



**NATIONAL COMPANY LAW TRIBUNAL**

**INDORE BENCH**

**COURT NO. 1**

ITEM No.204

**IA/366(MP)2025**

**in**

**CP(IB)/48(MP)2023**

**Order under Section Sec 60(5)(c) r.w Sec 14 & 238 & Rule 11**

**IN THE MATTER OF:**

Nishant Agrawal RP Shree Geeta Textile Mills Pvt

Ltd

**...Applicant**

**V/s**

Income Tax Department (ITD) Through Income Tax

Officer Burhanpur

**...Respondent**

**Coram:**

Hon'ble Shri Brajendra Mani Tripathi, Member (J)

Hon'ble Shri Man Mohan Gupta Member (T)

**PRONOUNCEMENT ORDER**

**Delivered on 10/03/2026**

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

Sd/-

**MAN MOHAN GUPTA  
MEMBER (TECHNICAL)**

Sd/-

**BRAJENDRA MANI TRIPATHI  
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**INDORE BENCH**

**I.A. No. 366 of 2025**  
**In**  
**C.P. (IB) No. 48 (MP) of 2023**

*[Under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Sections 14 and 238 of the Code and Rule 11 of the National Company Law Tribunal Rules, 2016]*

**In the matter of:**

**Nishant Agrawal,**

Resolution Professional,  
Shree Geeta Textile Mills Private Limited  
Office: AS-2, P-Plaza, 345, Alok Nagar,  
Opposite Maruti Nexa Service, Near Green Valley Apartments,  
Kanadiya Road, Indore, Madhya Pradesh-452016  
Mobile: +91-9977114864  
Email: [cirp.shreegeeta@gmail.com](mailto:cirp.shreegeeta@gmail.com)

**....Applicant**

**Versus**

**Income Tax Department (ITD),**

Through Income Tax Officer, Burhanpur,  
161, Station Road, Burhanpur – 450331 (M.P.)  
Email: [burhanpur.ito@incometax.gov.in](mailto:burhanpur.ito@incometax.gov.in)

**....Respondent**

**In the main matter of:**

**Bank of India**

**...Financial Creditor**

**Versus**

**Shree Geeta Textile Mills Private Limited**

**...Corporate Debtor**

**Coram:**

**Mr. Brajendra Mani Tripathi, Hon'ble Member(J)**

**Mr. Man Mohan Gupta, Hon'ble Member(T)**

**Order pronounced on: 10.03.2026**



**Appearance:**

For the Petitioner : Ms. Darshana Baghel, Adv.  
For the Income Tax Department : Ms. Yashika Bondwal, Adv. a.w.  
Mr. Harsh Prashar, Adv.

**ORDER**

1. The present Interlocutory Application, being I.A. No. 366/MP/2025, has been filed by the Nishant Agrawal, filed on **04.08.2025**, (hereinafter referred to as “**Applicant/Resolution Professional**”) Resolution Professional (IBBI Registration No. IBBI/IPA-001/IP-P-02100/2020-21/13283) of M/s Shree Geeta Textile Mills Private Limited (hereinafter referred to as the “**Corporate Debtor**”), under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**the Code**”) read with Sections 14 and 238 of the Code and Rule 11 of the National Company Law Tribunal Rules, 2016, seeking appropriate directions against the Income Tax Department, Burhanpur, (hereinafter referred to as “**Respondent**”) for the illegal and unilateral adjustment of the income tax refund of Rs. 4,95,720/- (Rupees Four Lakhs Ninety-Five Thousand Seven Hundred and Twenty Only) due and payable to the Corporate Debtor for Assessment Year 2024–25, which was appropriated against an alleged pre-CIRP outstanding demand during the subsistence of moratorium declared under Section 14 of the Code, and praying for a declaration that the said adjustment is null, void and unenforceable in law.



