

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Ins) No. 1786 of 2025

[Arising out of the Order dated 31.10.2025, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench), IA 2590 of 2025 in COMPANY PETITION (IB) NO.1113/NCLT/MB/2022]

IN THE MATTER OF:

1. BSE Limited

Having its registered office at:
25th Floor, Phiroze Jeejeebhoy Towers,
Dalal Street, Fort,
Mumbai – 400 001, Maharashtra
Email: registrar@thelawpoint.com

...Appellant

Versus

1. Mr. Avil Menezes

**Interim Resolution Professional of
Future Corporate Resources Private
Limited**

106, 1st Floor, Kanakia Atrium 2,
Cross Road A, Behind Courtyard Marriott,
Chakala, Andheri East, Mumbai-400093
Email ID: avil@caavil.com ;
irp.fcrpl@aegisipe.com

..Respondent No.1

**2. Central Depository Services (India)
Limited**

Marathon Futurex, A-Wing, a 25th floor,
NM Joshi Marg, Lower Parel, Mumbai-
400013
Email ID: [cdsllegal@cdslindia.com](mailto:cDSLlegal@cdslindia.com)

..Respondent No. 2

3. Securities and Exchange Board of India

SEBI Bhavan BKC
Mittal Court, 'B' & 'C' Wind
1st Floor, 224 Nariman Point
Mumbai-400021
Email ID: sebinro@sebi.gov.in

..Respondent No. 3

4. Samurai Securities Pvt. Ltd.

DP ID: 12038600
303/306 Raheja Chambers, F.P.J. Marg,
Nariman Point, Mumbai 400021
Email ID: admin@samuraisec.co.in

..Respondent No. 4

Present:

For Appellant : Mr. Abhishek Puri, Mr. Surbhi Gupta, Mr. Sahil Grewal, Mr. Manish Chhangani & Mr. Abhay Chauhan, Advocates.

For Respondent : Mr. Neeraj Malhotra Sr. Adv. with Mr. Abhishek Baid, Mr. Mohit Kumar Bagna, Mr. Praneet Das, Mr. Ravinder Kumar & Mr. Nimish Kumar, Advocates for R-3 (SEBI).
Mr. Anand Sengar, Advocate for R-4.
Mr. Ajit Shah, Advocate for R-2.
Mr. J. Rajesh, Mr. Dhruvad Vaghani, Mr. Md. Arsalan Ahmed & Mr. Yashwardhan Aggarwal, Advocates for R-1.

With
Company Appeal (AT) (Ins) No. 1862 of 2024

[Arising out of the Order dated 31.07.2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench, Court-III), IA/928/2023 in C.P. (IB)/2941 (MB)C-III-2019]

IN THE MATTER OF:

1. BSE Limited

Having its registered office at:
25th Floor, Phiroze Jeejeebhoy Towers,
Dalal Street, Fort,
Mumbai – 400 001, Maharashtra
Email: registrar@thelawpoint.com

...Appellant

Versus

1. Ms. Mrudula Brodie,

Liquidator for Liz Traders and Agents Pvt. Ltd., Having office at: A-403, Silver Estate Apartment, Raghukul Creation, Manish Nagar, Nagpur- 440 015
Email: siriuslegaladvocates@gmail.com

..Respondent No.1

2. National Stock Exchange of India Ltd. (NSE)

Having registered office at:
Exchange Plaza, C-1, Block G, Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051,
Maharashtra Email:
service.mumbai@parinamlaw.com

..Respondent No. 2

3. National Securities Depository Ltd. (NSDL)

Having office at:
Trade World, A wing, 4th Floor,
Kamala Mills Compound, Lower Parel,
Mumbai – 400 013, Maharashtra
Email: info@nsdl.com

..Respondent No. 3

4. India Infoline Finance Ltd. (IIFL)

Having office at:
801, 8th Floor, Hubtown Solris, N.S
Phadke Marg, Vijay Nagar, Andheri East,
Mumbai – 400 069, Maharashtra
info@iiflcap.co

..Respondent No. 4

5. Securities and Exchange Board of India (SEBI)

Having its head office at:
Plot No.C4 – A, “G” Block, Bandra – Kurla
Complex, Bandra (E)
Mumbai – 400 051, Maharashtra
Vinayak@sebi.gov.in

..Respondent No. 5

Present:

For Appellant : Mr. Abhishek Puri, Mr. Surbhi Gupta, Mr. Sahil Grewal, Mr. Manish Chhangani & Mr. Abhay Chauhan, Advocates.

For Respondent : Mr. Neeraj Malhotra Sr. Adv. with Mr. Abhishek Baid, Mr. Mohit Kumar Bagna, Mr. Praneet Das, Mr. Ravinder Kumar & Mr. Nimish Kumar, Advocates for R-5 (SEBI).
Mr. Amit Agrawal, Mr. Naveen Wegde, Mr. Sarthak Wadhwa, Ms. Lakshmi Nair & Mr. Nayak Samuel, Advocates for R-1.

J U D G M E N T
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

A common issue is involved in the aforesaid appeals and therefore for the sake of convenience both above appeals are being disposed of by passing this common order.

Factual Matrix pertaining to CA (AT) (Ins) No. 1786 of 2025

2. CA (AT) (Ins) No. 1786 of 2025 has been filed by the appellant-BSE Ltd. Challenging the impugned order dated 31.10.2025 passed by the Ld. National Company Law Tribunal, Mumbai (Adjudicating Authority) in IA No. 2590 of 2025 in CP (IB) No. 1113(MB) of 2022 whereby the appellant has been directed to vacate the debit freeze with immediate effect and issue necessary communication to the Respondent No. 2 within 15 days from the passing of the order.

3. Brief facts necessary for the disposal of the instant appeal are that Corporate Debtor (CD) is an Investment Company / Holding Company of the future group facilitating the funding of group companies through various investments and landing of loans and advances and also providing services to scale up/support the retail business of the group.

4. The CIRP of the CD was initiated vide order dated 24.09.2024 passed by the Ld. Adjudicating Authority in CP (IB) No. 1113 of 2022 and the Respondent No.1 was appointed as the Interim Resolution Professional (IRP) of the CD and Management of the affairs of the CD vested in him.

5. It is further reflected from the record that after verifying the claims of the creditors the Committed of Creditors (CoC) was constituted and

thereafter it was known that the CD holds a Demat account with appellant to hold shares and securities in Dematerialized form.

6. It is further reflected that in order to take control of the assets of the CD, Respondent no. 1 enquired from Respondent No. 4 pertaining to the status of the securities held by the CD and it was informed by Respondent No. 4 that a debit freeze is imposed on this Demat account.

7. It is further reflected that on request, Respondent No. 4 enquired with Respondent No. 2 vide email dated 21.02.2025, for the reasons of such debit freeze and the steps required to defreeze the same. Respondent no. 2 informed vide email dated 24.02.2025 that the debit freeze on this Demat account was initiated on the instructions received from appellant and asked Respondent No. 4 to provide with confirmation from the appellant for lifting of such freeze.

8. It is further reflected that the Respondent No. 1/IRP addressed a letter to the appellant on 25.02.2025 and Respondent No. 2 as well as to Respondent No. 4 regarding the initiation of the CIRP of the CD and requested to remove the debit freeze on this Demat account with a further request to provide the copy of the order by which the Demat account was frozen.

9. It is also reflected that appellant vide email dated 27.02.2025 responded to the Respondent No. 1 stating that the debit freeze on the Demat account was pursuant to the default committed by Future Retail Ltd. (FRL) in paying the annual listing fee to Respondent No. 2 as per the listing agreement entered into by and between appellant and FRL and also mentioned Circular no. 20210625-43 of date 25.06.2021 issued by the

appellant with regard to the action which may be taken for non-payment of the annual listing fee.

10. It is also reflected that Respondent No. 1 vide letter dated 19.03.2025, addressed to appellant and Respondent No. 2 requested to defreeze the above mentioned Demat account however vide reply dated 24.03.2025 appellant responded by stating that they will only lift the debit freeze after receiving the due amount of Rs. 15,15,857/- and as such the debit freeze on the Demat account was not removed.

11. Aggrieved by the refusal of the appellant to defreeze the aforesaid Demat account of the CD the appellant –BSE Ltd. has preferred an IA No. 2590 of 2025 before Ld. Adjudicating Authority, which was disposed of by passing impugned order, which is under challenge in this appeal.

Factual Matrix pertaining to CA (AT) (Ins) No. 1862 of 2024

12. The instant appeal has been preferred by the appellant-BSE Ltd. challenging the impugned order dated 31.07.2024, passed by Ld. NCLT, Mumbai (Adjudicating Authority) disposing IA No. 928 of 2023 in CP IB No. 2941/MB/2019 whereby the application moved by the Respondent No. 1/liquidator has been allowed and direction has been given to the appellant and other Respondents to defreeze the Demat account of the CD with consequential directions.

13. Necessary facts required for the disposal of this appeal are that vide order dated 25.02.2022, passed in CP (IB) No. 2941/MB/2019 by Xander Finance Services Ltd. under Section 7 of the IBC, 2016 the CIRP was initiated against the Liz Traders and Agents Pvt. Ltd. (CD) and Ms. Prajakta

Menezes was appointed as the Interim Resolution Professional (IRP) who was subsequently confirmed as RP (Resolution Professional).

14. It is also reflected that the CoC of the CD in its 3rd meeting approved the liquidation of the CD which was approved by Ld. Adjudicating Authority vide order dated 05.09.2022 and Ms. Mrudula Cletus Brodie was appointed as the liquidator.

15. The liquidator while going through the documents and financial statements of the CD got knowledge of certain shares of listed companies held by the CD and requested for the statement of holding from Respondent No. 4- India Infoline Finance Ltd. (IIFL) as Demat account was managed by the Respondent No. 4 and vide reply of the Respondent No. 4 dated 02.12.2022 it was known that the CD was holding 5,600 shares of Tata Chemicals Ltd., 6,384 shares of Tata Consumer Products Ltd., 572 shares of The Indian Hotels Company Ltd., 63 shares of The Indian Hotels Company Ltd., 45,387 shares of Cox and Kings Ltd., 110,209 shares of Cox and Kings Financial Services Ltd. and 8 shares of Videocon Industries Ltd.

16. It is further reflected that the liquidator also got knowledge that above mentioned Demat account of the CD has been frozen due to which selling of the shares and transferring the proceeds from such sale to the stakeholders of the CD is not possible and in order to get this Demat account de-frozen the liquidator wrote an email on 13.12.2022, to Respondent No. 4 pertaining to the liquidation of the CD and of her appointment as liquidator with a further request to defreeze the Demat account of the CD, however, Respondent No. 4 failed to defreeze the same and in this regard an email dated 09.01.2023 was also written by the Liquidator to Respondent No. 3

/National Securities Depository Ltd. (NSDL) and a response with regard to the same was received on 13.01.2023, however the Demat account was not de-frozen.

17. It is further reflected that after exchange of various correspondence/ emails between the Respondent No. 1 and Respondent No. 4 the Demat account was not de-frozen and ultimately the appellant as well as National Stock Exchange of India Ltd. (NSE)/Respondent No. 2 in their separate emails addressed to the Respondent No.1/liquidator dated 24.02.2023 and 23.02.2023 respectively, stated that the Demat account of the CD can only be de-frozen if the CD has completed all the necessary compliances in accordance with the LODR Regulation, as well as the fine so levied on the CD is paid. It is further stated that the CD has neither completed necessary compliances in accordance with the LODR Regulations nor has paid the fines levied for such non-compliances. It was further informed that due to non-compliance of various Regulations of SEBI (LODR) Regulations, 2015, freezing action against Cox and kings Ltd., Cox and Kings Financial Services Ltd. and Tulip Stars Hotels Ltd. were taken on November 19, 2019 and February 25, 2020, respectively. It was further stated that since Liz Traders and Agents Pvt. Ltd. were disclosed as Promoters of the above mentioned companies in the shareholding pattern filed by the them, Demat account of Liz traders and agents has also frozen.

