

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

Misc. A. (IB) No. 21/KB/2019
And
Misc. A. (IB) No. 22/KB/2019
In
C. P. (IB) No. 579/KB/2017

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)

In the matter of:

An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

And

In the matter of Misc.A.(IB) No. 21/KB/2019

An application inter alia under Section 60(5) of the Insolvency & Bankruptcy Code, 2016;

And

In the matter of Misc.A.(IB) No. 22/KB/2019

An application u/s. 60(5) of the Insolvency and Bankruptcy Code, 2016 ;

And

In the matter of:

1. Abhishek Stock Broking Services Pvt. Ltd., 9, Lalbazar Street, Block - A, Room No. 1, Kolkata 700 001;

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2. Narayan Finvest Pvt. Ltd., 9, Lalbazar Street, Block - A, 3rd Floor, Kolkata 700 001;
3. Ayush Fiscal Pvt. Ltd., 9, Lalbazar Street, Block - A, 3rd Floor, Kolkata 700 001;
4. Multiplus Resources Ltd., 1, Old Court House Street, 2nd Floor, Kolkata 700 001.

... Applicants/Financial Creditors

-Versus-

In the matter of:

M/S. SHREE GANESH JEWELLERY HOUSE (I) LTD., an existing company within the meaning of Companies Act, 1956 and having its office at Suite No. 413, 4th Floor, Vardhan Market, 25A, Camac Street, Kolkata - 700016.

... Respondent/Corporate Debtor

And

In the matter of:

MR ANUP KUMAR SINGH, the Liquidator of the Corporate Debtor having his office at Trinity Towers, Suite No. 3G, 226/1, A.J.C. Bose Road, Kolkata - 700020.

... Applicant/Liquidator

- Versus -

1. DIRECTORATE OF REVENUE INTELLIGENCE, Represented by Dr. Sudhanshu Rai of 8, Ho Chi Minh Sarani, 2nd Floor and 3rd Floor, Suite Nos.16,17, Kolkata - 700071.

2. THE BANK OF NOVA SCOTIA, being a Scheduled Bank within the meaning of Section 2(e) included in The Second Schedule of the Reserve Bank of India Act, 1934 inter alia carrying on its business from 91, 3 North Avenue, Maker Maxity, Bandra Kurla Complex, Mumbai - 400051.

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3. **MS. JAYATI CHAUDHURI**, Debts Recovery Tribunal, Kolkata, Jeevan Sudha Building, 42/C, Jawaharlal Nehru Road, Kankaria Estates, Kolkata - 700071.
4. **MS. MOUSAMI GANGULI**, Debts Recovery Tribunal, Kolkata, Jeevan Sudha Building, 42/C, Jawaharlal Nehru Road, Kankaria Estates, Kolkata - 700071.
5. **MR. SAJJAN KUMAR KASERA**, Debts Recovery Tribunal, Kolkata, Jeevan Sudha Building, 42/C, Jawaharlal Nehru Road, Kankaria Estates, Kolkata - 700071.
6. **MS. MEKHOLA KANJI**, Debts Recovery Tribunal, Kolkata, Jeevan Sudha Building, 42/C, Jawaharlal Nehru Road, Kankaria Estates, Kolkata - 700071.
7. **MS. SNIGDHA SINHA (DUTTA)**, Debts Recovery Tribunal, Kolkata, Jeevan Sudha Building, 42/C, Jawaharlal Nehru Road, Kankaria Estates, Kolkata - 700071.
8. **MS. FARIDA YASHMIN**, Debts Recovery Tribunal, Kolkata, Jeevan Sudha Building, 42/C, Jawaharlal Nehru Road, Kankaria Estates, Kolkata - 700071.
9. **MS. POETRY DUTTA**, Debts Recovery Tribunal, Kolkata, Jeevan Sudha Building, 42/C, Jawaharlal Nehru Road, Kankaria Estates, Kolkata - 700071.

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Respondents

And

In the matter of:

Mr. Anup Kumar Singh, being the Liquidator of the Corporate Debtor having his office at Trinity Towers, Suite No. 3G, 226/1, A.J.C. Bose Road, Kolkata 700020.

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Applicant/Liquidator

-Versus-

1. **West Bengal Industrial Development Corporation Limited**, represented by Sri Ashis Chakraborty, "Protiti", 23, Abanindranath

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Tagore Sarani, (Camac Street), Kolkata 700017, West Bengal, India,
Email: ashis.chakraborty@wbidc.com .

2. **Assistant Development Commissioner of Falta SEZ** having
Additional Charge of Manikanchan SEZ, represented by Dhrubajyoti
Sarma, of 2nd MSO Building (4th floor), Nizam Palace, 234/4, A.J.C.
Bose Road, Kolkata 700020, E-mail: dhruba.sarma@gov.in .

3. **Directorate of Revenue Intelligence**, represented by Dr.
Sudhanshu Rai of 8, Ho Chi Minh Sarani, 2nd Floor and 3rd Floor,
Suite No. 16,17, Kolkata, West Bengal - 7000071, E-mail:
drikzu@nic.in .

Counsels appeared:

1. Mr. Anup Kumar Singh, Liquidator

1. Mr. Joy Saha, Sr. Advocate] For the Liquidator
2. Mr. S. Kabiraj, Advocate]
3. Ms. Madhuja Barman, Advocate]

1. Mr. Kaushik Dey, Advocate] For the DRI

1. Mr. Arkodeb Sinha, Advocate] For the Bank of
2. Mr. Raghav Seth, Advocate] Nova Scotia
3. Mr. Aditya Singh Jatia, Advocate]

1. Mr. Debargha Basu, Advocate] For the Bata
] India Ltd. (R-4)

1. Mr. Ramesh Chandra Prusty,] For the UBOI,
Advocate] Financial Creditor
2. Ms. Manini Kabi, Advocate]

Order pronounced on 23rd April, 2019.

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O R D E R

Both applications were heard separately, but disposed of by common order since the questions arise for determination are common.