2. It is an admitted position on record that this Hon'ble Adjudicating Authority, vide order dated 13.11.2024, admitted the petition filed by Bank of India under Section 7 of the Code and initiated Corporate Insolvency Resolution Process (hereinafter referred to as “**CIRP**”) against the Corporate Debtor. Consequent upon the said admission, moratorium under Section 14 of the Code came into force with effect from the insolvency commencement date, i.e., 13.11.2024, thereby imposing a statutory prohibition on all actions for recovery, appropriation or enforcement of any claim against the Corporate Debtor or its assets. The Admission Order dated 13.11.2024 has been placed on record and is marked as **Annexure A/1** (Pages 10–20).
3. It is further noted that initially, Ms. Chaya Gupta (Registration No. IBBI/IPA-002/N-00984/2020-2021/13133) was appointed as the Interim Resolution Professional vide the order dated 13.11.2024. Subsequently, this Adjudicating Authority vide order dated 05.02.2025, in pursuance of the decision of the Committee of Creditors taken with 86.13% voting share, confirmed the appointment of the Applicant, Shri Nishant Agrawal, as the Resolution Professional of the Corporate Debtor. The order dated 05.02.2025 appointing the Resolution Professional has been placed on record and is marked as **Annexure A/2**.
4. It is brought on record that the Centralised Processing Centre (hereinafter referred to as “**CPC**”), Bengaluru, processed the income tax



return of the Corporate Debtor, M/s Shree Geeta Textile Mills Private Limited (PAN: AAMCS3217L), filed for Assessment Year 2024–25, and determined a tax refund of Rs. 4,95,720/- (Rupees Four Lakhs Ninety-Five Thousand Seven Hundred and Twenty Only) as payable to the Corporate Debtor, vide Intimation under Section 143(1) of the Income Tax Act, 1961 dated 01.11.2024. The said Intimation has been placed on record and is marked as **Annexure A/3** (Pages 22–29).

5. It is the specific and categorical grievance of the Applicant that, despite the moratorium having come into force with effect from 13.11.2024, the Respondent unilaterally and without intimation to or consent of the Resolution Professional, adjusted the aforesaid refund of Rs. 4,95,720/- for Assessment Year 2024–25 on 22.11.2024 against an alleged outstanding tax demand pertaining to Assessment Year 2022–23, which is admittedly a pre-CIRP period. This adjustment was after the commencement of CIRP and during the full subsistence of the moratorium under Section 14 of the Code. The CPC Adjustment Intimation dated 22.11.2024 (DIN: CPC/2425/A6/520805920) has been placed on record and is marked as **Annexure A/4**.

**Submissions by the Applicant/Resolution Professional:**

6. The Applicant submitted that the present Interlocutory Application has been filed by the Resolution Professional of Shree Geeta Textile Mills Private Limited, under Section 60(5) of the Insolvency and Bankruptcy



Code, 2016, seeking appropriate directions against the Respondent for illegal and unilateral adjustment of income tax refund during the subsistence of moratorium declared under Section 14 of the Code.

- 7.** The Applicant submitted that the Corporate Debtor was admitted into CIRP by order dated 13.11.2024 passed by this Hon'ble Tribunal, pursuant to which moratorium under Section 14 of the Code came into force from the insolvency commencement date, i.e., 13.11.2024. From that date onwards, all actions for recovery, appropriation or adjustment of any amount against the Corporate Debtor stood statutorily prohibited.
- 8.** The Applicant further submitted that during the CIRP period, the CPC, Bengaluru, determined a refund of Rs. 4,95,720/- for Assessment Year 2024–25 in favour of the Corporate Debtor, as reflected in the Intimation under Section 143(1) of the Income Tax Act, 1961 dated 01.11.2024. Instead of releasing the said refund to the Corporate Debtor or to the CIRP account, the Respondent unilaterally adjusted the same against an alleged outstanding demand for Assessment Year 2022–23, which admittedly pertains to the pre-CIRP period, vide CPC Adjustment Intimation dated 22.11.2024.
- 9.** It was further submitted that the alleged outstanding demand for Assessment Year 2022–23, against which the aforesaid adjustment was made, itself was under challenge and subject to statutory appeal



before the competent authority, and was therefore neither final nor crystallised.