18. Aggrieved by the refusal of the appellant to de freeze the aforementioned Demat account the IA No. 928 of 2023 was filed by the liquidator/Respondent No. 1 requesting the Adjudicating Authority to direct the appellant and other Respondents to defreeze the Demat account of the

CD with consequential directions and vide impugned order of dated 31.07.2024 Ld. Adjudicating Authority allowed the aforesaid application of the liquidator and directed the appellant and other Respondents therein to defreeze the Demat account of the CD with a further direction to Respondent No. 4/IIFL to extend its co-operation by ensuring the proper functioning of the trading account.

19. The BSE Ltd.-Appellant feeling aggrieved by the impugned order passed by the Ld. Adjudicating Authority has preferred instant appeal.

Submissions of Ld. Counsels

20. Ld. Counsel for the appellant submits that the Demat account of the CD was frozen pursuant to the failure of the CD to pay Annual Listing Fees (ALF) in accordance with the circular dated 25.06.2021 issued by the appellant read with Circular dated 11.02.2021 (SoP) Circular issued by the SEBI/Respondent No.3, however instead of carrying out the business of the CD in accordance with the applicable laws and Regulations or take appropriate measures to rectify such non-compliance for the purpose of de-freezing of the Demat account the Respondent No. 1/IRP along with the CoC proceeded to invite the Expression of Interest (EOI) for process sale of shares lying in the Demat account of the CD and with the intent to bypass the necessary requirements for the purpose of de-freezing the above mentioned Demat account the IA No. 2590 of 2025 was filed before Adjudicating Authority under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (Code).

21. It is further submitted that the Ld. Adjudicating Authority while passing the impugned judgment has relied on its own judgment passed in IA

No. 928 of 2025 in CP IB No. 2914 of 2019 which is the subject matter of the connected appeal in complete ignorance of the orders passed by the Hon'ble Supreme Court and the judgment passed by the co-ordinate Benches.

22. It is vehemently submitted that Ld. Adjudicating Authority was not having any jurisdiction at all under Section 60 (5) of the Code to adjudicate on the issues which are within the Securities Law Framework and SEBI Circulars. Elaborating further it is submitted that the action of freezing of the Demat account the CD has been taken in exercise of power contained under the SoP Circular read with BSE ALF Circular. In this regard Section 9(2) and Section 21 of the Securities Contracts (Regulation) Act, 1956 (SCRA) has been highlighted along with Regulation 14 of SEBI (Listing obligations and Disclosure Requirements) Regulations, 2015 (LODR) Regulations and it is submitted that a comprehensive securities law framework exists to ensure compliance by listed entities including payment of Annual License Fee (ALF) and the issue falls within the domain of the exchange and the Adjudicating Authority was not having any jurisdiction to grant the prayers sought by the Respondent No. 1. Reliance has been placed by Ld. Counsel for the Appellant on ***Embassy Property Developments Pvt. Ltd. vs. State of Karnataka***, (2019) SCC Online SC 1542.

23. It is further submitted that Demat accounts of the CD were frozen much prior to the commencement to the CIRP process and thus was not an action arising from or in relation to the Insolvency Proceedings. Emphasis has been laid on ***Gujarat Urja Vikas Nigam Ltd. vs. Amit Gupta and Ors.***, (2021) 7 SCC 209.

24. It is further submitted that the impugned order fails to consider that freezing of the Demat account has no nexus with the Insolvency/liquidation of the CD under the Securities Law Framework and therefore there was no occasion for the Ld. Adjudicating Authority to assume any jurisdiction which was not available. Reliance has been placed on the judgment passed by the Ld. NCLT Mumbai of date 20.08.2024, in IA No. 5538 of 2023 in ***Dolphin off Shore Enterprises (India) Ltd. vs. BSE Ltd.*** in order to show that the Reliance of Ld. Adjudicating Authority on Clause 5 of the SoP circular is erroneous.

25. It is further submitted that the IRP is only obliged to carry out the business of the CD in compliance of the applicable laws including his obligations and requirement under the Securities Law Framework(SLF) in view of Section 17(2)(e) of the Code and Section 25(2) (b) also gives power to the RP to represent the CD with the third parties in all proceedings and therefore the IRP/RP should have approached the appropriate forum for defreezing of the Demat account of the CD. However, the IRP in this case failed to conduct necessary diligence before initiating the process for sale of assets under Section 29 of the IBBI (Corporate Insolvency Resolution Process) Regulations, 2016 (CIRP) Regulations and thus the IRP was under a legal obligation to determine the status of the assets of the CD before initiating the any process for sale of such assets and therefore was not having any locus to file an application for de-freezing of the demat account under Section 60 (5) of the Code and thus have by passed the Regulatory Framework Governing Securities Market.

26. It is also submitted that the moratorium as provided under Section 14 of the Code is not applicable to actions taken for compliance with mandatory securities regime and prior action of freezing of demat account as the objective of the freezing action is not recovery but to ensure compliance with the applicable laws and Regulations and therefore the action of freezing is not barred by moratorium as the moratorium provided in the Code is with regard to suits and proceedings in relation to the debts payable by the CD and could not encroach upon the right of other authorities, duly empowered under a statute or Regulations. Reliance in this regard has been placed on **Regional P.F. Commissioner vs. T.V. Balasubramanian (RP), CA (AT) (Ins) No. 1521 of 2019 decided on 08.06.2020** as well as on **Roofit Industries Ltd. vs. Jitender Kumar Jain and Ors., (2017) SCC Online NCLT 12085**. It is submitted that the Reliance of Respondent No. 1 on **Anju Aggarwal Resolution Professional of Shree Bhavani Paper Mills vs. BSE Ltd.** is wholly misplaced.

27. It is further submitted that pre-requisite for application of the overriding Principle contained under Section 238 of the Code that the provisions of the other law are in consistent with the provisions of the Code as per the test laid down by the Hon'ble Supreme Court in **Kishorebhai Khamachand Goyal vs. State of Gujarat (2003) 12 SCC 274**. However, those tests are not satisfied in the instant case.

28. It is further submitted that despite the impugned order recognized that appellant has discretion and power to relax the action taken in terms of the circulars issued by the SEBI and exchange, has completely disregarded the submissions of the appellant that the appellant should be given an

opportunity to exercise its discretion under the various circulars issued by the SEBI and the Exchange and has set a dangerous precedent allowing the non-compliant listed entities to allow them to simply by pass the process and requirements under aforesaid circulars and in this way the various circulars issued by the SEBI and Exchange has been ignored and the Securities Law Framework has been undermined.

29. Ld. Counsel for the Appellant further submits that in Judgment dated 29.07.2017 passed by the Hon'ble NCLT, Mumbai in CP 593 & CP1085/I&BP/ NCLT/ MAH/ 2017 in **“Shobha Limited and Sadashiv Lazman Jogalekar v. Pancard Clubs Limited”** NCLT Mumbai has held that Section 238 of I&B Code cannot be said to have an overriding effect or overlapping effect over the provisions of Securities and Exchange Board of India Act, 1992 (“SEBI Act”) and that nullification of actions taken by regulatory authorities / SEBI does not fall in the jurisdiction of the Hon'ble NCLT. Reliance is also placed on the judgment passed by NCLT, New Delhi vide Order dated 23.02.2021 in **M/s Adonis Electronics Pvt. Ltd. v M/s Saka Ltd** and also that Hon'ble Supreme Court in Civil Appeal No.7038 /2025 in the matter of **BSE Ltd. Vs. Spice Energy Pvt. Ltd.** has granted stay of the Order dated 30.04.2025 passed by SAT directing refund of ALF by the Appellant and de-freezing of demat account of the promoter of a corporate debtor. The said Order dated 30.04.2025 passed by SAT was premised on the finding that the said action of freezing was in teeth of Section 238 and Section 14 of I&B Code. It is also submitted that the case laws relied on by the Appellants are not applicable to the facts of these cases.

30. Ld. Counsel for the Respondent No.1 in CA (AT) (Ins) No.1786 of 2025 submits that the Resolution Professional is entitled to take custody of the assets of the Corporate Debtor and during the moratorium under Section 14 of the Code enforcement proceedings by the appellant cannot continue against the Corporate Debtor and the SEBI Circular dated 11.02.2021 also recognizes and relaxes the restraint imposed during moratorium, thus there is no illegality in the impugned orders.

30.1 It is further submitted that Future Corporate Resources Pvt. Ltd. (Corporate Debtor) is the suspended promoter company of Future Retails Limited (FRL) and the Appellant had frozen the Demat Account of the Corporate Debtor, as FRL had not paid its Annual Listing Fees (ALF), despite the Appellant having filed a claim for the ALF, which was admitted in the CIRP and the Liquidation process of FRL and recovery proceedings for the ALF by the Appellant under the SEBI Circular dated 11.02.2021 against FRL are barred by Section 14(1)(a) of the Code.

30.2 It is submitted that SEBI Circular dated 11.02.2021 provides the SOP for listed entities that fail to pay ALF, which requires the Appellant to follow up with the listed entity and, only thereafter, deny permission for further listing. The Appellant may freeze the promoters' shares only if the listed entity fails to pay the ALF. In other words, freezing of the promoters' shares can occur only as the third step in the recovery process by the Appellant under the SEBI Circular dated 11.02.2021.

30.3 It is also submitted that the Appellant has filed claim in the CIRP of FRL which was admitted in full by the RP of FRL and when FRL was admitted into Liquidation the Appellant again filed the claim which was also

admitted in full and the payment to the Appellant was subject to the provisions of the Code, and the recovery of the ALF was also subject to the insolvency resolution and liquidation process. The SEBI Circular dated 11.02.2021 at Clause 5 provides that no action must be taken, and to withdraw any action where the listed entity is under moratorium, recognizing the bar against recovery proceedings under Section 14(1)(a) of the Code.

30.4 It is also submitted that **SEBI** had, in their Affidavit in Reply to the IA No. 2590 of 2025, relied on Clause 5 of the SEBI Circular dated 11.02.2021, and had given a no-objection before Ld. Adjudicating Authority for de-freezing the Corporate Debtor's demat account.

30.5 It is further submitted that the SEBI Circular dated 11.02.2021 at para 3.3 states that if the listed entity fails to pay ALF, the Appellant shall issue a notice to the promoter company to pay ALF for the listed entity. In the present case, after FRL was admitted into CIRP, the promoters were suspended and therefore were barred under Section 17(1)(b) from acting on behalf of the FRL. Therefore, the Appellant could not initiate recovery proceedings, nor could they have required the promoter to act on behalf of FRL, and pay ALF.

