSC BKID0006059, subject to the Liquidator confirming in writing that the account remains operative. If the account has changed, the Respondent shall remit payment to the substituted liquidation account communicated by the Liquidator.

e. The Respondent's admitted claim of Rs. 18,94,43,437 shall continue to be dealt with in accordance with Section 53 of the IBC. The invalid adjustments shall not be treated as satisfaction of that claim. Credit shall, however, be given for any distribution actually received by the Respondent in liquidation, so that there is no double recovery.

f. Within one week after making payment, the Respondent shall provide the Liquidator an assessment-year-wise compliance statement setting out the

principal refunded, statutory interest paid, date of credit and transaction reference.

g. There shall be no order as to costs. All pending prayers in the Application stand disposed of in the above terms.

I.A. No. 153 of 2025 stands disposed of accordingly.

Sd/-
REENA SINHA PURI
MEMBER (TECHNICAL)

Sd/-
MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)