- 10.** The Applicant submitted that upon becoming aware of the illegal adjustment, the Applicant immediately objected to the same and called upon the Respondent to reverse the adjustment and release the refund, duly pointing out the subsistence of moratorium and the statutory bar under Section 14 of the Code, through emails dated 12.04.2025 and 24.04.2025. Despite repeated representations, the Respondent failed to undo the illegal adjustment, which necessitated and compelled the Applicant to approach this Hon'ble Tribunal.
- 11.** The Applicant further submitted that the Respondent, in its reply to the Interlocutory Application, has categorically admitted the factum of adjustment of the refund amount. In Paragraph 11 of the Reply, the Respondent expressly admits that the refund of Rs. 4,95,720/- for AY 2024–25 was adjusted against an earlier outstanding demand.
- 12.** The Applicant submitted that, more significantly, in Paragraph 11 of the Reply, the Respondent expressly states that the actual adjustment was effected on 22.11.2024 by CPC, Bengaluru. The said date is indisputably subsequent to the insolvency commencement date of 13.11.2024 and therefore squarely falls within the period of moratorium under Section 14 of the Code.
- 13.** The Applicant further submitted that in Paragraph 12 of the Reply, the Respondent additionally admits that the Corporate Debtor was already



under CIRP and that moratorium was in force at the time of the adjustment, yet seeks to justify the same on the ground that the Department was allegedly unaware of the moratorium at the relevant time. It was submitted that this admission conclusively establishes that the impugned adjustment was indeed carried out during the moratorium period.

- 14.** The Applicant also drew the attention of this Hon'ble Tribunal to Paragraph 16 of the Reply, wherein it is stated that the intimation under Section 245 of the Income Tax Act, 1961 was issued on 01.11.2024, granting 21 days' time to raise objections. The said period of 21 days expired on 22.11.2024, which is the very date on which the adjustment was effected. On that date, the Corporate Debtor was already under CIRP and moratorium under Section 14 was unequivocally in force. The adjustment is thus admitted to have been made during the currency of moratorium and is therefore illegal.
- 15.** The Applicant submitted that the defence sought to be raised by the Respondent — that the adjustment was “automatic” or initiated prior to communication of the CIRP order is legally untenable. Moratorium under Section 14 of the Code operates by force of statute from the insolvency commencement date i.e. from 13.11.2024, and its applicability does not depend upon service, knowledge or communication of the admission order to any creditor.



16. The Applicant submitted that any adjustment or set-off of a refund against pre-CIRP dues amounts to recovery in law and is expressly barred under Section 14(1)(a) of the Code. It was further submitted that the Respondent's reliance on the provisions of the Income Tax Act, 1961, including Sections 143(1), 245 and 154 thereof, is entirely misconceived in view of the overriding effect of Section 238 of the Code, which provides that the provisions of the Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.
17. The Applicant submitted that the refund amount in question forms part of the assets of the Corporate Debtor during CIRP and ought to have been credited to the CIRP account, to be dealt with strictly in accordance with the Code and the IBBI (CIRP) Regulations, 2016. It was contended that permitting unilateral adjustment by a statutory authority would wholly defeat the very object of moratorium and the collective insolvency resolution process contemplated under the Code.
18. The Applicant placed reliance on the judgment of the Hon'ble National Company Law Appellate Tribunal, Principal Bench, in **Mr. Devarajan Raman, Liquidator of Kotak Urja Pvt. Ltd. vs. Principal Commissioner of Income Tax & Ors., [2024 SCC OnLine NCLAT 690]**, wherein it has been categorically held that any set-off or adjustment of tax demand against refunds during the CIRP or the intervening period till liquidation amounts to a clear violation of the



moratorium under Section 14 of the Code. The Applicant submitted further that therefore, the impugned adjustment is ex facie illegal and unsustainable in law.

**19.** In view of the aforesaid submissions and the Respondent's own admissions as borne out from its reply and the annexures placed on record, the Applicant submitted that the adjustment of refund of Rs. 4,95,720/- during the moratorium period is ex facie illegal, void and unenforceable in law, and is accordingly liable to be reversed forthwith. The Applicant therefore prayed that this Hon'ble Tribunal may be pleased to allow the present Interlocutory Application and direct the Respondent to refund the adjusted amount to the CIRP account of the Corporate Debtor, along with applicable interest.

**Submissions by the Respondent/Income Tax Department:**

**20.** The Respondent set out the following chronology of relevant events:

<b>S. No.</b>	<b>Date</b>	<b>Particulars</b>
1.	20.03.2024	Assessment Order passed for A.Y. 2022-23 under Section 144 of the Income Tax Act, 1961, raising a demand of <b>Rs. 38,14,42,727/-</b> (Rupees Thirty-Eight Crores Fourteen Lakhs Forty-Two Thousand Seven Hundred Twenty-Seven Only).