30.6 It is further submitted that the Corporate Debtor was not vicariously liable for its group company, i.e., FRL, as, due to the operation of Section 14(1)(a) of the Code, FRL could not be proceeded against for recovery of ALF by the Appellant. Reliance is placed on the Judgment of the Hon'ble Supreme Court in **State Bank of India v. Shyama Devi (1978) 3 SCC 399**, **Dilip Hariramani v Bank of Baroda (2024) 15 SCC**, **Ashutosh Ashok**

Parasrampuriya and others. v Gharrkul Industries Private Limited, (2023) 14 SCC 770 and Pradeep Kumar Kabra v Assistant Commissioner, CGST & Central Excise Comp. App. (AT)(Ins) No. 409 of 2023 to emphasize that assets attached prior to CIRP may be released by the Adjudicating Authority, as the assets are the property of the Corporate Debtor. Reliance is also placed on **ArcelorMittal India Private Ltd. v. Satish Kumar Gupta (2019) 2 SCC 1** and **Embassy Property Developments (P) Ltd. v State of Karnataka (2020) 13 SCC 308** in order to show that the Adjudicating Authority alone has jurisdiction when it comes to proceedings by or against the Corporate Debtor and once the dues have been crystallized and are recoverable from the Corporate Debtor, the claim of the government would be operational debt, and would make the government an operational creditor. Therefore, the government dues would have to be paid only in the manner as provided in the resolution plan.

30.7 Reliance is also placed on **Ms. Anju Agarwal v. Bombay Stock Exchange & Ors. Company Appeal (AT)(Ins) 734 of 2018** in the context that recovery proceedings, including under Section 28A of the SEBI Act, cannot continue during a moratorium as well on **National Spot Exchange Ltd. through its Authorised Representative v Namdhari Foods International Pvt. Ltd. 2021 SCC OnLine NCLAT 2918, Pinakin Shah-Liquidator v The Assistant Commissioner of State Tax Company Appeal (AT)(Ins) No. 32 of 2021, Hemant Mehta, RP of Pan India Utilities v Ass. Commissioner of State Tax 2022 SCC Online NCLAT 4191, GUVNL v Amit Gupta (2021) 7 SCC 209, Varrsana Ispat Ltd v Deputy Director of**

Enforcement 2019 SCC OnLine NCLAT 235 and Kiran Shah v Enforcement Directorate Company Appeal (AT)(Ins) No. 817 of 2021.

30.8 Ld. Counsel for the Respondent No.3 SEBI on the other hand submits that the issue of freezing of the demat accounts of the Corporate Debtor falls within the domain of the Stock Exchange in terms of the circulars issued by the Respondent No. 3/SEBI and the Exchange; and the Hon'ble NCLT does not have jurisdiction to grant the prayers sought for by the Respondent No. 1 under Section 60(5) of the IBC in view of the law laid down by the Hon'ble Supreme Court in **Embassy Property Developments Pvt. Ltd. v State of Karnataka [2019 SCC Online SC 1542]** and **Gujrat Urja Vikas Nigam Limited v. Amit Gupta and Ors. [(2021) 7 SCC 209]**, as Ld. NCLT does not have jurisdiction under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 which the IBC expressly does not empower it to do. The residuary jurisdiction vested with the Ld. NCLT under the IBC is confined only to facts and issues that arise solely out of, or in relation to the insolvency of the Corporate Debtor.

30.9 It is further submitted that the Impugned Order fails to consider that the freezing action by the Appellant/BSE was initiated against the Corporate Debtor in accordance with the circulars issued by the Respondent No. 3/SEBI and Appellant/BSE much prior to initiation of CIRP, has no nexus with the insolvency/ liquidation of the Corporate Debtor, but with the obligations of listed entities and the promoters thereof of the listed entities under the securities law framework.

30.10 It is further submitted that the interpretation accorded by the Ld. NCLT to Clause 5 of the SOP Circular is wholly misconceived and legally untenable. At no stage does Clause 5 confer any adjudicatory power upon the Ld. NCLT to direct de-freezing of a Demat account, nor does it dilute the statutory powers exercised by SEBI under the provisions of the SEBI Act, 1992 and the Regulations framed thereunder.

30.11 It is further submitted that Section 25(2)(b) of the IBC gives the power to the RP to represent and act on behalf of the Corporate Debtor with third parties, and exercise rights for the benefits of the Corporate Debtor in judicial, quasi-judicial and arbitration proceedings. The Hon'ble Supreme Court in Embassy Property Developments (supra) at Para 40-41 has held that this provision clearly shows that the corporate debtor continues to have rights to represent before judicial and quasi-judicial forums and the RP, thus, cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5) of the IBC.

30.12 Reliance has been placed on **Regional P.F Commissioner Vs. T.V. Balasubramanian (RP) (Sholingur Textiles Ltd) & Anr. (Company Appeal (AT) (Insolvency) No. 1521 of 2019, decided on June 08, 2020)**¹⁰, whereby the attachment of property by EPFO before initiation of CIRP was held to be valid and **Directorate of Economic Offences Vs. Binay Kumar Singhania & Ors. (CA(AT)(Ins) 935 of 2020 decided on May 04, 2021)**,**P. Mohanraj v Shah Brothers Ispat Pvt. Ltd., (2021) 6 SCC 258, Varrsana Ispat Limited versus Deputy Director of Enforcement; 2019 SCC OnLine NCLAT 235** to show that the moratorium may not have any adverse effect on the rights of the Appellant and Respondent No. 3 and also on

Saranga Anilkumar Aggarwal v. Bhavesh Dhirajlal Sheth & Ors.; 2025 SCC OnLine SC 493, Judgment dated 20.08.2024 passed by the Hon'ble NCLT, Mumbai in IA 5538/ 2023 in Dolphin Offshore Enterprises (India) Ltd. v BSE Ltd. to show lack of jurisdiction of NCLT to entertain application to defreeze the demat account.

30.13 Ld. Counsel for the Respondent No.1 in company Appeal No. 1862 of 2024 submits that he approached BSE and NSE for de-freezing the demat account but was refused. Hence, she filed IA No. 928/2023 seeking de-freezing of the demat account and by passing the Impugned Order the demat account was unfrozen and the shares there after were sold for Rs. 1,36,65,499.2/- and amount has been distributed to the creditors on an undertaking to abide by any orders passed by this Hon'ble Tribunal. Admittedly, the shares in the demat account of the CD were owned by it and there is no controversy or dispute surrounding the same.

30.14 It is further submitted that Ld. Adjudicating Authority is having jurisdiction to pass the impugned order as R1 is neither challenging the validity of the actions of the stock exchanges, nor is questioning the quantum of penalty imposed and the issue was limited as to how CD's assets are to be dealt with BSE's contentions need outright rejection as entire objective to conclude liquidation in a time bound manner would become impossible. The liquidation process would not get over for years since all statutory authorities would have to be separately moved.

30.15 It is further submitted that Section 35(1)(b) of the Code, casts an obligation on the liquidator to take into her custody/control all properties of the CD, and Section 35(1)(f) mandates the liquidator to sell such properties,

subject only to Section 52 of the Code. Section 36 of the Code includes all assets of the CD in the liquidation estate, with Section 36(3) specifically including encumbered assets not in possession of the CD. Thus, all properties of the CD must be taken over and sold by the liquidator, and the proceeds must be distributed as per Section 53 of the Code. Moreover, the Jurisdiction of NCLT arises not only under Section 60(5) but also under Section 35(1)(n) of IBC. Reliance has also placed on Section 32A (2) of the Code in order to show that no action shall be taken against property of the CD in relation to an offence committed prior to insolvency commencement date, when such property is covered under sale of liquidation assets. Sale of assets can only be made only if the property is made available for sale and is free from attachment. Explanation to Section 32A (2) clarifies that “action” includes attachment, retention or even confiscation of property. “Offence” is not defined, but would include all actions inviting punishment, and would therefore include actions resulting in penalties. Thus, sale under the liquidation process is protected under Section 32A(2) notwithstanding existence of any freezing order.

30.16 It is further submitted that S. 32 of the SEBI Act, 1992 states that it is in addition to, and not in derogation of, other laws; while S. 238 of the Code provides an overriding effect over anything inconsistent in any other law. The Circular dt. 03.05.2018 under which the freezing orders have been passed, provides no mechanism to sell the frozen assets; and in fact states that the de-freezing can be made pursuant to court orders. Reliance is placed on **Anju Agarwal v BSE, CA(AT)(Ins) No. 734/2018 dt. 23.04.2019** in order to show that penalties payable to BSE or SEBI are ‘operational debt’

and that Section 238 of the Code Overrides Section 28A of the SEBI Act. The case of **Hemant Mehta v ACST, CA(AT)(Ins) No. 328/2022 dt. 05.08.2022** has also been relied to show that, where bank accounts had been frozen by GST authorities, the Adjudicating Authority has jurisdiction to interfere under Section 60(5).

30.17 Ld. Counsel for the Respondent No. 1 has further placed reliance on **ED v Manoj Kumar Agrawal, CA(AT)(Ins) No. 575/2019 dt. 09.04.2021** that attachments cannot continue and property would be available till resolution in terms of Section 32A of the Code. Three-member judgment of this Appellate Tribunal in **Vantage Point Asset Management Pte Ltd. v Gaurav Misra, 2025 SCC Online NCLAT 1652** has also been relied wherein it is held that properties attached under PMLA prior to initiation of insolvency proceedings could be included in the information memorandum and could be part of a resolution plan. **ABG Shipyard Liquidator v CBITC, (2023) 1 SCC 472** is also highlighted wherein the Hon'ble Supreme Court held that the Code overrides the Customs Act. It is submitted that the appeal is liable to be dismissed.

Analysis and Findings

31. Having heard Ld. Counsel for the parties and having considered the record it is reflected that in both the above appeals on an application moved by the RP/liquidator, the adjudicating authority has de frozen the demat accounts of the CD which was frozen by the appellant on account of non-payment of annual listing fee by the CD. It is to be recalled that in CA (AT) (Ins) No. 1786 of 2025 the CD i.e. M/s Future Corporate Resources Pvt. Ltd. a promoter of M/s Future Retail Ltd., a listed company, was holding 0.82%

equity shares of Generali Central Insurance Company Ltd. and 2.22% equity stake in Shendra Advisory Pvt. Ltd. which translate to 1.09% equity shares in Generali Central Insurance Company Ltd., in demat account with the appellant. Likewise, in CA (AT) (ins) No. 1862 of 2024 the CD i.e. Liz traders and agents Pvt. Ltd. was having 5,600 shares of Tata Chemicals Ltd., 6,384 shares of Tata Consumer Products Ltd., 572 shares of The Indian Hotels Company Ltd., 63 shares of The Indian Hotels Company Ltd., 45,387 shares of Cox and Kings Ltd., 110,209 shares of Cox and Kings Financial Services Ltd. and 8 shares of Videocon Industries Ltd., in a demat account lying with the appellant.

32. There is no dispute with regard to the ownership of these shares by CD's of these shares, as the case of the appellant is only that due to non-payment of annual listing fee by these corporate debtors, their demat account were debit freezed. Thus, so far as the shares lying in these demat accounts are concerned, were owned by the respective CDs and this fact has also not been denied by the appellant. The contention of appellant and Respondent No. 3-SEBI is that debit freeze of these demat accounts was done by the appellant on account of non-payment of annual listing fee, in exercise of powers provided under the SoP Circulars read with BSE ALF circulars and in pursuance of the provisions contained under Section 9(2) and 21 of the Securities Contracts (Regulations Act) 1956, (SCRA) Regulation 14 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) Regulations and thus according to appellant a comprehensive securities law framework exists to ensure compliance by listed entities and their promoter entities to comply with the listing

requirements including payment of ALF and further that freezing and de-freezing of the demat accounts of the CD is in the domain of the exchange and the NCLT does not have jurisdiction to entertain any application for de-freezing of these demat accounts as the same could only be done by an appropriate authority established under the securities law framework, more so when the same was not having any nexus with the Insolvency/liquidation of the CD and was connected solely with the obligations of listed entities and promoter of listed entities, to be discharged under the securities law framework.