Misc. A. (IB) No. 21/KB/2019

1. This is an application filed under section 60(5) of the I&B Coded,2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking the following relief:-

a) "An order directing the Respondent No.1, to give the custody of the assets of the Corporate Debtor, seized pursuant to Inventory cum Seizure list dated 23.02.2018 being **Annexure 'A'** hereto, to the Applicant forthwith so that all necessary steps in accordance with the IBC, 2016 can be taken by the Liquidator.

b) An order directing the Respondent No. 1 DRI, to remit the sum of Rs. 25,25,02,220/- paid to it by the Respondent No. 2 namely, Bank of Nova Scotia, under the cover of its letter dated 2.2.2018, to the Applicant forthwith so that and all necessary steps in accordance with the IBC, 2016 can be taken by the Liquidator;

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c) An order directing the Receivers appointed by the Debts Recovery, Kolkata and/or the erstwhile management of the Corporate Debtor or such other person or persons who are in physical possession of the properties described in Schedule being Annexure L annexed hereto to handover the possession of the said immovable properties to the Liquidator so that appropriate steps in accordance with law can be taken by the Liquidator.

d) Such further and other order or orders as this Hon'ble Tribunal may deem fit and proper."

2. The applicant contends that while proceeding with the process of the Liquidation of the Corporate Debtor Company, the Liquidator came to learn that in the course of an investigation the office of the First Respondent, the Directorate of Revenue Intelligence (DRI) has seized gold and other valuable assets of the Corporate Debtor valued at Rs. 36,05,06,771/- (Rupees Thirty Six Crores Five lacs Six Thousand Seven Hundred Seventy One Only) by the approved Valuer. The seizure list dated 23.02.2018 has been annexed with the application marked as **Annexure 'B'**. The Gold ornaments as per the seizure list were imported by R2 for and on behalf of the Corporate Debtor on the strength of an agreement **SGJHBL0A** (Shree Ganesh Jewellery House Bullion Loan Agreement) executed between R2 and the Corporate Debtor. The Corporate Insolvency Resolution Process was initiated vide order dated

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12.02.2018. Despite moratorium has been declared, the DRI in violation of the order of Moratorium seized the goods of the Corporate Debtor on 23.02.2018. Since the Corporate Debtor is under order of Liquidation the valuable assets seized by the DRI which are required to be in custody of the Liquidator for the purpose of taking further effective steps in the liquidation process of the Corporate Debtor, he filed this application.

3. In order to get the custody of the assets the Applicant/Liquidator has issued several letters to the DRI. The applicant also learnt that DRI has issued directions to Bank of Nova Scotia/Respondent No. 2 to remit a sum of Rs.25,25,02,220/- (Rupees Twenty Five Crores Twenty Five Lacs Two Thousand and Twenty Only) on the ground that the Corporate Debtor had failed to submit Bank Realisation Certificate against the export made by them

4. It is submitted that Respondent No. 2 in compliance of the directions of the DRI has remitted the above said amount as per the demand draft dated 02.02.2017. A copy of the letter addressed to the DRI by Respondent No. 2 and the request made by the DRI to the Respondent No. 2 are annexed with the application collectively marked as **Annexures-C & D.**

5. It is further submitted that the above said amount has not been appropriated towards Statutory dues of Government Respondent No. 1 who is still holding all the assets as Custodian/Trustee of

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assets of the Corporate Debtor which must be made over to the Liquidator so that the assets can be suitably dealt with in accordance with the provisions of law as envisaged under the IBBI (Liquidation Process) Regulation 2016.

6. The Applicant further states that an amount of Rs. 13,07,60,182/- (Rupees Thirteen Crores Seven Lacs Sixty Thousand One Hundred Eighty Two Only) is lying in the custody of Respondent No. 2 as Margin Money. Respondent No. 2 was requested to remit the amount to the Liquidation Account of the Corporate Debtor. Despite request the Respondent No. 2 has not remitted the said amount and it is still lying in their custody.

7. The Respondent No. 2 has been informed about the commencement of Liquidation process initiated against the Corporate Debtor vide letter dated 25.09.2018 along with the work sheet of calculation of the amount kept in the custody of the Bank. The copy of the letters are produced with the application marked as **Annexure - E & F** respectively.

8. In order to have an effective completion of Liquidation Process, the Liquidator has to liquidate all assets and properties of the Corporate Debtor and to distribute the proceeds thereof amongst all the creditors of the Corporate Debtor who has submitted their claim with the Liquidator after the order of Liquidation of the Corporate Debtor.

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9. Despite repeated requests submitted to the Respondent No. 1 it refused to hand over possession of the seized articles to the Liquidator. To the letter addressed to the DRI the Respondent No. 1 stated that the investigation being governed by the Customs Act, 1962, an investigation of the subject case had commenced prior to proceedings under the Insolvency and Bankruptcy Code, 2016, the assets will not be handed over to the applicant. A copy of the reply addressed to the Liquidator is produced marked as **Annexure - I.**

10. The Applicant contends that Respondent No. 1 has failed and neglected to hand over the assets of the Corporate Debtor/ the Applicant. The Applicant also further alleged that the immovable properties of the Corporate Debtor has been taken possession of by the Receivers appointed by the Debt Recovery Tribunal. The inventories prepared by the Receivers showing the immovable properties of the Corporate Debtor also produced marked as **Annexure - 'K'.**

11. In order to complete the Liquidation proceedings the Liquidator also is in need of getting back the possession of the immovable properties taken possession by the Receiver. The Receiver being the holder of all the assets of the Corporate Debtor is a Custodian/Trustee of the assets of the Corporate Debtor which must be made over to the Liquidator so that the assets can be suitably dealt with in accordance with the

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provisions of law. Unless appropriate orders are passed directing the Respondent to make over all the assets and properties of the Corporate Debtor lying in the custody, domain or control the Liquidation proceedings undertaken by the appellant shall be first dealt with.

12. Upon the above said contentions, the Applicant has prayed for passing an order directing the Respondents to make over the possession of the seized articles and possession of the property by the Receivers and to remit the amount kept in the custody of the Respondent No. 2 into the Liquidator's Account.

13. Respondent No. 1/DRI (R1) filed its opposition in the form of Reply Affidavit contending in brief the following:-

14. The Respondent denies all the averment other than the averment admitted in the reply affidavit. Since the Corporate Debtor M/s. Shree Ganesh Jewellery House (I) Ltd. Failed to fulfil the conditions of duty free import of Gold in violation of FTP (Foreign Trade Policy) and huge export proceeds of Rs. 7618 Crores are unrealized in their account. In that regard an investigation was started by DRI in January, 2015. The Promoter Directors were summoned but they did not respond. The DRI issued look out Circulars for which One of the Promoter Director has been apprehended and another has not been apprehended.