2.	01.11.2024	Intimation sent to the assessee under Section 245 of the Income Tax Act, 1961 received which is proposed against the outstanding demand for the assessment year 2022-23 for seeking response for refund adjustment within 21 days & order to be passed automatically.
3.	13.11.2024	Order passed by this Hon'ble NCLT admitting the corporate debtor into Corporate Insolvency Resolution Process.
4.	22.11.2024	Adjustment of Income Tax Refund by the CPC, Bangalore adjusting demand of Rs. 4,95,720/- (Four Lakhs ninety five thousand seven hundred ).
5.	01.01.2025	IRP mailed the department on 01.01.2025 along with the order of Hon'ble NCLT, Indore Bench that M/s. Shree Geeta Textile Mills Private Limited under the provision of the Insolvency and Bankruptcy Code 2016.
6.	21.01.2025	Submissions of claim in FORM -B by the Income Tax Department.
7.	15.03.2025	The RP mailed the Income Tax Department to expedite the appeal pending before the CIT(A).



8.	12.04.2025	Mail received from the Resolution Professional seeking refund of Rs. 4,95,720/- adjusted under Section 245 of the Income Tax Act, 1961.
9.	25.06.2025	Submission of Revised Claim in Form-B by the Income Tax Department before the Resolution Professional.

**21.** The Respondent submitted that the assessee-company, M/s Shree Geeta Textile Mills Private Limited, filed its Income Tax Return for Assessment Year 2024–25 on 29.10.2024. CPC, Bengaluru, processed the said return and determined a refund of Rs. 4,95,720/-. CPC thereafter issued an intimation under Section 245 of the Income Tax Act, 1961 dated 01.11.2024, proposing adjustment against the outstanding demand for AY 2022–23 and calling upon the assessee to respond within 21 days. No response was submitted by the assessee or by the Interim Resolution Professional/Resolution Professional within the stipulated period.

**22.** The Respondent further submitted that the Income Tax Officer, Burhanpur, was informed of the commencement of CIRP only on 01.01.2025, i.e., well after the adjustment had already been effected by CPC, Bengaluru on 22.11.2024. It was therefore submitted that the adjustment of Rs. 4,95,720/- was carried out before this office received any intimation of the order dated 13.11.2024, and that the proceedings



under Section 245 were initiated prior to the date of admission. Accordingly, the Respondent submitted that the adjustment was justified, procedurally correct and bona fide in the given circumstances.

**23.** The Respondent submitted that the intimation under Section 245(1) dated 01.11.2024 is supported by and must be read in light of **Instruction No. 06 of 2022** dated 28.11.2022 issued by the Directorate of Income Tax (Systems), New Delhi, issued pursuant to directions of the Hon'ble Delhi High Court. The said Instruction prescribes a maximum period of 21 days for Assessing Officers to provide feedback upon receipt of objection, failing which CPC shall automatically effect the adjustment. The Respondent submitted that the entire procedure is fully system-driven and automated, leaving no scope for manual intervention, and that since no objection was filed within 21 days, the adjustment on 22.11.2024 was the automatic and inevitable consequence of the non-response and was essentially a fait accompli.

**24.** The Respondent submitted that the total demand for AY 2022-23 amounts to Rs. 38,14,42,727/- (Rupees Thirty-Eight Crores Fourteen Lakhs Forty-Two Thousand Seven Hundred Twenty-Seven Only), whereas the actual adjustment effected is only Rs. 4,95,720/-. It was submitted that the demand has been grossly under-adjusted and not



over adjusted in as much as the substantial portion of the assessed demand.

- 25.** The Respondent placed reliance on the judgment of the Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi, in ***Avil Menezes, Liquidator of Sunil Hitech and Engineers Limited vs. Principal Chief Commissioner of Income Tax, Mumbai [Company Appeal (AT) (Insolvency) No. 258 of 2024]*** and more particularly to Paragraph 30 of the said judgement which makes a pragmatic call by the NCLAT against similar adjustments done by the Department.
- 26.** The Respondent further submitted that the judgment relied upon by the Applicant, namely ***Mr. Devarajan Raman, Liquidator of Kotak Urja Pvt. Ltd. vs. Principal Commissioner of Income Tax & Ors. [2024 SCC OnLine NCLAT 690]***, is clearly distinguishable on facts and is not applicable to the present case. The Respondent submitted that in the said case, the intimation regarding the proposed adjustment was issued by the Income Tax Department after the Corporate Debtor had already been admitted into CIRP, whereas in the present case, the intimation under Section 245 was issued on 01.11.2024, which is prior to the date of admission i.e. 13.11.2024.