33. At this juncture, it would be relevant to have a glance on the relevant provisions of the SCRA, LODR Regulations and SOP Circulars issued by the appellant. Section 9 of the SCRA, 1956 is reproduced as under:

“Power of recognised stock exchanges to make bye-laws.

9. (1) Any recognised stock exchange may, subject to the previous approval of the 27[Securities and Exchange Board of India], make bye-laws for the regulation and control of contracts.

(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for:

(a) the opening and closing of markets and the regulation of the hours of trade;

(b) a clearing house for the periodical settlement of contracts and differences thereunder, the delivery of and payment for securities, the passing on of delivery orders and the regulation and maintenance of such clearing house;

(c) the submission to the 28[Securities and Exchange Board of India] by the clearing house as soon as may be after each periodical settlement of all or any of the following particulars as the 29[Securities and Exchange Board of India] may, from time to time, require, namely: —

(i) the total number of each category of security carried over from one settlement period to another;

(ii) the total number of each category of security, contracts in respect of which have been squared up during the course of each settlement period;

(iii) the total number of each category of security actually delivered at each clearing;

(d) the publication by the clearing house of all or any of the particulars submitted to the 30[Securities and Exchange Board of India] under clause (c) subject to the directions, if any, issued by the 31[Securities and Exchange Board of India] in this behalf;

(e) the regulation or prohibition of blank transfers;

(f) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;

(g) the regulation, or prohibition of budlas or carry-over facilities;

(h) the fixing, altering or postponing of days for settlements;

(i) the determination and declaration of market rates, including the opening, closing highest and lowest rates for securities;

(j) the terms, conditions and incidents of contracts, including the prescription of margin requirements, if any, and conditions relating thereto, and the forms of contracts in writing;

(k) the regulation of the entering into, making, performance, recession and termination, of contracts, including contracts between members or between a member and his constituent or between a member and a person who is not a member, and the consequences of default or insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer, and the responsibility of members who are not parties to such contracts;

(l) the regulation of taravani business including the placing of limitations thereon;

(m) the listing of securities on the stock exchange, the inclusion of any security for the purpose of dealings and the suspension or withdrawal of any such securities, and the suspension or prohibition of trading in any specified securities;

(n) the method and procedure for the settlement of claims or disputes, including settlement by arbitration;

(o) the levy and recovery of fees, fines and penalties;

(p) the regulation of the course of business between parties to contracts in any capacity;

(q) the fixing of a scale of brokerage and other charges;

(r) the making, comparing, settling and closing of bargains;

(s) the emergencies in trade which may arise, whether as a result of pool or syndicated operations or cornering or otherwise, and the exercise of powers in such emergencies, including the power to fix maximum and minimum prices for securities;

(t) the regulation of dealings by members for their own account;

(u) the separation of the functions of jobbers and brokers;

(v) the limitations on the volume of trade done by any individual member in exceptional circumstances;

(w) the obligation of members to supply such information or explanation and to produce such documents relating to the business as the governing body may require.

(3) The bye-laws made under this section may—

(a) specify the bye-laws the contravention of which shall make a contract entered into otherwise than in accordance with the bye-laws void under sub-section (1) of section 14;

(b) provide that the contravention of any of the bye-laws shall render the member concerned liable to one or more of the following punishments, namely: —

(i) fine,

(ii) expulsion from membership,

(iii) suspension from membership for a specified period,

(iv) any other penalty of a like nature not involving the payment of money.

(4) Any bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed, and, when approved by the [Securities and Exchange Board of India], shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised stock exchange is situate, and shall have effect as from the date of its publication in the Gazette of India:

Provided that if the [Securities and Exchange Board of India] is satisfied in any case that in the interest of the trade or in the public interest any bye-law should be made immediately, it may, by order in writing specifying the reasons therefore, dispense with the condition of previous publication”.

Section 21, is reproduced as under:

[Conditions for listing.

21. *Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.]*

Regulation 14 of the LODR Regulations, 2015 is reproduced as under:

Fees and other charges to be paid to the recognized stock exchange(s)

14. *The listed entity shall pay all such fees or charges, as applicable, to the recognised stock exchange(s), in the manner specified by the Board or the recognised stock exchange(s).*

Regulation 98 is reproduced as under:

Liability of contravention of the Act, rules or the regulations.

98. *(1) The listed entity or any other person thereof who contravenes any of the provisions of these regulations, shall, in addition to liability for action in terms of the securities laws, be liable for the following actions by the*

respective stock exchange(s), in the manner specified in circulars or guidelines issued by the Board:

(a) imposition of fines;

(b) suspension of trading;

(c) freezing of promoter/promoter group holding of designated securities, as may be applicable, in coordination with depositories.

(d) any other action as may be specified by the Board from time to time

(2) The manner of revocation of actions specified in clauses (b) and (c) of sub-regulation (1), shall be as specified in circulars or guidelines issued by the Board.

Section 11 A of the Securities and Exchange Board of India Act, 1992 is reproduced as under:

Securities and Exchange Board of India Act, 1992

11A. (1) Without prejudice to the provisions of the Companies Act, 1956 (1 of 1956), the Board may, for the protection of investors, —

(a) specify, by regulations—

(i) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and

(ii) the manner in which such matters shall be disclosed by the companies;

(b) by general or special orders—

(i) prohibit any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities;

(ii) specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.

(2) Without prejudice to the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Board may specify the requirements for listing and transfer of securities and other matters incidental thereto.]

34. SEBI circular of date 22.01.2020 also provides for the action which may be taken by the stock exchanges for violation of listing regulations by listing entities, including freeze or unfreeze of shareholding and payment of fine and are reproduced as under:

4. The fines specified above shall continue to accrue till the time of rectification of the non-compliance to the satisfaction of the concerned recognized stock exchange or till the scrip of the listed entity is suspended from trading for non-compliance with aforesaid provisions". Such accrual shall be irrespective of any other disciplinary/enforcement action(s) initiated by recognized stock exchange(s)/SEBI.

5. Every recognized stock exchange shall review the compliance status of the listed entities and shall issue notices to the non-compliant listed entities within 30 days from the due date of submission of information. Non-compliant listed entity shall ensure compliance with the requirement(s) and pay fines as per the circular within 15 days from the date of such notice. If the non-compliant listed entity fails to comply with the aforesaid requirement(s) and/or pay fine levied within the stipulated period as per the notice stated above, the concerned recognized stock exchange(s) shall, upon expiry of the period indicated in the notice, shall issue notices to the promoter(s) of such non-compliant entities, to ensure compliance with the requirement(s) and pay fines within 10 days from the date of such notice. While issuing the aforementioned notices, the recognized stock exchange shall also send intimation to other recognized stock exchange(s) where the shares of the non-compliant entity are listed.

6. The concerned recognized stock exchange(s) shall, upon expiry of the stipulated periods indicated in the aforementioned notices, forthwith intimate the depositories to freeze the entire shareholding of the promoter(s) in such entity as well as all other securities held in the demat accounts, if the non-compliant listed entity fails to comply with the aforesaid requirement(s) and/or pay fine levied. The depository(ies) shall immediately freeze such demat accounts and also intimate the promoter(s) about the details of non-compliances resulting in freezing of their demat accounts.

7. If the non-compliant listed entity subsequently complies with the respective requirement(s) and pays the fine levied, in terms of this circular, the concerned recognized stock

exchange(s) shall display on their website details of compliance and fines paid by the listed entity. Simultaneously, the recognized stock exchange(s) shall intimate the depositories to unfreeze the entire shareholding of the promoter(s) in such entity as well as all other securities held in the demat account of the promoter(s), immediately from the date of compliance.

8. If any non-compliant listed entity fails to pay the fine despite receipt of the notice as stated above, the recognized stock exchange(s) may also initiate appropriate enforcement action.

9. The recognised stock exchange(s) shall also advise the non-compliant listed entity to ensure that the subject matter of non-compliance which has been identified and indicated by the recognised stock exchange(s) and any subsequent action taken by the recognised stock exchange(s) in this regard shall be placed before the Board of Directors of the company in its next meeting. Comments made by the board shall be duly informed to the recognised stock exchange(s) for dissemination.

35. SOP Circular issued by the SEBI of date 11.02.2021 is also relevant and is reproduced in full as under:



GENERAL MANAGER
CORPORATION FINANCE DEPARTMENT
COMPLIANCE AND MONITORING DEPARTMENT - II

भारतीय प्रतिभूति
और विनियम बोर्ड
Securities and Exchange
Board of India

CFD/CMD/AAD/SG/BM/OW/03859/2021
February 11, 2021

Mr. Neeraj Kulshrestha,
Chief Regulatory Officer,
Bombay Stock Exchange
Ltd.,
Floor 25,
P J Towers, Dalal Street,
Mumbai

Ms. Priya Subbaraman,
Chief Regulatory Officer,
National Stock Exchange
of India Ltd,
Exchange Plaza,
Bandra-Kurla Complex,
Bandra (E),
Mumbai

Ms. Latika Kundu,
MD and CEO,
Metropolitan Stock
Exchange of India Ltd.,
Vibgyor towers,
Bandra-Kurla Complex,
Bandra (E)
Mumbai

Sub: Standard Operating Procedure regarding actions for non-payment of Annual Listing Fees (ALF).

1. This has reference to the discussions and representations by the exchanges on 'actions initiated against listed companies for non-payment of Annual Listing Fees (ALF) and the need for a Standard Operating Procedure (SoP) in this regard. It is noted that Exchanges have already issued notices/ circulars dated June 11, 2019 and November 06, 2020 for taking actions in this respect.
2. It is observed that the actions taken for non-payment of ALF as per aforementioned notices/ circulars by the Stock Exchanges are similar to that taken for non-compliance with provisions of SEBI (LODR) Regulations, 2015 under SoP circular no. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020. It has been informed to the stock exchanges that the actions by the stock exchanges for non-payment of ALF should be proportionate to the violation committed and cannot be kept at the same pedestal as the actions taken for violation of corporate governance norm(s). Accordingly, Exchanges are advised to take actions towards non-payment of ALF in a graded manner after issuing notices and providing adequate opportunities for hearing to the company/ promoter(s).



The SoP against listed entities for non-payment of ALF shall be as under:



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Securities and Exchange
Board of India

Stage 1: Follow up with the listed entity

- 3.1. Stock exchanges shall not initiate any punitive measure on non-payment of ALF till 6 months from the date of issuance of invoice of ALF raised for that year. However, exchanges shall continue to follow up with the listed entity for recovery of its Annual Listing Fee (ALF) for these six months through reminders.

Stage 2: Issue of notices and denying permission for further listing

- 3.2. If the listed entity fails to pay ALF within the completion of six months from the date of issuance of ALF invoice, the stock exchange shall issue notice to the said listed entity giving it time to pay the outstanding ALF within 15 days from the date of such notice failing which no further listing approval would be given to the said listed entity.

Stage 3: Freezing of shareholding of promoter(s)

- 3.3. If the said listed entity fails to pay ALF within the stipulated period as per the notice stated above, the concerned recognized stock exchange(s), upon expiry of the period indicated in the notice, shall issue notice to the promoter(s) of such entity, to ensure compliance with the requirement(s) and pay ALF within 30 days from the date of such notice failing which the stock exchange shall go ahead with freezing of the demat account(s) of the promoter(s). While issuing the aforementioned notices, the recognized stock exchange shall also send intimation to other recognized stock exchange(s) where the shares of the said entity are listed.
- 3.4. The stock exchange shall also give an opportunity to such promoter(s) of being heard/ of providing a written representation against freezing of their demat account(s).
- 3.5. In case of failure of non-payment of ALF, the concerned recognized stock exchange(s) may, after giving a reasoned explanation in writing for accepting/rejecting the representation (personal hearing or written) by the promoters, freeze the demat account(s) of promoter(s). The exchange and depository(ies) shall intimate the promoter(s) about such a freeze owing to non-payment of ALF.