15. The Corporate Debtor procured duty free gold for its DA and Special Economic Zone Units imported primary gold of .995

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fineness and delivered to SGJHIL (Shree Ganesh Jewellery House (I) Ltd) a total quantity of 1409 kg during the period 14.04.2009 to 02.07.2013 out of that they did not receive the Bank Realization Certificate (BRC) for the exports made out of 1211.63 kg of primary gold.

16. Respondent No. 2 submitted a Bank Draft for Rs. 25.25 crores towards the Custom Duty payable on 1211.63 kg of Gold a show cause notice has been issued to the Respondent No. 2 on 12.08.2017 seeking to adjust the Duty amounting to Rs. 13,53,67,882.55/- payable on 1069.03 kg of primary gold if they did not receive the BRC and interest along with the proposing imposition of penalties against the amount deposited by the Bank of Nova Scotia. Respondent No. 1 further stated that the investigation being governed by the Customs Act, 1962, an investigation of the subject case has commenced prior to proceedings under the Insolvency and Bankruptcy Code, 2016, the R1 is not liable to hand over to the applicant. The respondent No.1 DRI objected to this application mainly raising the following grounds:-

(i) The investigation is going on under the Customs Act, 1962 and no orders under the I & B Code can be passed on the prayer of the Liquidator.

(ii) DRI has effected the seizure of the gold ornaments as per the statutory procedure of the Customs

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Act, 1962 and the fate of the seized goods can only be decided by the Adjudicating Authority.

(iii) Since show cause notice dated 21/2/2019 has been issued demanding Rs.117 crore, the claim of the Liquidator from such seized goods cannot be allowed.

(iv) The SEZ unit as per Sec.53 of the SEZ Act, 2005 are deemed territory outside Customs of India and, as such, the goods seized under the Customs Act will not come under the purview of the I & B Code.

17. Second respondent (R2) also filed reply affidavit objecting the application. The objections of R2 in brief for the consideration of the points for determination alone are narrated here for brevity. Respondent No. 2 submits that the Margin Money Account in the name of the Corporate Debtor contains an amount of Rs. 12,23,04,074.14 (Rupees Twelve Crores Twenty Three Lacs Four Thousand Seventy Four and Paise Fourteen Only) and not the amount as shown by the Liquidator. The Respondent No. 2 made a request to the Liquidator to provide an undertaking to make good any demand which the DRI being the Respondent No. 1 imposes on the Bank or else requested to furnish Bank Guarantee on the same in favour of the Bank. Expressing the said request the R2 has sent a letter to the liquidator. Other than the above said objection there is no serious objections raised on the side of the R2.

Misc.A. No.22/KB of 2019

18. This is an application filed by the Liquidator u/s. 60(5) of the Insolvency and Bankruptcy Code, 2016 (In short, **I & B Code, 2016**).

19. The applicant contends that several assets of the Corporate Debtor being in custody of various statutory authorities. While he was trying to resolve the assets of the Corporate Debtor, respondents have not cooperated with him by providing access to the premises wherein the assets of the Corporate Debtor is kept. It is contended that various assets and properties of the Corporate Debtor are in the custody of respondents. Despite request as well as reminders, the respondents refused to handover the assets to the Liquidator.

20. It is in the said circumstances this application has been filed seeking the following reliefs:-

(a) An order directing the respondent nos. 1, 2 and 3 to allow complete custody of the asset of the corporate debtor at Manikanchan to the applicant within the Special Economic Zone, Manikanchan so that the applicant can take physical possession of the said property;

(b) Inspector-in-Charge of Diamond Harbour Police Station be directed to provide all assistance to the applicant for facilitating smooth take over physical

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possession of the Manikanchan property of the Corporate Debtor situated within the Special Economic Zone, Manikanchan;

(c) Further and other order or orders and/or direction or directions be given.

21. The applicant contends that in the best interest of all the creditors of the Corporate Debtor and in conformity with the provisions of Chapter III of the I & B Code, 2016 he has to take custody of the assets of the Corporate Debtor and the respondents being failed in handing over the possession of assets of the Corporate Debtor filed CA(IB) No. 384/KB/2018 in which directions has been issued to the respondents to co-operate with the Resolution Professionals. However, the respondents have not co-operated with the Resolution Professional. In the meantime, the Corporate Insolvency Resolution Process (In short, **CIRP**) period has been expired and for want of any resolution applicant, the order was passed for liquidation of the Corporate Debtor Company. Subsequent to his appointment as Liquidator, he had again approached the respondents for the purpose of handing over of the assets of the Corporate Debtor in the possession of the respondents herein.

22. Corporate Debtor has valuable assets in the Special Economic Zone, Manikanchan. Factory premises of the Corporate Debtor was within the Special Economic Zone, Manikanchan and the

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access thereto is regulated by the Respondent No. 1 being the West Bengal Industrial Development Corporation Limited (In short, **WBIDC**) as per the various deed of sub-lease between the Corporate Debtor and the respondent No. 1, which is annexed with the application and marked as "**Annexure C**".

23. The applicant by its letter dated 31/07/2018 called upon Mr. Ashish Chakraborty being the Deputy General Manager of Manikanchan Special Economic Zone Unit for allowing access to the said Manikanchan Property owned by the Corporate Debtor so that valuation of the said property as required under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 can be done. A copy of the said letter dated 31/07/2018 is annexed with the application and marked as "**Annexure D**".

24. The respondent no. 2 on the request of the applicant sent a letter to the DRI, respondent no. 3 herein, dated 07/08/2018 requesting the respondent no. 3 to provide access to the immovable assets of the Corporate Debtor in the Manikanchan SEZ to the applicant for valuation of the properties. The said letter dated 07/08/2018 is annexed with the application and marked as "**Annexure E**".

25. It is contended that applicant has approached the Respondent Nos. 1, 2 and 3 individually as well as collectively but he was not given access to the immovable assets of the

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Corporate Debtor lying in the Manikanchan SEZ and the property has not been valued so far. He also denied access to the premises and thereby unable to take possession of the property. In the said circumstances he has no other alternative than to file this application.

26. In compliance of the directions of the Adjudicating Authority dated 09/01/2019 applicant has served notice upon the respondents for their appearance on 01/03/2019. The track consignment reports show that the notice was delivered on 14/01/2019 to all the respondents. On 01/03/2019 only Dy. Director from the Office of DRI, respondent no. 3, appeared and the matter was again fixed for further consideration on 19/03/2019.