**Observation and Analysis:**



27. We have heard the learned counsel appearing on behalf of the Applicant/Resolution Professional and Respondent and have carefully perused the documents placed on record.

28. The singular and determinative question that falls for consideration before this Tribunal is *whether the adjustment of the income tax refund of Rs. 4,95,720/-, effected by the Centralised Processing Centre (CPC), Bengaluru, on 22.11.2024, against the pre-CIRP outstanding demand for Assessment Year 2022-23 of the Corporate Debtor, M/s Shree Geeta Textile Mills Private Limited, constitutes a violation of the moratorium declared under Section 14 of the Insolvency and Bankruptcy Code, 2016, and is accordingly liable to be declared null and void and reversed?*

29. Before proceeding to examine the rival contentions on merits, this Tribunal notes that there is no dispute between the parties on the following critical foundational facts, which may be taken as established on the basis of the pleadings and the documents on record:

- i. That this Tribunal, vide order dated 13.11.2024, admitted the petition of Bank of India under Section 7 of the Code and initiated CIRP against the Corporate Debtor, consequent upon which moratorium under Section 14 came into force with effect from 13.11.2024, being the insolvency commencement date. **(Annexure A/1)**



**ii.** That CPC, Bengaluru, vide Intimation under Section 143(1) of the Income Tax Act, 1961 dated 01.11.2024, determined a tax refund of Rs. 4,95,720/- for Assessment Year 2024–25 as payable to the Corporate Debtor. **(Annexure A/3)**

**iii.** That CPC, Bengaluru, vide communication dated 22.11.2024, effected the adjustment of the said refund of Rs. 4,95,720/- against the outstanding demand pertaining to Assessment Year 2022–23, which admittedly belongs to the pre-CIRP period. **(Annexure A/4)**

**iv.** That the date of adjustment, viz. 22.11.2024, is indisputably after the insolvency commencement date of 13.11.2024, and the Respondent expressly admits that the Corporate Debtor was already under CIRP and that moratorium was in force at the time of the adjustment. This is admitted in express terms by the Respondent in Paragraph 11 and 12 of its reply.

**30.** The defence raised by the Respondent is that the proceedings under Section 245 of the Income Tax Act, 1961 were initiated by CPC, Bengaluru vide intimation dated 01.11.2024 — i.e., prior to the insolvency commencement date of 13.11.2024 — and that the actual adjustment effected on 22.11.2024 was the automatic and inevitable consequence of the non-response by the assessee within the 21-day period prescribed under the said intimation. It is further contended that the Income Tax Officer, Burhanpur, was communicated the CIRP



order only on 01.01.2025, i.e., well after the adjustment had been effected, and accordingly, the Department cannot be said to have acted in violation of the moratorium. The Respondent also placed reliance on Instruction No. 06/2022 of the CBDT to contend that the adjustment process under Section 245 is fully system-driven and automated.

**31.** This Tribunal has carefully considered the above defence and finds it to be **legally untenable** for the following reasons:

- i. Moratorium under Section 14 of the Code operates by force of statute, and not by virtue of any notification or communication to individual creditors. The Code expressly provides that moratorium comes into force from the insolvency commencement date, which in the present case is 13.11.2024. The statutory prohibition under Section 14(1) is absolute and automatic, and does not depend upon whether a creditor or statutory authority had actual knowledge or notice of the admission order. Any person, authority or institution whether a private creditor or a statutory instrumentality of the State is equally bound by the moratorium from the date of its commencement. The Respondent's contention that it was unaware of the moratorium at the time of adjustment is, therefore, legally irrelevant and cannot constitute a valid defence to the present application.
- ii. The contention that the adjustment was “**automatic**” and system-driven under the CPC mechanism governed by Instruction No.