Stage 4: Suspension with limited trading

- 3.6. The stock exchanges shall not take any further action for the next 3 months from the date of freezing of shareholding of promoter(s). If a listed entity pays the ALF, the



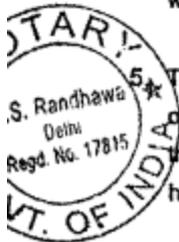
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**Securities and Exchange
Board of India**

exchange shall intimate the depository(ies) to unfreeze such demat accounts that were frozen.

- 3.7. If the listed entity still doesn't pay the ALF, then, after 3 months, the stock exchanges shall send a notice to the entity to pay the outstanding ALF within 30 days of the date of the intimation, failing which the exchange shall suspend the trading in the scrip. While issuing the said intimation, the recognized stock exchange(s) shall also inform other recognized stock exchange(s) where the shares of the said entity are listed to ensure that the date of suspension is uniform across all the recognised stock exchange(s). Simultaneously, the recognized stock exchange(s) shall give a 30-day notice to the market also regarding possible suspension of trading in the shares of the said listed entity. The recognized stock exchange(s) shall suspend the trading in the scrip after the expiry of the aforesaid notice period of 30 days.
- 3.8. In case of receipt of outstanding ALF any time before the proposed date of suspension, all the aforementioned punitive actions taken by stock exchanges in this regard shall be reversed and the concerned recognized stock exchange(s) shall give a public notice in this regard. The same shall also be informed to other recognized stock exchange(s) where the shares of the entity are listed and the depository(ies).
- 3.9. While suspending trading in the shares of the said entity, the recognized stock exchange(s) shall send intimation of suspension to other recognized stock exchange(s) where the shares of the said entity are listed to ensure that the date of suspension is uniform across all the recognised stock exchange(s). After initiation of suspension, trading in the shares of said entity may be allowed on 'trade to trade basis' on the first trading day of every week, till the time of payment of ALF by the listed entity.

4. Stock exchanges may deviate from the above by granting exemption/ waiver on the above, wherever desired.



5. The recognized stock exchanges may keep in abeyance the action against any said entity or withdraw the action in specific cases where specific exemption from compliance with the requirements under the Listing Regulations/moratorium on enforcement proceedings has been provided for under any Act, Court/Tribunal Orders etc.



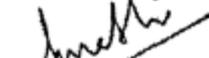
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Applicability of the SoP

6. The above SoP is applicable with immediate effect and shall supersede the notices/ circulars dated June 11, 2019 and November 06, 2020, previously issued by the exchanges on the subject matter. Accordingly, no further action shall be initiated by the exchanges under the said superseded notices/ circulars
7. The actions under the SoP shall be taken where invoices for ALF have been raised annually and shall be applicable for the invoices raised from the Financial Year 2020-21.
8. For listed companies already under suspension due to non-payment of ALF, trading may be allowed on 'trade to trade basis' on the first trading day of every week, till the time of payment of ALF.
9. Additionally, Exchanges are directed to:
 - 9.1. Formulate a consistent ALF Invoicing policy.
 - 9.2. Inform the depositories to unfreeze the demat accounts of all the promoter group entities which have been frozen for non-payment of ALF, till date, with immediate effect.
 - 9.3. Inform the depositories to update the reasons for freezing of demat accounts of the concerned promoter(s) from 'Regulatory Action' to 'Non-payment of ALF'
 - 9.4. Place the representations received with regard to ALF invoices and freezing of shareholding of promoter(s) as per previous notices/ circulars of the exchanges, before a competent authority of the exchange and take a reasoned decision at the exchange level.

Yours sincerely, *


Surabhi Gupta

36. The BSE ALF Circular dated 25.06.2021 is also important and is also reproduced as under:

NOTICES

Notice No.	20210625-43	Notice Date	25 Jun 2021
Category	Circulars Listed Companies	Segment	Equity
Subject	Action(s) to be initiated against listed companies for non-payment of outstanding Annual Listing Fees ("ALF")		
Content			

June 25, 2021

To,
The Company Secretary & Compliance Officer / Promoter (s)
All Listed Entities
(To all listed entities who have not paid Annual Listing Fees)

Subj: Action(s) to be initiated against listed companies for non-payment of outstanding Annual Listing Fees ("ALF")

All listed entities are requested to take a note that as per the directions of Securities Exchange Board of India (SEBI) regarding Standard Operating Procedure (SOP) on actions for non-payment of Annual Listing Fees (ALF), following actions shall be taken if a listed entity fails to pay the outstanding ALF (hereinafter referred to as "defaulting entities"), in the manner mentioned below:

Stage 1: Reminders to defaulting entities

The Exchange will send reminder letter(s) to the defaulting entity during the period of six months from the date of issuance of the invoice for ALF.

Stage 2: Issue of notices and no approval for further listing of securities

Upon expiry of the six months, a notice will be issued to the defaulting entity giving it time to pay the ALF within 15 days from the date of issuance of such notice.

In case, the listed entity fails to pay the outstanding ALF within 15 days from the date of issuance of the notice by the Exchange, no approval for further listing of securities would be given to the defaulting listed entity.

Stage 3: Freezing of shareholding of promoter(s) of defaulting entities

If the defaulting entity fails to pay the ALF within time stipulated period as per the notice stated above, a notice will be issued to the promoter(s) of such defaulting entities based on the information available with the Exchange upon expiry of the period indicated in the notice, to ensure compliance with the requirement(s) thereof and pay ALF within 30 days from the date of such notice.

In such a situation, the concerned promoter(s) of the defaulting entities may make a representation to the Exchange by addressing an email to ALFSOP@sebiindia.com within the stipulated time period. Please note that representations addressed to the Exchange through any other mode or at any other email address or after the expiry of stipulated period shall not be considered as valid representation and the Exchange shall proceed with action as contemplated in this circular.

In case, the ALF is not paid to the Exchange within 30 days from date of the said notice, Exchange shall intimate depositories regarding freezing of the demat account(s) of the promoter(s) of such defaulting entities based on the latest available shareholding pattern and disclosure differentiating promoter(s) and promoter group, submitted by the defaulting entity to the Exchange.

Stage 4: Suspension with limited trading

If the defaulting entity still fails to pay the ALF even after 3 months from the action of freezing of promoter(s) demat accounts, a notice shall be issued to the entities to pay the outstanding ALF within 30 days of the date of the intimation, failing which the securities of such entities shall be suspended from trading. Simultaneously, a 30-day notice will also be issued to the market regarding suspension of trading in the shares of the said listed entity.

In case, the defaulting entity fails to pay the ALF within 30 days from the date of aforesaid notice issued to the defaulting entities, the trading in the securities of the defaulting entities shall be suspended by the Exchange.

After initiation of suspension against defaulting entities, trading in the shares of said entities shall be allowed on 'trade to trade basis' on the first trading day of every week, till the time of payment of ALF by such defaulting entities.

However, on the payment of ALF by the defaulting entities, the weekly trading shall be discontinued, and all the aforementioned punitive actions taken by stock exchanges in this regard shall be reversed and the concerned stock exchange(s) shall give a public notice in this regard. It may be noted that if securities of the defaulting entities are suspended by the Exchange for various other reasons including non-payment of ALF, then the action(s) including suspension initiated for such other reasons shall continue to prevail. Kindly note that the above actions against defaulting entities on account of non-payment of ALF shall be in conjunction with any other action(s) imposed by the Exchanges from time to time.

In case the defaulting entities are commonly listed i.e., on more than one stock exchange, actions such as no approval for listing of securities, freezing of demat accounts of promoter(s) of such defaulting entities, suspension in the trading of securities and reversal of these actions shall be done in coordination with the other stock exchanges where the defaulting entity is listed.

NOTE: The measures listed above, would not apply to the following:

- Public Sector Undertakings (PSUs) (also applicable to promoter(s) of PSUs for freezing of their demat accounts)
 - Companies that have only Debt Infrastructure Investment Trust (DIIITs) / Real estate Investment trusts (REITs) / Mutual Funds listed with the Exchange.
 - Where specific exemption is granted from compliance with the requirements under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 in connection with enforcement proceedings / entities under liquidation has been provided for under any Act, Court / Tribunal Orders.
- It may also be noted that for computation of the total outstanding ALF, Tax Deducted at Source (TDS) would be excluded.

The actions under the SOP shall be taken for non-payment of ALF from the Financial Year 2020-21 onwards.

This circular is in furtherance and supersession of the earlier circulars dated June 11, 2019 and November 6, 2020 issued by the Exchange.

Yours faithfully

Dhushan Mokash Additional General Manager	Tushar Kamath Dy. General Manager
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37. Perusal of the above placed Securities Law Framework would reveal that adequate provisions have been made therein for regulating the business of listing entities at stock exchanges including payment of ALF by them and also for the purpose of complying other Regulations for transaction of business in such stock exchanges and also the action which may be taken against any erring/non-compliant listing entity including debit freeze of its demat account. Thus all above placed provisions and circulars have been

placed for smooth functioning of the stock exchanges and conduction of business by the listing entities and an effective regulatory framework has been established.

38. It is also reflected that on complying with the Regulations and other necessary compliances and also by payment of ALF the demat accounts lying with the appellant even if freezed by non-payment of the ALF may be de freezed subsequently by paying the arrears of ALF. Thus the scheme is that only a compliant entity would be allowed to do the business at the exchange and those non-compliant shall not be allowed to do the business at the stock exchanges and certain punitive actions, including imposition of fine and even freezing of their demat accounts may also be undertaken however, after complying with the rules and regulations, these entities may again be permitted to commence their business at stock exchanges. Thus, the foremost purpose of these regulations and circulars and scheme is to streamline the business at stock exchanges. Therefore, any dispute which is pertaining to the performance of business at the stock exchange is necessarily required to be resolved and taken care of within the securities law frame work including SEBI Regulations and SoP Circulars discussed herein before.

39. At this juncture, it is also necessary to recall the relevant provisions of the Insolvency and Bankruptcy Code, 2016 (Code) to understand the jurisdiction of the NCLT as provided under Section 60 (5) of the Code and also the relevant provisions of the Code which deals with the duty of the IRP/RP as well as the liquidator with regard to dealing with the properties of the CD.

“Section 16 Appointment and tenure of Interim Resolution Professional

(1) *The Adjudicating Authority shall appoint an interim resolution professional 1[on the insolvency commencement date].*

(2) *Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, as the case may be, the resolution professional, as proposed respectively in the application under section 7 or section 10, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.*

(3) *Where the application for corporate insolvency resolution process is made by an operational creditor and--*

(a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;

(b) a proposal for an interim resolution professional is made under sub-section (4) of section 9, the resolution professional as proposed, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

(4) *The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.*

(5) *The term of the interim resolution professional 2[shall continue till the date of appointment of the resolution professional under section 22].*

Section 17 Management of affairs of corporate debtor by interim resolution professional.

(1) *From the date of appointment of the interim resolution professional, ---*

(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;

(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;

(c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;

(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

(2) The interim resolution professional vested with the management of the corporate debtor shall---

(a) act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;

(b) take such actions, in the manner and subject to such restrictions, as may be specified by the Board;

(c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

(d) have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as 1[may be specified; and].

[(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.]