27. On 19/03/2019 except the respondent no. 3 nobody appeared from the side of the respondent nos. 1 and 2. Ld. Counsel for the respondent no. 3 sought time for filing reply affidavit. However, respondent nos. 1 and 2 were declared ex-parte on account of their non-appearance on that day.

28. The 3rd respondent/Directorate of Revenue Intelligence (In short, **DRI**) has submitted its reply affidavit on 03/04/2019 contending in brief the following:-

A show cause notice proposing confiscation of the seized goods worth Rs. 36 Crores approx. and demanding the duty

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amounting to Rs. 117.10 crores on the unaccounted primary gold imported/procured duty-free has been issued on 21/02/2019. DRI acts under Customs Act and in course of exercising its statutory powers, under Customs Act, 1962, DRI effected the seizure as stated herein above and as per the statutory procedure of the Customs Act, 1962, the fate of the seized goods can only be decided by the adjudicating authority. As per the statute, DRI has no control over the seized goods. The goods were seized in terms of section 110 of the Customs Act, 1962 after due valuation by the Licensed Government Approved Valuer. As per the statute, at first the show cause notice is issued proposing confiscation of the seized goods. The seized goods are then confiscated after adjudication and the goods become property of the Government of India. So the fate of the seized goods can only be decided by the adjudicating authority. The show cause notice in this regard has been issued on 21/02/2019 demanding Rs. 117 Crore of Customs Duty foregone on account of 4586.923 Kg. of duty free imported gold which could not be accounted for or shown used in the exports by SGJHIL. The goods were seized by DRI from a SEZ unit and its registered office in connection with an offence appeared to have been committed by a company in SEZ units in misuse of SEZ facilities for which they were authorised by Letters of Permission (LOP) issued by the Development Commissioner. SEZ units as per Section 53 of SEZ Act, 2005 are deemed to be territory outside Customs Territory of India and also for the

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reasons as stated in the preceding paragraphs that the fate of the seized goods can only be decided by the adjudicating authority, as such regarding the goods seized from the SEZ premises will not come under the purview of the Insolvency and Bankruptcy Code, 2016. The then Director and Promoter of the Corporate Debtor, Shri Nilesh Parekh, averred in his Writ Petition pending before the Hon'ble High Court, Calcutta vide WP No. 88 of 2019 (para 6 in page 10 of WP 88 of 2019) that the assets seized on 23/02/2018 are not under clean title of the company and does not come under the category of assets. These assets further do not make any actionable claim (in terms of Section 3 of the Transfer of Property Act, 1882) on which the company has a right and as such under the given facts and circumstances, the liquidator has no jurisdiction over the properties as stated above.

29. It is also contended that M/s. Shree Ganesh Jewellery House (India) Limited have five units set up in Manikanchan SPECIAL ECONOMIC ZONE under the letters of permission issued to them by the Development Commissioner, Manikanchan SPECIAL ECONOMIC ZONE. All these letters of permission have since been revoked in July, 2016. After revocation of the letters of permission, SGJHIL was supposed to pay the Customs Duty on the imported goods and machinery therein as per the SPECIAL ECONOMIC ZONE Act, 2005 as amended and take the same out of the SEZ control. This has not been done so far. Therefore, the imported goods and machinery are

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lying there and if these are to be allowed to the Domestic Tariff Area, first the duties of Customs are to be paid as the SPECIAL ECONOMIC ZONE is a territory outside Indian Customs Area, as per the statute. Thus MKSEZ authority has only the power to assess the goods lying there and value them as per the law laid down depreciation norms with regard to the import value, as set out in the FTP or EXIM policy of the Govt. of India and no other authority is empowered to value the goods lying inside the SPECIAL ECONOMIC ZONE unit. It is further contended that as per Section 53 of SEZ Act, 2005, the SEZ Units are deemed to be territory outside customs Territory of India and as such the goods seized from the SEZ premises does not come within the purview of the Insolvency and Bankruptcy Code, 2016.

30. With the above submissions the respondent no. 3 prays for dismissal of the application.

31. Heard the Ld. Sr. Counsel Mr. Joy Saha for the Liquidator/Applicant, Ld. Counsel Mr. Kaushik Dey for the R-1 in Misc. A. No. 21/KB/2019 and for the R-3 in Misc. A. No. 22/KB/2019 and Mr. Arkodeb Sinha for the R-2 in Misc. A.No 21/KB of 2019. Perused the records and the citations referred to on the side of the Applicant.

32. Both these Applications were filed by the Liquidator praying for multiple reliefs as against the Respondents Nos. 1 to 9 in Misc. A. No.21/KB of 2019 and Respondents Nos. 1 to 3 in.

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Misc.A. No. 22/KB of 2019. The First Respondent in Misc. A. No.21/KB of 2019 and 3rd respondent in Misc. A. No. 22/KB of 2019 is the Directorate of Revenue Intelligence (DRI). The Second Respondent in Misc.A. No. 21/KB of 2019 is the Bank of Nova Scotia and 3rd to 9th Respondents are receivers who are appointed by the Debt Recovery Tribunal-I, Kolkata in CA No.581 of 2015. The 1st respondent in Misc. A. No. 22/KB of 2019 is the West Bengal Industrial Development Corporation Limited, and the 2nd respondent in Misc. A. No. 22/KB of 2019 is the Assistant Development Commissioner of Falta SEZ having Additional Charge of Manikanchan SEZ,

33. The relief sought for as against the First Respondent in Misc. A. No. 21/KB of 2019 is that the DRI who has taken custody of goods belonging to the Corporate Debtor as per the seizure list (Annexure 'B') dated 20.03.2018 are to be handed over to the Liquidator for enabling him to liquidate the assets of the Corporate Debtor.

34. The Respondent No. 2, in the Misc. A. No. 21/KB of 2019, the Bank of Nova Scotia is maintaining an account of the Corporate Debtor. According to the Liquidator Respondent No. 2 is keeping a deposit of INR 13,07,60,182/- belonging to the Corporate Debtor and prays for remitting the said amount by the Bank with the Liquidator. The Respondent No. 2 admittedly maintains a Margin Account bearing No. 0127G005203 and the

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balance outstanding in the Margin Account is INR 12,23,04,074.14 and not the above said amount as claimed by the Liquidator submitted by R2.