06/2022 does not save the Respondent. The legal character of an action must be tested by its legal effect, not by the manner in which it was mechanically executed. Even if the CPC system effected the adjustment automatically, the legal consequence of the adjustment — i.e., recovery of a pre-CIRP debt by appropriating an asset of the Corporate Debtor during the moratorium — is squarely prohibited under Section 14(1)(a) of the Code. The moratorium is a statutory prohibition directed at the legal effect of an action, not at the intention of the actor or the manner of execution. The Respondent cannot be permitted to circumvent the moratorium by attributing the recovery to an automated system.

- iii. The contention that the proceedings under Section 245 were “**initiated**” prior to the insolvency commencement date is of no avail. The initiation of the proceedings under Section 245 on 01.11.2024 is a distinct act from the execution of the adjustment on 22.11.2024. It is the date of actual adjustment **22.11.2024** that is legally determinative, not the date on which the intimation was issued. On 22.11.2024, the moratorium was fully operative, and any recovery action on that date, howsoever initiated, was prohibited under Section 14(1). To accept the Respondent's logic would be to create a mechanism by which any recovery action could be insulated from the moratorium by the simple expedient of



issuing a notice marginally before the CIRP admission date, a result wholly inconsistent with the object and scheme of the Code.

- iv. The adjustment of a tax refund payable to the Corporate Debtor against a pre-CIRP outstanding demand is, in substance and effect, a recovery of a **pre-CIRP debt** during the moratorium. It is a settled principle of insolvency law that set-off, appropriation and adjustment of amounts payable to the Corporate Debtor against its pre-CIRP liabilities are prohibited under Section 14(1)(a) of the Code, which bars any institution, continuation or execution of any proceedings against the Corporate Debtor during the moratorium. The refund amount payable to the Corporate Debtor is, during the CIRP period, an asset of the Corporate Debtor to be dealt with in accordance with the Code and the CIRP Regulations, and cannot be unilaterally appropriated by any creditor being statutory authority or otherwise.
- v. The Respondent's reliance on the provisions of the Income Tax Act, 1961, including Sections 143(1), 245 and 154 thereof, to justify the adjustment, is misconceived. **Section 238** of the Code expressly provides that the provisions of the Insolvency and Bankruptcy Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. The Code, being a special law operating on the subject of insolvency resolution, must prevail over the provisions of the Income Tax Act,



1961, a general taxing statute, to the extent of any inconsistency. Any provision of the Income Tax Act that would otherwise permit adjustment, set-off or recovery against a Corporate Debtor undergoing CIRP must yield to the overriding mandate of the Code.

- 32.** This Tribunal has also considered the judgments cited by the parties. The Respondent sought to rely on the judgment of the Hon'ble NCLAT, Principal Bench, in ***Avil Menezes, Liquidator of Sunil Hitech and Engineers Limited vs. Principal Chief Commissioner of Income Tax, Mumbai [CA(AT)(Insolvency) No. 258 of 2024]***, contending that the said judgment permits adjustment of tax refunds against tax demands up to the extent of the claim admitted in CIRP. A careful reading of the said judgment shows that the Hon'ble NCLAT in that case was dealing with a situation arising in liquidation proceedings, and the direction in **Paragraph 30** thereof is to the effect that in the event the ITR amount set off exceeds the Department's admitted claim in liquidation, only the excess may be refunded. The said judgment does not, in any manner, sanction or validate the adjustment of a refund during the CIRP moratorium period. The facts and the legal context of the said case are therefore materially distinct from the present case, and the judgment cannot be relied upon to sustain an adjustment effected during the subsistence of moratorium.
- 33.** The Applicant has placed reliance on the judgment of the Hon'ble National Company Law Appellate Tribunal, Principal Bench, in ***Mr.***



***Devarajan Raman, Liquidator of Kotak Urja Private Limited vs. Principal Commissioner of Income Tax (Mumbai-1) & Ors. [2024***

**SCC OnLine NCLAT 690]**. This Tribunal notes that the said NCLAT judgment arose out of an appeal against the NCLT Mumbai Bench order dated 16.06.2023 in IA-117/2022 in CP (IB) No. 3269/MB-IV/2019. The NCLT Mumbai Bench had dismissed the Liquidator's application on the ground that the set-off exercised on 10.02.2021 fell within the post-CIRP and pre-liquidation order vacuum period. On appeal, the Hon'ble NCLAT reversed this position insofar as it concerned adjustments during the CIRP period. The ratio of the NCLAT judgment in Devarajan Raman (supra) is further confirmed by the observation of the Hon'ble NCLAT in **Avil Menezes** itself at **Paragraph 25**, where the NCLAT expressly acknowledged that *“In the Raman judgement, set off was claimed while Corporate Debtor was undergoing CIRP and for reasons of set-off being claimed prior to passing of liquidation order, it was held to be contrary to law.”* The present case is entirely on all fours with this principle as the adjustment was made on 22.11.2024, squarely during the CIRP period.