Section 18 Duties of Interim Resolution Professional

The interim resolution professional shall perform the following duties, namely: —

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—

(i) business operations for the previous two years;

(ii) financial and operational payments for the previous two years;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified;

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;

(c) constitute a committee of creditors;

(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

(e) file information collected with the information utility, if necessary; and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board.

Explanation. —For the purposes of this 1 [section], the term "assets" shall not include the following, namely: —

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

Section 19 Personnel to extend co-operation to Interim Resolution Professional

(1) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.

(2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.

(3) The Adjudicating Authority, on receiving an application under sub-section (2), shall by an order, direct such personnel or other person to comply with the

instructions of the resolution professional and to cooperate with him in collection of information and management of the corporate debtor.

Section 20 *Management of operations of corporate debtor as going concern.*

(1) The interim resolution professional shall make every endeavor to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority—

(a) to appoint accountants, legal or other professionals as may be necessary;

(b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;

(c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property:

Provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.

(d) to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and

(e) to take all such actions as are necessary to keep the corporate debtor as a going concern.

Section 22 *Appointment of Resolution Professional*

(1) The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

(2) The committee of creditors, may, in the first meeting, by a majority vote of not less than [sixty six] per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

(3) *Where the committee of creditors resolves under sub-section (2) ---*

(a) to continue the interim resolution professional as resolution professional, it shall communicate its decision to the interim resolution professional, [subject to a written consent from the interim resolution professional in the specified form] it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority; or

(b) to replace the interim resolution professional, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional. [along with a written consent from the proposed resolution professional in the specified form].

(4) The Adjudicating Authority shall forward the name of the resolution professional proposed under clause (b) of sub-section (3) to the Board for its confirmation and shall make such appointment after confirmation by the Board.

(5) Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.

Section 25 Duties of Resolution Professional

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: —

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;

(c) raise interim finances subject to the approval of the committee of creditors under section 28;

- (d) appoint accountants, legal or other professionals in the manner as specified by Board;*
- (e) maintain an updated list of claims;*
- (f) convene and attend all meetings of the committee of creditors;*
- (g) prepare the information memorandum in accordance with section 29;*
 - [(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.].*
- (i) present all resolution plans at the meetings of the committee of creditors;*
- (j) file application for avoidance of transactions in accordance with Chapter III, if any; and*
- (k) such other actions as may be specified by the Board.*

Section 29 Preparation of Information Memorandum.

(1) The resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.

(2) The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes—

(a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading;

(b) to protect any intellectual property of the corporate debtor it may have access to; and

(c) not to share relevant information with third parties unless clauses (a) and (b) of this sub-section are complied with.

Explanation. —For the purposes of this section, “relevant information” means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified.

Section 35 Powers and Duties of Liquidator.

(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: —

(a) to verify claims of all the creditors;

(b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;

(c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;

(d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;

(e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;

(f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified;

[Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant].

(g) to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;

(h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;

(i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;

(j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;

(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor;

(l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;

(m) to take all 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;

(n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and

(o) to perform such other functions as may be specified by the Board.

(2) The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53:

Provided that any such consultation shall not be binding on the liquidator:

Provided further that the records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board.

Section 36 **Liquidation Estate**

(1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.

(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following: —

(a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be

specified by the Board, including shares held in any subsidiary of the corporate debtor;

(b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;

(c) tangible assets, whether movable or immovable;

(d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;

(e) assets subject to the determination of ownership by the court or authority;

(f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;

(g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;

(h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and

(i) all proceeds of liquidation as and when they are realised.

(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation: —

(a) assets owned by a third party which are in possession of the corporate debtor, including—

(i) assets held in trust for any third party;

(ii) bailment contracts;

(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;

(iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and

(v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;

(b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;

(c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;

(d) assets of any Indian or foreign subsidiary of the corporate debtor; or

(e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor”.

40. Above placed provisions thus provide that after being appointed as the IRP the management of the affairs of the CD shall vest in the IRP and the officers and managers of the CD shall report to the IRP and powers of the Board of Directors of the CD shall also stand suspended (Section 16 and 17 of the Code). Section 18 of the Code provides that apart from other obligation, the IRP shall take control and custody of any assets over which the CD has ownership rights as recorded in the balance sheet of the CD or with information utility and also securities including shares held in any subsidiary of the CD, financial instruments, insurance policies and also the assets subject to the determination of the ownership by a court or authority. (Section 18 of the Code). Section 25 of the Code provides that it shall be the duty of the RP to protect and preserve the assets of the CD and for this purpose the RP shall immediately take custody and control of all the assets of the CD, represent the CD with third party and also to prepare information memorandum.

41. Likewise, the liquidator is duty bound to take into his custody or control all the assets, property and actionable claims of the CD and to take such measures to protect and preserve the assets and properties of the CD as he considers necessary and also to sell immovable and movable properties and actionable claims of the CD by public auction (Section 35 of the Code). The liquidator is further obliged to form a liquidation estate of the assets of the CD and shall hold the same as a fiduciary for the benefit of all the creditors. Thus the scheme as provided in the IBC empowers the IRP/RP and liquidator of the CD to immediately take the custody of the

properties and assets of the CD and to further deal with the same as provided under relevant provisions of the Code.

42. Incidentally, these powers of the IRP/RP and liquidator has not been disputed by Ld. Counsels for Appellant and Respondent No. 3 but their reservation is that the RP or the liquidator as the case may be, should have approached the authority constituted under the Securities Regulatory framework for the purpose of defreezing of the demat accounts of the CD and also that these demat accounts could only be de freezeed by the appellant or any appellate forum established under the Securities Regulatory framework and in any case the NCLT was not having any jurisdiction to entertain an application to de freeze the demat accounts under Section 60 (5) of the Code. Ld. Counsels for the appellant and Respondent No. 3 have relied on various case laws in support of their submission and for the purpose of convenience we are placing the same as under:

43. The first case relied on by the appellant is ***Embassy Property Developments (P) Ltd. v. State of Karnataka, (2020) 13 SCC 308*** **wherein** Hon'ble Supreme Court while considering the jurisdiction of the NCLT under section 60(5) of the IBC, has held as under:

"31. NCLT and NCLAT are constituted, not under the IBC, 2016 but under Sections 408 and 410 of the Companies Act, 2013. Without specifically defining the powers and functions of the NCLT, Section 408 of the Companies Act, 2013 simply states that the Central Government shall constitute a National Company Law Tribunal, to exercise and discharge such powers and functions as are or may be, conferred on it by or under the Companies Act or any other law for the time being in force. Insofar as NCLAT is concerned, Section 410 of the Companies Act merely states that the Central Government shall constitute an Appellate

Tribunal for hearing appeals against the orders of the Tribunal. The matters that fall within the jurisdiction of the NCLT, under the Companies Act, 2013, lie scattered all over the Companies Act. Therefore, Sections 420 and 424 of the Companies Act, 2013 indicate in broad terms, merely the procedure to be followed by the NCLT and NCLAT before passing orders. However, there are no separate provisions in the Companies Act, exclusively dealing with the jurisdiction and powers of NCLT.

32. In contrast, sub-sections (4) and (5) of Section 60 of the IBC, 2016 give an indication respectively about the powers and jurisdiction of the NCLT.

37. From a combined reading of sub-section (4) and sub-section (2) of Section 60 with Section 179, it is clear that none of them hold the key to the question as to whether NCLT would have jurisdiction over a decision taken by the Government under the provisions of the MMDR Act, 1957 and the Rules issued thereunder. The only provision which can probably throw light on this question would be sub-section (5) of Section 60, as it speaks about the jurisdiction of the NCLT. Clause (c) of sub-section (5) of Section 60 is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the Government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase “arising out of or in relation to the insolvency resolution” appearing in clause (c) of sub-section (5). Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of the IBC is interpreted to include all questions of law or facts under the sky, an Interim Resolution Professional/Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal under Section 260-A of the Income Tax Act, 1961. Therefore, the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results. **It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression “operational debt” under Section 5(21), making the Government an**

“operational creditor” in terms of Section 5(20). The moment the dues to the Government are crystallised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the adjudicating authority, namely, the NCLT.

40. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(1)(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact, an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term “assets” under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word “assets”, while Section 20(1) uses the word “property” together with the word “value”. Sections 18 and 25 do not use the expression “property”. Another important aspect is that under Section 25(2)(b) of the IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Sections 25(1) and 25(2)(b) reads as follows:

“25. Duties of resolution professional. — (1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:

(a) ***

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings;”

(emphasis supplied)

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and

bring a claim before NCLT taking advantage of Section 60(5).

41. *Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.*

(Emphasis Ours)

44. Another case which has been relied on by Appellant as well as Respondent No.3 is **Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (2021)**

7 SCC 209, wherein the Hon'ble Supreme Court Observed as under:

"69. The institutional framework under IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. In the absence of a court exercising exclusive jurisdiction over matters relating to insolvency, the corporate debtor would have to file and/or defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts and courts of appeal. A delay in completion of the insolvency proceedings would diminish the value of the debtor's assets and hamper the prospects of a successful reorganisation or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner. Pursuing this them in Innoventive [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407: (2018) 1 SCC (Civ) 356] this Court observed that: (SCC p. 422, para 13)

"13. One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process."

The principle was reiterated in ArcelorMittal [ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1] where this Court held that: (SCC p. 88, para 84)

“84. ... The non obstante clause in Section 60(5) is designed for a different purpose: to ensure that NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings.”

Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor. However, in doing so, we issue a note of caution to NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the corporate debtor. The nexus with the insolvency of the corporate debtor must exist.

74. *Therefore, we hold that the RP can approach NCLT for adjudication of disputes that are related to the insolvency resolution process. However, for adjudication of disputes that arise dehors the insolvency of the corporate debtor, the RP must approach the relevant competent authority. For instance, if the dispute in the present matter related to the non-supply of electricity, the RP would not have been entitled to invoke the jurisdiction of NCLT under IBC. However, since the dispute in the present case has arisen solely on the ground of the insolvency of the corporate debtor, NCLT is empowered to adjudicate this dispute under Section 60(5)(c) of IBC.*

I.3. Residuary jurisdiction of NCLT under Section

60(5)(c)

84. *The respondents have relied upon the decision of this Court in *Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta* [*Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta*, (2020) 8 SCC 531: (2021) 2 SCC (Civ) 443], where this Court held that Section 60(5)(c) of IBC “is in the nature of residuary jurisdiction vested in NCLT so that NCLT may decide all questions of law or fact arising out of or in relation to insolvency or liquidation under the Code” [Id p. 589, para 69.].*

91. *The residuary jurisdiction of NCLT under Section 60(5)(c) of IBC provides it a wide discretion to adjudicate questions of law or fact arising from or in relation to the insolvency resolution proceedings. If the jurisdiction of NCLT were to be confined to actions prohibited by Section 14 of IBC, there would have been no requirement for the legislature to enact Section 60(5)(c) of IBC. Section 60(5)(c) would be rendered otiose if Section 14 is held to be exhaustive of the grounds of judicial intervention contemplated under IBC in matters of preserving the value of the corporate debtor and its status as a “going concern”. We hasten to add that our finding on the validity of the exercise of residuary power by NCLT is premised on the facts of this case. We are not laying down a general principle on the contours of the exercise of residuary power by NCLT. However, it is pertinent to mention that NCLT cannot exercise its jurisdiction over matters dehors the insolvency proceedings since such matters would fall outside the realm of IBC. Any other interpretation of Section 60(5)(c) would be in contradiction of the holding of this Court in Satish Kumar Gupta [Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531: (2021) 2 SCC (Civ) 443].*

173. *Although various provisions of IBC indicate that the objective of the statute is to ensure that the corporate debtor remains a “going concern”, there must be a specific textual hook for NCLT to exercise its jurisdiction. NCLT cannot derive its powers from the “spirit” or “object” of IBC. Section 60(5)(c) of IBC vests NCLT with wide powers since it can entertain and dispose of any question of fact or law arising out or in relation to the insolvency resolution process. We hasten to add, however, that NCLT's residuary jurisdiction, though wide, is nonetheless defined by the text of IBC. Specifically, NCLT cannot do what IBC consciously did not provide it the power to do.”*

45. In **TATA Consultancy Services Ltd. v. SK Wheels (P) Ltd. (Resolution Professional)**, **2021 SCC OnLine SC 1113**, Hon’ble Supreme Court cautioned the NCLT in exercising jurisdiction even at interim stage, in following words;

“31. *While in the present case, the second issue formulated by this Court has no bearing, we would like to*

issue a note of caution to NCLT and NCLAT regarding interference with a party's contractual right to terminate a contract. Even if the contractual dispute arises in relation to the insolvency, a party can be restrained from terminating the contract only if it is central to the success of CIRP. Crucially, the termination of the contract should result in the corporate death of corporate debtor.