35. The Liquidator also prays for handing over the possession of immovable properties of the corporate Debtor, kept in the possession of the Receivers viz., Respondent Nos. 3 to 9 in Misc. A. No. 21/KB of 2019 as per the order of the Hon'ble Debt Recovery Tribunal - I, Kolkata dated 09.09.2016.

36. The Respondent No. 1 has strongly objected this application. However, Respondent No. 1 admits that it has seized the goods referred to in **Annexure 'B'** but according to the Respondent No. 1, the seized goods as per Annexure 'B' were confiscated after adjudication and the goods became the property of the Government of India and therefore the Respondent No. 1 is not liable to return the goods to the Liquidator.

37. According to the Ld. Counsel appearing for the DRI, serious fraud was committed by the Promoter Directors of the Corporate Debtor and investigation was initiated and is continuing, and the goods were seized in terms of Section 110 of the Customs Act, 1962 and that the Corporate Debtor is liable to pay Customs Duty to the tune of Rs. 117 crores, and that the DRI is not bound to hand over the custody of the goods. He would further submit that the Corporate Debtor who have availed the permission to import Gold duty free as per the provisions of SEZ Act 2005 and the

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Corporate Debtor being violated and misused the Letters of Permission (LOP) issued by the Development Commissioner of SEZ and that the SEZ Unit situated outside the Customs Territory of India, the goods seized from the premises will not come under the purview of the Insolvency & Bankruptcy Code, 2016 and thereby the Respondent No. 1 is not liable to return the goods to the Liquidator as claimed by the Liquidator.

38. The Respondent No. 2 however did not object to this application. According to the Ld. Counsel appearing for the Respondent No. 2, the amount kept in the account of the Corporate Debtor has been directed not to be parted with to anybody by the DRI and since the DRI imposes restrictions upon the Bank on account of the default of the Corporate Debtor, the Bank cannot be held responsible for not remitting the money as requested by the Liquidator.

39. The Ld. Counsel appearing for the Respondent No. 2 Bank also submits that the Bank has no objection in remitting the amount if the Adjudicating Authority (AA) issues such a direction, but according to him the bank is to be discharged from any liability arising out of remitting the amount to the liquidator account, towards Custom duty payable by the Corporate Debtor.

40. Respondent Nos. 3 to 9 in Misc. A. No. 21/KB of 2019 and respondents Nos. 1 and 2, in Misc. A. No. 22/KB of 2019, did not turn up though notices were served upon them.

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41. Coming to the objection of the Respondent No.1, in Misc. A. No. 21/KB of 2019, it appears to me that it cannot claim any right over the goods seized as it is the assets of the Corporate Debtor on the date of seizure. As per the powers vested with the Liquidator in a Liquidation process he is duty bound to take custody of all the moveable goods and immovable properties belonging to the Corporate Debtor subject to the right of DRI to submit claim for the amount due to it from the Corporate Debtor to the liquidator.

42. Here in this case, M/s. Abhishek Stock Broking Services Pvt. Ltd/ financial Creditor, filed this application C.P. (IB) No. 579/KB/2017 u/s 7 of the Insolvency & Bankruptcy Code, 2016 for initiating CIRP as against the Corporate Debtor/M/s. Shree Ganesh Jewellery House (I) Ltd. By an order dated 12.02.2018 this Bench passed an order of admission for initiating CIRP as against the Corporate Debtor and for want of Resolution Plan the AA passed an order for liquidation of the Corporate Debtor, vide its order dated 14.09.2018.

43. A perusal of the record shows that majority of the assets are kept in the hands of various statutory Authorities. While the Liquidator was acting as an RP he tried his level best to get back the custody of the goods and properties, however none of the Statutory Authorities or the Bank who are Respondents herein responded to the request made by the RP by handing over

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possession of the goods, money and properties. The Resolution Professional seems to have explained his powers u/s 25(2)(a) of the Code, to the respective authorities. Section 25(2)(a) I & B Code, 2016 read as under:

"Section 25(2)(a): Take immediate custody and control of all the assets of the Corporate Debtor, including the business records of the Corporate Debtor".

44. The Respondent even if aware of the power of the Resolution Professional that he is the legitimate custodian of the assets of the Corporate Debtor upon initiating the CIRP, all of them are reluctant to comply his direction. The Resolution Professional when has been reappointed as the Liquidator he again issued letters to the Respondent Nos. 1 & 2 for enabling him to take over the possession of the seized goods by Respondent No. 1 to get back money maintained in the account of the Corporate Debtor in the Respondent No. 2's Bank. The Resolution Professional as well as the Liquidator has informed about the impact of the moratorium declared u/s 14 of the Code to the Respondent No. 2.

45. As per Section 34(2) of the Insolvency & Bankruptcy Code, 2016 *all powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor as the case may be shall cease to have effect and shall be vested in the Liquidator.*" As per Section 35 (1) (m) of the Insolvency & Bankruptcy Code, 2016 the Liquidator is duty bound *"to take all*

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such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as Liquidator", is bound to take back possession of all the assets of the Corporate Debtor so as to complete the liquidation.

46. The above being the power and duties of the Liquidator the First question germane for consideration is whether the objections raised by the First Respondent DRI are sustainable under law?.

47. What is highlighted on the side of the DRI is that the Customs Act, 1961 & SEZ Act, 2005 being Special Statutes empowering the DRI to proceed with investigation, seizure and disposal of the goods and the Adjudicating Authority under the Customs Act being confiscated the goods, it became the property of the Government of India and therefore the Liquidator cannot claim any right over the property.

48. The above said submission on the side of the First Respondent is found not at all sustainable under law. The I & B Code, 2016 has been enacted with an object of Resolution of the Corporate Debtor by maximising the value in a time bound manner. The effort of the Liquidator is to distribute the assets of the Corporate Debtor among the eligible creditors and dissolve the

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Corporate Debtor Company upon completion of distribution of the assets of the Corporate Debtor. Truly liquidation brings the life of the corporate debtor to an end.

49. Section 238 of the I & B Code, 2016 no doubt is an overriding provision which has been enacted subsequent to the Enactment of Customs Act, 1962 and SEZ Act, 2005. It is good to read Section 238 of the I & B Code -

"Section 238: The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law".