- 34.** Further, at **Paragraph 26**, the Hon'ble NCLAT, even in the context of liquidation, has held that the Income Tax authority does not enjoy the jurisdiction and power to suo motu initiate recovery of dues or execute their claim unilaterally by adjusting the ITR amount with past tax dues. The Hon'ble NCLAT extended the ratio of the **Hon'ble Supreme Court's**



judgment in ***Sundaresh Bhatt, Liquidator of ABG Shipyard vs. Central Board of Indirect Taxes and Customs [Civil Appeal No. 7667 of 2021]*** to hold that while statutory authorities can take steps to determine tax dues, they cannot enforce a claim for recovery during the moratorium period. This principle, articulated in the context of liquidation moratorium, applies with even greater force to the CIRP moratorium under Section 14.

- 35.** This Tribunal further notes that the Respondent has, in its own revised claim dated 10.06.2025 (**Annexure A/8**), explicitly acknowledged the adjustment of Rs. 4,95,720/- against the pre-CIRP demand. The Respondent thus stands doubly bound i.e., both by the express admissions in its pleadings and by the clear documentary evidence on record that the adjustment was effected on 22.11.2024, during the subsistence of moratorium. This is not a case of disputed facts requiring further inquiry.
- 36.** In view of the foregoing analysis, this Tribunal holds that:
- i.** The moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016, came into force on 13.11.2024, being the insolvency commencement date, and was fully operative on 22.11.2024, the date of the impugned adjustment.
  - ii.** The adjustment of the income tax refund of Rs. 4,95,720/- for Assessment Year 2024–25 effected by the Respondent on 22.11.2024, against the outstanding demand for Assessment Year



2022–23, amounts to a recovery of a pre-CIRP debt during the moratorium period and is accordingly in direct contravention of Section 14(1)(a) of the Code.

- iii.** The defence of the Respondent that the adjustment was automatic, system-driven, and effected without knowledge of the moratorium is **legally untenable** and does not constitute a valid justification for the violation of the statutory moratorium.
- iv.** The provisions of the Income Tax Act, 1961, under which the Respondent seeks to justify the adjustment, must yield to the overriding provisions of Section 238 of the Code read with Section 14 thereof, to the extent of any inconsistency.

### **ORDER**

In view of the above observations and analysis, the present **I.A. No. 366/MP/2025** is hereby **ALLOWED**. Accordingly, it is directed as follows:

- A.** The **adjustment of the income tax refund of Rs. 4,95,720/-** (Rupees Four Lakhs Ninety-Five Thousand Seven Hundred and Twenty Only) for Assessment Year 2024–25, effected by the Respondent — Income Tax Department, Burhanpur — on **22.11.2024**, against the outstanding demand for Assessment Year 2022–23, during the subsistence of the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016, is hereby declared



to be **in violation of Section 14 of the Insolvency and Bankruptcy Code, 2016 and unenforceable in law.**

- B.** The Respondent — Income Tax Department, through the Income Tax Officer, Burhanpur, and/or the Principal Commissioner of Income Tax-1, Indore — is hereby directed to **forthwith reverse the aforesaid adjustment** and credit the amount of **Rs. 4,95,720/-** together with interest thereon under **Section 244A of the Income Tax Act, 1961**, to the designated CIRP bank account of the Corporate Debtor.
- C.** Accordingly, **I.A. No. 366 of 2025** in **C.P. (IB) No. 48 (MP) of 2023** stands **allowed** and **disposed of.**

Sd/-

**Man Mohan Gupta**  
**Member (Technical)**

Sd/-

**Brajendra Mani Tripathi**  
**Member (Judicial)**

Abhinav Maru/LRA