The jurisdiction of NCLT under Section 60(5)(c) of IBC cannot be invoked in matters where a termination may take place on grounds unrelated to the insolvency of corporate debtor. Even more crucially, it cannot even be invoked in the event of a legitimate termination of a contract based on an ipso facto clause

33. *Admittedly, this Court has clarified the law on the present subject-matter in Gujarat Urja [Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (2021) 7 SCC 209; (2021) 4 SCC (Civ) 1] after the pronouncements of NCLT and NCLAT. Going forward, the exercise of NCLT's residuary powers should be governed by the above decision."*

46. The Hon'ble Supreme Court in **SEBI v. Ajay Agarwal, (2010) 3 SCC 765** Observed that *the legislative intent for enacting the securities and Exchange Board of India Act,1992 was to achieve the twin purposes of promoting orderly and healthy growth of securities market and for protecting the interest of the investors. The requirement of such an enactment was felt in view of substantial growth in the capital market by increasing the participation of the investors. In fact, such enactment was necessary in order to ensure the confidence of the investors in the capital market by giving them some protection. It was also clarified that the Act makes it clear that the primary function of the Board is to regulate the business in stock exchanges and any other securities markets and in order to do so it has been entrusted with various powers.*

47. In **Chalasani Udaya Shankar v. Lexus Technologies (P) Ltd., (2024) 10 SCC 303 para)** Hon'ble Supreme Court has given a note of caution in terms that *when constitutional courts are called upon to interpret provisions*

affecting exercise of powers and jurisdiction by regulatory bodies, it is the duty of the Court to ensure that transactions falling within the province of the regulators are necessarily subjected to their scrutiny and regulation. It was pointed out that this would ensure that the regulatory body charged with the duty to protect the consumers has real-time control over the sector, thereby realising the purpose of its constitution. It was, therefore, held that the purpose of these regulations could not be short-circuited by making an application to the Company Court under Section 111-A of the 1956 Act, on the ground that the provision bestowed jurisdiction parallel to the SEBI.

48. In **Vishal Tiwari (Adani Group Investigation) v. Union of India, (2024) 4 SCC 115 (para)** Hon'ble Supreme Court observed that when technical questions arise particularly in the financial or economic realm; experts with domain knowledge in the field have expressed their views; and such views are duly considered by the expert regulator in designing policies and implementing them in the exercise of its power to frame subordinate legislation, the court ought not to substitute its own view by supplanting the role of the expert. Courts do not act as appellate authorities over policies framed by the statutory regulator and may interfere only when it is found that the actions are arbitrary or violate of constitutional or statutory mandates. The court cannot examine the correctness, suitability, or appropriateness of the policy, particularly when it is framed by a specialised regulatory agency in collaboration with experts. The court cannot interfere merely because in its opinion a better alternative is available.

49. The Hon'ble Supreme Court in **BALCO Employees' Union v. Union of India, (2002) 2 SCC 333** observed that it is neither within the domain of

the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved.

50. The Hon'ble Supreme Court again in ***ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1*** held as under:

"84..... Section 60(5), when it speaks of the NCLT having jurisdiction to entertain or dispose of any application or proceeding by or against the corporate debtor or corporate person, does not invest the NCLT with the jurisdiction to interfere at an applicant's behest at a stage before the quasi-judicial determination made by the adjudicating authority. The non obstante clause in Section 60(5) is designed for a different purpose: to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings."

51. This Appellate Tribunal in ***Pradeep Kumar Kabra v. Assistant Commissioner, CGST & Central Excise Company Appeal (AT) (Insolvency) No. 409 of 2023*** Observed that in view of the Circular issued by Central Board of Excise and Customs, the Department itself has understood that when CIRP has been initiated for recovering any amount, the claim has to be filed and no recovery can be made since moratorium has been imposed under the Code. The Respondent after imposition of moratorium with effect from 27.04.2022 could not have recovered its dues. The attachment of the goods of the Corporate Debtor were made before initiation of CIRP. The assets, which were attached were still the assets of the Corporate Debtor, which were in the 'supurdagi' of the Corporate Debtor. Respondent being unable to recover the amount from the attached assets,

the RP has rightly filed the Application seeking a direction for release of the attachment, so that assets can be included in the assets of the Corporate Debtor for payment to the creditors. It was held that the Adjudicating Authority has committed error in rejecting Application filed by RP, by holding that Adjudicating Authority has no jurisdiction to issue direction to the State Authority, when the IRP is duty bound to take custody and control of the assets belonging to the Corporate Debtor, Application under Section 60, sub-section (5), sub-clause (c) was clearly maintainable and the Adjudicating Authority had ample jurisdiction to issue necessary direction.

52. This Appellate Tribunal in ***Hemant Mehta v. Asst. Commissioner of State Tax, 2022 SCC OnLine NCLAT 4191*** held as under:

"14. From a plain reading of the above provision of IBC (Section 60) and also given that the said section is prefaced with a non-obstante clause, we are inclined to agree that the Adjudicating Authority is vested with residuary jurisdiction and it therefore casts a responsibility on the Adjudicating Authority to intervene in certain circumstances. The present is also a fit case where the Adjudicating Authority could have exercised its residuary discretion under Section 60(5) so as to ensure that the objectives of IBC are not frustrated including providing relief to the Liquidator in stalemate circumstances as the present. It has also been held by the Hon'ble Supreme Court in the Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta (Civil Appeal No. 9241 of 2019) that the residuary jurisdiction of the NCLT under Section 60(5)(c) of the IBC provides it a wide jurisdiction and can be exercised as long as the matter is not dehors the insolvency proceedings.

17. Given that the persistent efforts on the part of the Appellant to defreeze the accounts of the Corporate Debtor did not bear any result; given that there is sufficient proof of reluctance on the part of Respondents 1 to 4 to defreeze the bank accounts of the Corporate Debtor; given that Section 238 of IBC overrides anything inconsistent contained in any other enactment and also given that

Section 60(5) of the IBC vests residuary jurisdiction on the Adjudicating Authority to intervene and, above all, keeping in mind that the cardinal objective of the IBC Code is to obviate uncalled for derailment of the insolvency resolution process, we find sufficient merit in the submission made by the Learned Counsel for the Appellant that the Adjudicating Authority ought to have appreciated the constraints faced by the Appellant/Liquidator and provided relief by exercising its residuary jurisdiction rather than remanding the Appellant once again back in the hands of the government authorities.

18. In view of the above discussions, facts and circumstances, we hold that the Adjudicating Authority erred in not exercising the residuary jurisdiction vested in it under Section 60(5) of the IBC....."

53. In ***Pinakin Shah (Liquidator) v. The Assistant Commissioner of State Tax, (2021) ibclaw.in137 NCLAT*** this Appellate tribunal held as under:

"8. The Learned Counsel has referred to this Order of Hon'ble Supreme Court as well as the Judgment referred by the Hon'ble Supreme Court in the Order and submits that the freezing of Account by the Respondent No. 1 is not maintainable and the Liquidator cannot be made to run to the parties and Authorities under the Sales Tax Act to get the Account defrosted. Learned Counsel submits, and, rightly says that Liquidation Proceedings are time-bound to maximize the value and all the Creditors are entitled to get their dues only in terms of Section 53 of I & B Code, 2016 and different Creditors cannot be allowed to resort to different proceedings and enactments only because they are Authorities under earlier enactments considering the Provision of Section 238 of I & B Code, 2016.

10. We find that the Adjudicating Authority has failed to exercise jurisdiction vested in it to give relief to the Appellant in the context of the position of law under Section 238 of IBC."

54. This Appellate Tribunal in ***Varrsana Ispat Limited Vs. Deputy Director, Directorate of Enforcement, 2019 SCC OnLine NCLAT 236*** held that 'Prevention of Money Laundering Act, 2002' relates to different

fields of penal action of 'proceeds of crime', it invokes simultaneously with the 'I&B Code', having no overriding effect of one Act over the other including the 'I&B Code'.

55. In Kiran Shah Vs. Enforcement Directorate. (Company Appeal (AT)

(Ins) No. 817 of 2021 this Appellate Tribunal again opined as under;

"110. 'Tribunal' makes it candidly clear that filing of Application under Section 60(5) of the I & B Code is not an 'all pervasive' one, thereby conferring 'Jurisdiction' to an 'Adjudicating Authority' (NCLT) to determine 'any question/issue of priorities', question of Law or Facts pertaining to the 'Corporate Debtor' when in reality in 'Law', the 'Adjudicating Authority' (NCLT) is not empowered to deal with the matters falling under the purview of another authority under PMLA."

56. Reliance has been placed by the Appellant on the judgement of this Appellate Tribunal in **Regional Provident Fund Commissioner Vs. T.V. Balasubramanian (RP) (Sholingur Textiles Limited) & Anr. (Company Appeal (AT) (Ins) NO. 1521 of 2019** wherein the attachment made by the EPFO before initiation of the CIRP was held to be valid.

57. In **P. Mohanraj and Others Vs. Shah Brothers Ispat Private Limited, (2021) 6 SCC 258** Hon'ble Supreme Court has considered the applicability of moratorium on the act of statutory Authority and held that no Sections 138/141 proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Sections 141 (1) and (2) of the Negotiable Instruments Act. This being the case, it is clear that the moratorium provision contained in Section 14 IBC would apply

only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act.

58. Much emphasis has been placed on the judgement in **Roofit Industries Limited vs. Jitender Kumar Jain and Ors. (2017 SCC OnLine NCLT 12085)** placed as under:

"1. It is a Company Application filed by the Resolution Professional assailing the Order of Delisting passed by Bombay Stock Exchange delisting the shares of the Corporate Debtor Company along with other Companies on 21.8.2017 with reliefs as follows:

(a) To declare that the order of 1st and 2nd Respondent i.e. Bombay Stock Exchange Ltd. and National Stock Exchange Ltd. to delist the shares of the Corporate Debtor and consequential impact that they are under SEBI Laws including the delisting Regulations of the Corporate Debtor as illegal and void in view of the provisions of section 14/238 of the Insolvency & Bankruptcy Code, 2016.

(b) To direct the Respondents not to deal with the shares of the Corporate Debtor pending Moratorium granted by this Tribunal.

((c) To direct the Respondents to list the shares of the Corporate Debtor back on the Stock Exchanges operated by them pending validity of Moratorium passed by this Bench under section 14 of I&B Code.