50. The Ld. Sr. Counsel appearing for the Liquidator has cited an order of NCLT, Mumbai Bench in SREI Infrastructure Finance Limited - Vs - Sterling SEZ and Infrastructure Limited in M.A. No. 1280/2018 dated 12.02.2019, and an Order of NCLT Allahabad Bench in C.A. No. 88/ALD/2018 in C.P. (IB) 23/ALD/2017 in the case of Raman Ispat Private Limited - vs - Executive Engineer, Paschimanchal Vidyut Vitran Nigam Limited dated 21.08.2018 and One of the Orders of this Bench in CA (IB) No. 116/KB/2018 in CP (IB) No. 349/KB/2017 in the case of Ramsarup Industries Limited - vs - ICICI Bank Limited dated 3rd July, 2018, for highlighting an argument that the provisions of the I & B Code, 2016 has an overriding effect over the Customs Act, 1962 as well as the SEZ Act, 2005.

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51. According to him the Code is a statute enacted in the year 2016 which has been enacted later in point of time and long after the Customs Act, 1962 was enacted, the non-obstante clause as provided u/s 238 of the I & B Code, 2016 providing for "over-riding effect of the IBC over all other laws makes it abundantly clear that the conflict if any amongst the two Acts, the I & B Code, 2016 shall prevail.

52. The above said view has been strengthened as per the proposition laid down in **Solidaire India Limited - vs - Fairgrowth Financial Services Pvt. Limited (2001) 3 SCC 71** by the Hon'ble SC. It has been held in the said decision that -

"where there are two special statutes which contain non-obstante clauses, the later statute must prevail. This is because at the time of enactment of the later statute, the Legislature was aware of the earlier legislation and its non-obstante clause. If the Legislature still confers the later enactment with a non-obstante clause it means that the legislature wanted that enactment to prevail, if the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply".

53. Relying upon the above said proposition the Hon'ble Allahabad Bench allowed an application filed by the Liquidator praying for releasing the attached property of **Raman Ispat**

Private Limited holding that the attached property by the District Magistrate and Tehsildar, Muzaffarnagar is a part of Liquidation Estate under the purview of Section 36(2) of the Code. So also the Hon'ble NCLT Mumbai Bench allowed an application filed by a Resolution Professional while CIRP process was in progress wherein the Resolution Professional has sought for release of the property attached by the Enforcement Directorate. In the said case the assets of the Corporate Debtor has been attached by the Directorate of Enforcement under the provision of Prevention of Money Laundering Act (PMLA). The Mumbai Bench has relied upon an order of Appellate Tribunal for PMLA in the case of **Bank of India - vs - Deputy Directorate Enforcement, Mumbai, MANU/ML/0040/2018** wherein the Hon'ble Appellate Tribunal has held that "*the Adjudicating Authority under PMLA does not have jurisdiction to attach the properties of the Corporate Debtor undergoing Corporate Insolvency Resolution Process*".

54. Relying upon the proposition laid down by the above said decisions the Mumbai Bench has held that *the attachment order under PMLA Act issued by the Deputy Director, Directorate of Enforcement is a nullity and non-est in law* and hence it will not have any binding force and allowed the application and ordered release of the attachment.

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55. In view of the above said discussions I have no doubt to hold that the seizure of goods belonging to the Corporate Debtor vide its seizure list dated 23.02.2018 was illegal and has no legal force at all. The moratorium in the case in hand was in force from 12.02.2018 and seizure by the First Respondent was on 23.02.2018. So, only because the proceedings was initiated by the DRI in connection with the offence committed by the Promoter Directors of the Corporate Debtor by not remitting the Custom Duty and violated the terms of permission issued by the Development Commissioner under SEZ is not a ground to claim absolute right over the goods. The duty if any due to the Statutory Authorities only comes under the purview of operational debt, and the right of the Authority is to claim the amount due as an operational debt by submitting the claim to the Liquidator. The right and obligation of DRI arising out of the application of the Customs Act, 1962 is not at all under challenge. According to the Ld. Sr. Counsel for the liquidator, the Customs Act, 1962 creates a legal fiction by stating that the unit under the SEZ will not be deemed within the territorial limits of India. The objective of the exclusion is only for the taxation purpose and not for any other purpose affecting the business opportunities who is running the unit under the special economic zone. Therefore, the movable properties seized from the SEZ area would not fall within the CSWE of I & B Code. I do find some force in the said argument.

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56. The right of the DRI to claim the Custom Duty and penalty on account of importing duty free Gold and not exporting it in violation of LOP is not at all under challenge. Its claim over the seized goods alone is under challenge. An order or direction to hand over the goods in no way affects the right of DRI in continuing the investigation under the applicable law. In view of the above said discussions I am of the considered view that the DRI has to hand over the seized goods to the Liquidator. The objections of R-1 in this regard is found devoid of any merit.

57. The Liquidator also prays for remitting a sum of Rs. 25,25,02,220/- paid to the Respondent No. 1 by the Respondent No. 2 towards the payment of custom duty. The Corporate Debtor has got permission to import Gold and Precious Stones under the Special Economic Zone facility for enabling the Corporate Debtor to export it as per the letter of permission (LOP) granted to SGJHIL(CD) by the Development Commissioner. However the Corporate Debtor in violation of the terms of LOP exported the goods thereby was found liable to pay Customs Duty. The DRI is conducting an Investigation in this regard. It has been brought to the notice of DRI that the Corporate Debtor has diverted the goods in violation of the Letter of Permission (LOP) thereby resulting into evasion of Custom Duty to the tune of Rs. 117 Crores. The Promoter Directors of the Corporate Debtor has been arrested under the provision of Section 104 of the Customs Act, 1962 and proceedings has been initiated against them and it is

pending for consideration before the appropriate Authority. The First Respondent has learnt that the Second Respondent Bank is holding fixed deposit of the Corporate Debtor in the account maintained by the Respondent No. 2 vide letter dated 27.01.2017 issued directions to the Respondent No. 2 to remit an amount of Rs. 25,02,02,446/- found payable on account of default by the Corporate Debtor with the DRI in case it fail to submit Bank Realisation Certificate against exports made by the Corporate Debtor.

58. In response to the above said letter (Annexure 'C') the Second Respondent has remitted an amount of Rs. 25,25,02,220/- by way of demand draft on 02.01.2017 which includes interest. It is the said amount which is to be directed to be remitted to the Liquidator's account.

59. The Ld. Counsel appearing for the Second Respondent submits that in view of the Corporate Debtor has failed to produce a copy of the Bank Realisation Certificate (BRC) as proof of export who had exported the jewellery is liable to pay the amount demanded by the DRI and thereby has remitted said amount and it has no claim over that amount. So the question is whether R-1 is directed to remit the said amount to the liquidator account as prayed for by the Liquidator?.

60. The CIRP in this case was initiated from 12.02.2018. The above said amount was remitted to DRI by the R2 on 02.01.2017

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towards the custom duty payable by the Corporate Debtor. Admittedly the Corporate Debtor is a defaulter. DRI has legitimate right to recover its dues. It has realised the above said amount from the R2 who is liable to pay the duty in default by the corporate Debtor in terms of SGJHBL0A executed by the corporate Debtor in favour of R2. The moratorium was declared long after the recovery of that amount by the DRI. That amount was appropriated by the R1 before the date of initiating the CIRP. In the said circumstances, the liquidator cannot claim right over that amount as the amount due to the Corporate Debtor. That being the circumstance I am of the considered view that DRI is not liable to remit Rs. 25,02,02,446/- . as demanded by the Liquidator. Therefore, no remittance of the above said amount by the DRI is found legal and proper. The objection in regard to remitting of the above said amount to the liquidator account is therefore found sustainable.

61. The next submission on the side of the liquidator is that an amount of Rs.13,07,60,182/- which is kept in the fixed deposit with the Respondent No. 2 is liable to be remitted to the Liquidator account by the R2 as it is the amount due to the Corporate Debtor with interest.

62. In regards to the demand of the said amount allegedly kept in the Fixed Deposit of Respondent No.2, Bank the Respondent No. 2 has submitted that it has not been keeping any Fixed Deposit of

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the Corporate Debtor. What is kept in the accounts of the Corporate Debtor maintained by the Respondent No. 2 is the Margin Money held by the Respondent No. 2 to secure demand for payment of import duty until the Corporate Debtor fulfils its export obligation by providing the necessary documents evidencing timely export of Bullion. According to the Ld. Counsel for the R2, since the Respondent No. 1 issued a demand notice that the money kept by the Respondent No. 2 shall not be parted with anybody which is being held in Trust that amount was not to be remitted to the liquidator account as requested. If it is released to the Liquidator it would amount to violation of directions issued by a statutory authorities inviting penal consequences, argued by the Ld. Counsel. According to the ld. Counsel appearing for the Respondent No. 2 in case a direction is issued to the Respondent No. 2 to release the amount admittedly held by the Respondent No. 2, the Respondent No. 2 is to be discharged from all its liability out of the default committed by the Corporate Debtor in defaulting its obligation in regard to the non-fulfilment of export obligations by the Corporate Debtor.

63. The Respondent No. 2 is a Canada's International Bank licensed to run its Branch in India as a scheduled bank. It is working as a nominated Agency as per licence issued by Reserve Bank of India and Respondent No. 2 was acting as a Nominated Agency for facilitating import of Gold and export as per an agreement entered into in between the Respondent No. 2 and the

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Corporate Debtor dated 11th February, 2013. The agreement is styled as "SGJHBL0A" (Shree Ganesh Jewellery House Bullion Loan Agreement).

64. The Ld. Counsel for the Respondent No. 2 submits that the Respondent is authorized to supply goods as per the **Foreign Trade Policy of India**. As per the provisions of the **Foreign Trade Development and Regulation Act 1992** an exporter may obtain Gold/Silver/Platinum as inputs for export products from Nominated Agencies in advance or as replenishment after exports in accordance with the specified procedure. As per the agreement the Respondent No. 2 supplied 1409 kg of imported Bullion on duty free basis to the Corporate Debtor between 2008 & 2013. Out of the said 1409 kg the Corporate Debtor did not complete the export obligations towards 1211.63 kg of Bullion. Accordingly, the Respondent No. 2 was directed to pay Rs. **25,25,02,220/-** to the Commissioner of Customs as directed by Additional Director, Directorate of Revenue Intelligence (Respondent No. 1 herein) towards Custom Duty liability along with the interest accrued as on the date of said payment. The above said payment being paid to the First Respondent in compliance of the directions the Respondent No.2 has no further liability towards the Customs Duty in respect of non-fulfilment of export obligation by the Corporate Debtor towards 1211.63 kg of Bullion.

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65. In respect of demand of Rs.13,07,60,182/- the Respondent No. 2 is admittedly holding an amount of **INR 12,23,04,074.14** in the margin money account of the Corporate Debtor. According to the Ld. Counsel appearing for the Respondent No. 2 the said Margin Money is held in Trust by the Respondent No. 2 in favour of the Department of Revenue, Ministry of Finance, Government of India on account of pending Export Obligations of the Corporate Debtor arising from duty free import of Gold. In respect of that amount Respondent No. 2 was in receipt of a **show cause notice dated 14th August 2017** demanding duty amount to **INR 13,53,67,882/-** along with applicable interest.

66. Further, the Respondent No. 1 vide letter dated February 26, 2019 directed the Respondent No. 2 not to part with the Margin Money held in the Margin Money Account in exercise of its powers **u/s 54 of the Prevention of Money-Laundering Act, 2002. (PMLA)**. It is in the above said circumstances the Respondent No. 2 expressed its inability to remit the money in the account maintained by the R2.

67. Admittedly, Respondent No. 2 has imported goods as an authorised Nominated Agency subject to fulfilment of certain conditions specified in the **Exemption Notification No. 57/2000 dated 8th May, 2000** issued by the Central Government and since the Corporate Debtor not fulfilled the export obligations as per the terms and conditions, no doubt the Customs Duty liable to be paid

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is bound to pay by the Nominated Agency I.e. the Respondent No. 2. It has come out in evidence that the Respondent No. 2 has already remitted Rs. 25,25,02,220/- crores in favour of the Commissioner of Customs as directed by the Respondent No. 1 towards the Customs Duty payable for the non-fulfilment of export obligations towards 1211.63 kg of Bullion. The averment in the reply of the Respondent No. 2 does not reveal that any other Gold / Bullion has been imported and the Corporate Debtor has violated the rules and thereby Custom Duty liability other than INR 25,25,02,220/- is liable to be paid by the Respondent No. 2 to R1.

68. The Margin Money now held by the Respondent No. 2 no doubt is an asset of the Corporate Debtor. Respondent No. 1 cannot realise that amount from the R2 as there is clear bar under section 14(1) of the Code. Truly the abovesaid margin money is kept in the account of the Corporate Debtor by the Respondent No. 2 for facilitating the Import and Export by the Respondent No. 2 as per the terms of Bullion Loan Agreement (**BLOA**) referred to above. The Corporate Debtor could borrow Bullion for use in its business for export and domestic use up to an amount not exceeding INR 136,19,20,000/-. It is certain that the Export Import business at present is not in operation. When the Corporate Debtor is liquidated after settling all the claims of creditors inclusive of operational creditors which includes statutory authorities, the R2's liability to pay the applicable customs duty on import of bullion stands appears to me to be

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completely discharged. Under the above said facts and circumstances, the demand of remitting the margin money kept in the margin account of the R2 by the liquidator is perfectly legal and R2 is bound to remit the said amount to the Liquidator account.

69. Thirdly, the liquidator prays for issuing directions to the Receivers who are in possession of the immovable properties of the Corporate Debtor, as per an order of DRT-1, Kolkata dated, 09.09.2016. The receivers not turned up for challenging the applications. As per section 14(1) (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 (54 of 2002)*. The receivers though have taken possession of the properties as per the order passed by DRT in OA 581 of 2015 they cannot proceed with the sale of the property for realisation of the money due to the creditors in view of the declaration of the moratorium. That being so the properties are no doubt liable to be handed over to the liquidator so as to liquidate the assets of the Corporate Debtor.

70. Having regards to the relevant factors discussed above, I am of the considered view that all the prayers in Misc. A. No. 21/KB of 2019 except prayer for remitting an amount of INR

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25,25,02,220/- by the R1 to the liquidator account are found liable to be allowed. The submission that issuing direction to hand over the custody of the goods seized under section 110 of the Customs Act,1962 amounts to disrupt the functioning of the statutory authorities is found devoid of any merit. Liquidation proceedings is not a proceedings to disrupt the functioning of the statutory authorities, rather it is for the purposes of liquidation of the assets of the corporate Debtor as per the provisions of the code and Regulations in a time bound manner. The non compliance of legitimate direction of the liquidator by the R1 and R2 on the other hand disrupts the functioning of the Liquidator which is unwarranted in the nature of this case.

71. Coming to the relief sought for in Misc. A. No. 22/KB of 2019 the ld. Sr. Counsel appearing for the Liquidator has submitted that despite several requests made to the respondents 1 to 3, they failed and neglected to provide access to the applicant to the Manikanchan SEZ wherein immovable assets of the Corporate Debtor is lying. According to him in order to liquidate all assets and properties of the Corporate Debtor and distribution amongst all the creditors of the Corporate Debtor, who have submitted their claim with the Liquidator after the order of liquidation of the Corporate Debtor, it is necessary that the custody of the assets of the Corporate Debtor at Manikanchan SEZ is to be handed over to the Liquidator. The only one contesting respondent is 3rd respondent/DRI. The objections

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raised by DRI are the very same objections raised by it in Misc.A.No.21/KB of 2019. None of the objections are found sustainable as per the above said findings. Subject to the right of DRI towards the Customs Duty payable for the non-fulfilment of export obligations, the DRI or any other respondents in the application cannot claim right title over the assets of the Corporate Debtor lying in the Manikanchan SEZ. The objection that the liquidator cannot enter into the SEZ for the purpose of valuation of the assets is also found not sustainable under the provisions of the Code. The denial of access to the premises of SEZ by the respondents in the Misc.A.No. 22/KB of 2019 claiming non applicability of the provisions of the Code is also found devoid of any merit. I have already come to a finding that the provisions of the I & B Code, 2016 have an over riding effect over the Customs Act, 1962 as well as the SEZ Act, 2005. So I am of the considered view that the seizer of goods belongs to the corporate debtor as per provisions of the Customs Act,1962 and keeping the goods under the provisions of SEZ Act without permitting the Liquidator to take inventory and possession of the goods is in violation of section 14 and 36(2) of the I & B, Code. The statutory authorities can claim statutory dues as an operational debt by submitting its claim to the Liquidator. The Hon'ble NCLAT in **CA (AT)(Insolvency)No. 205 of 2017 [Pr.Director General of Income Tax (Admn.&TPS)vs. Synergies Dooray Automative Ltd & Ors]** has held that "*Income Tax Department of the Central*

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Government' and the 'Sale Tax Department of the State government' and 'local authority', who are entitled for dues arising out of the existing law are Operational Creditor within the meaning of section 5 (20) of the I&B Code.' So the respondents who are statutory authorities come under the purview of section 5(20) of the Code and they can claim the statutory dues as an operational debt. They cannot claim ownership over the goods belonging to the corporate debtor. In view of the above said discussions this application is also liable to be allowed.

72. In the result the -

(a) **Misc. A. No. 21/KB of 2019** is allowed upon the following orders:-

(i) Respondent No.1, is hereby directed to give the custody of the assets of the Corporate Debtor, seized pursuant to Inventory cum Seizure list dated 23.02.2018 being **Annexure 'A'** to the liquidator within two weeks from the date of receipt of this order.

(ii) Respondent No.2 is directed to remit the sum of **INR 12,23,04,074.14** to the Liquidator account within two weeks of the receipt of the order.

(iii) The Receivers No 3 to 9 are directed to hand over possession of the properties as per the list **Annexure-K** within two weeks of the date of the order.

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(b) **Misc.A.No.22/KB of 2019** is allowed upon the following orders:-

(i) Respondent nos. 1, 2 and 3 are directed to allow complete custody of the assets of the corporate debtor at Manikanchan to the applicant within the Special Economic Zone, Manikanchan so that the applicant can take physical possession of the said property;

(ii) Inspector-in-Charge of Diamond Harbour Police Station is directed to provide all assistance to the applicant for facilitating smooth take over physical possession of the Manikanchan property of the Corporate Debtor situated within the Special Economic Zone, Manikanchan subject to the lease - hold right as per the terms in Annexure - C.

Both parties are directed to bear their respective Costs.

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23/4/19.
(Jinan K.R.)
Member (J)

Signed on this, the 23rd day of April, 2019.

vc/hb.