(d) To declare the provisions of SEBI laws including Delisting Regulations to the extent such provisions are inconsistent with the provisions of I&B Code not applicable to the Companies which are under Corporate Insolvency Resolution process under I&B Code. (e) Any other relief or reliefs in favor of the Applicants as this Tribunal deem fit and proper.

14. *As to application of section 238 is concerned, that non-obstante clause can be invoked only when any other law, dealing with the core issues this enactment dealt with, is inconsistent with the provisions of I&B Code, since the provisions of Securities Contract Regulations Rules of 1957/- provisions in respect to the Listing of shares before*

Exchanges is nowhere connected to the dues payable by the company, it can't be said that action under Securities Contract Regulations Rules of 1957 is hit by either Moratorium under section 14 or under section 238 of the Code. It is an issue in relation to Investors therefore, such an issue cannot be construed as inconsistent with the provisions of I&B Code, therefore, this Bench is of the opinion that the action of National Stock Exchange or Bombay Stock Exchange is neither connected to the prohibitions given."

59. Reliance is also placed on the judgement of the Hon'ble Supreme Court in **Kishorebhai Khamanchand Goyal Vs. State of Gujarat and Another (2003) 12 SCC 274** in order to emphasise that the overriding effect of the IBC by virtue of section 238 of the IBC could only be enjoyed when the following tests are passed:

- "(1) Whether there is direct conflict between the two provisions.*
- (2) Whether the legislature intended to lay down an exhaustive Code in respect of the subject-matter replacing the earlier law.*
- (3) Whether the two laws occupy the same field."*

60. Ld. Counsels for the Appellant and Respondent No.3 have also placed reliance on the case decided by NCLT Mumbai in **Shobha Limited. & Sadash Lazman Jogalekar v. Pancard Clubs Ltd, CP No. 593 and 1085 of 2016 dated 29.07.2017**, wherein relying on Kishore Bhai (Supra), no inconsistency or conflict was found between the SEBI Act and IBC and held that that these two laws are occupying different fields and not the same field and there cannot be any occasion to presume that I & B Code has come into existence to replace SEBI jurisdiction.

61. Ld. Counsel for the Respondent No.1 in both the appeals i.e. Resolution Professional and Liquidator however submits that in case of conflict of any statute with the provisions of the IBC, the code shall override

SEBI circulars, provisions of the securities contract (Regulations) Act, 1956 and the Securities Exchange Board of India Act, 1992. Reliance in this regard is placed on the judgement of the Hon'ble Supreme Court passed in **Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes & Customs, (2023) 1 SCC 472** placed as under:

"40. We may note that the IBC, being the more recent statute, clearly overrides the Customs Act. This is clearly made out by a reading of Section 142-A of the Customs Act. The aforesaid provision notes that the Customs Authorities would have first charge on the assets of an assessee under the Customs Act, except with respect to cases under Section 529-A of the Companies Act, 1956; Recovery of Debts and Bankruptcy Act, 1993; Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the IBC, 2016. Accordingly, such an exception created under the Customs Act is duly acknowledged under Section 238 of the IBC as well.

43. From the above, it is to be noted that the Customs Act and the IBC act in their own spheres. In case of any conflict, the IBC overrides the Customs Act. In present context, this Court has to ascertain as to whether there is a conflict in the operation of two different statutes in the given circumstances. As the first effort, this Court is mandated to harmoniously read the two legislations, unless this Court finds a clear conflict in its operation."

62. Reliance was also placed on the judgement of the Hon'ble Supreme Court passed in **Paschimanchal Vidyut Vitran Nigam Ltd. V. Raman Ispat Private Limited (2023) 10 SCC 60:**

"56. The views expressed by the present judgment finds support in the decision reported as ABG Shipyard Liquidator v. Central Board of Indirect Taxes & Customs. In that case, Section 142-A of the Customs Act, 1962 was in issue — authorities had submitted that dues payable to it were to be treated as “first charge” on the property of the assessee concerned. In the resolution process, it was argued that the Customs Act, 1962 acquired primacy and had to be given effect to. This Court, after noticing the overriding effect of Section 238 IBC, held as follows: (SCC p. 496, paras 56-57)

“56. For the sake of clarity following questions, may be answered as under:

(a) Whether the provisions of IBC would prevail over the Customs Act, and if so, to what extent?

56.1. IBC would prevail over the Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.

(a) *Whether the respondent could claim title over the goods and issue notice to sell the goods in terms of the Customs Act when the liquidation process has been initiated?*

56.2. Answered in the negative.

57. *On the basis of the above discussions, following are our conclusions:*

57.1. *Once moratorium is imposed in terms of Sections 14 or 33(5) IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.*

57.2. *After such assessment, the respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under IBC, before the adjudicating authority.*

57.3. *In any case, the IRP/RP/liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of IBC."*

57. *Similarly, in Duncans Industries Ltd. v. AJ Agrochem, Section 16-G of the Tea Act, 1953 which required prior consent of the Central Government (for initiation of winding-up proceedings) was held to be overridden by IBC. In a similar manner, it is held that Section 238 IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non obstante clauses (i.e. Sections 173 and 174). The position of law with respect to primacy of IBC, is identical with the position discussed in ABG Shipyard Liquidator and Duncans Industries [refer also: Innoventive Industries, CIT v. Monnet Ispat & Energy Ltd Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., and Jagmohan Bajaj v. Shivam Fragrances (P) Ltd. "*

63. Reliance is also placed on the following paragraph of the judgement of the Hon'ble Supreme Court in **Principal Commissioner of Income TAX vs. Monnet Ispat and Energy Limited (2018) 18 SCC 786:**

"2. *Given Section 238 of the Insolvency and Bankruptcy Code, 2016, it is obvious that the Code will override*

anything inconsistent contained in any other enactment, including the Income Tax Act. We may also refer in this connection to Dena Bank v. Bhikhabhai Prabhudas Parekh and Co. [Dena Bank v. Bhikhabhai Prabhudas Parekh and Co., and its progeny, making it clear that income tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons."

64. It is submitted by Ld. Counsel for the Respondent No.1 that the liability on the CD is vicarious and the same has arisen on account of failure of FRL to pay the ALF and the CD may not be held vicariously liable to pay the ALF. Reliance in this regard is placed on the judgement of the Hon'ble Supreme Court in **State Bank of India v. Smt. Shyama Devi (1978) 3 SCC 399, Dilip Hariramani v. Bank of Baroda (2024) 15 SCC 443 and Ashutosh Ashok Parasrampuriya and Anr. V Gharrkul Industries Private Limited (2023) 14 SCC 770.**

65. Ld. counsel for the appellant and Respondent No.3 in rebuttal has placed reliance on **Dolphin Offshore Enterprises (India) Limited v. Bombay Stock Exchange Limited (BSE), IA/5538/2023 In C.P.(IB)/4087(MB)/C-III-2018** decided by the NCLT wherein after approval and implementation of the Resolution Plan, and after the decision of the new management to continue trading of the shares of the Applicant on BSE, the new management applied to the BSE for which reinstatement fee as per the SEBI LODR was asked to be paid and quantum of which, on an application by the Applicant, was suitably reduced. Further the applicant paid such fees on its own and without taking any legal recourse. It is also noteworthy that

the fine imposed by the BSE for non-compliance was completely waived and what has been paid by the Applicant is only reduced re-instatement fee, refund of which is being sought through the instant application. Under such facts and circumstances of the case it was held that if the Applicant despite making payment of re-instatement fee is aggrieved by any action of the SEBI, it should have approached the appropriate forum i.e., SAT for redressal of its grievances, as per the provisions of the SCR Act, 1956. It was also held that the issue on hand is not related to the insolvency of the Corporate Debtor and also that the dispute is not the one arising from or relate to the Insolvency as the Corporate Insolvency Resolution Proceedings. This judgment though not having any precedential value for this Appellate Tribunal but we do not have any quarrel with the ratio decided in that case, for the reason that in that case refund of reduced re-instatement fee deposited by the applicant was being sought, which could only be entertained by the appropriate forum established in that regime and not the NCLT.

66. We also notice that in ***Mr. Hemant Mehta, RP of Pan India Utilities Distribution Company Ltd. vs. Assistant Commissioner of State Tax and Ors., CA (AT) (Ins) No. 328 of 2022 decided on 05.08.2022*** a three Members Bench of this Appellate Tribunal while considering the de-freezing of the frozen bank accounts of the CD by the IDBI and Axis Bank on the direction of Assistant Commissioner of State Tax Mumbai and Commercial Tax Officer Gwalior Madhya Pradesh taking into consideration Section 35, 60 (5) and 238 of the Code and also keeping in view the ratio of the decision of the Hon'ble Supreme Court in ***Gujarat Urja***

Vikas Nigam Ltd. (Supra) as well as in **Principal Commissioner of Income Tax vs. Monnet Ispat and Energy Ltd. (2018) SCC Online SC 3465** observed that Section 60 (5) of the Code is starting with a non-obstante clause and the Adjudicating Authority is vested with residuary jurisdiction which casts a responsibility on the Adjudicating Authority to intervene in certain circumstances and held that the directions of aforesaid authorities to freeze the accounts of the CD during liquidation process are bad in law and it was within the jurisdiction of the Adjudicating Authority to issue appropriate directions for providing statutory relief to the appellants.

67. In **Vantage Point Asset Management Pte. Ltd. vs. Gaurav Mishra (RP) and Anr., CA (AT) (Ins) No. 1495 of 2024 decided on 14.010.2025**, a co-ordinate Bench of this Appellate Tribunal while considering the applicability of Section 32 A of the Code came to the conclusion that by provisional attachment of the property by the Directorate of Enforcement the ownership rights of the CD may not be divested and it may not be said that the CD does not continue to be the owner of the asset and despite attachment the CD is entitle to enjoy that property.

68. In **Ms. Anju Agarwal RP v. Bombay Stock Exchange & Ors., (2019) ibclaw.in 123 NCLAT**, this Appellate Tribunal held that Section 14 of the Code will prevail over Section 28A of the SEBI Act, 1992 and Securities Exchange Board of India cannot recover any amount including the penalty from the Corporate Debtor. The Bombay Stock Exchange for the same very reason cannot take any coercive steps against the Corporate Debtor nor can threaten the Corporate Debtor for suspension of trading of shares. The Bombay Stock Exchange deals with the shares. The shares of the Corporate

Debtor, if listed with the Bombay Stock Exchange, can be dealt with by the Bombay Stock Exchange. However, in view of Section 18 of the Code, the IRP while taking control and custody of any asset including the tangible and intangible assets, cannot sell the shares of the Corporate Debtor during the period of Moratorium except in accordance with the provisions of the Code and with the approval of the Committee of Creditors. Therefore, dealing with the shares of the Corporate Debtor by the Bombay Stock Exchange during the period of Moratorium normally does not arise. The shares can be transferred only in the manner prescribed under the Code and following requirements framed under the SEBI Act, 1992 and the Companies Act, 2013. The case of **Maharashtra Seamless Ltd. vs. Shri Padmanabhan Venkatesh & Ors.—Company Appeal (AT) (Insolvency) No. 220 of 2019**, is also quoted with approval wherein this Appellate Tribunal held that the statutory dues i.e. the dues to Central Government or the State Government arising under any law for the time being in force and payable come within the meaning of Operational Debt. If penalty is imposed or amount is payable to the ‘Securities Exchange Board of India’ in such case, it may claim as an ‘Operational Creditor’ but cannot recover the same during the Resolution Process.

69. At this juncture it is required to place on record section 60 of the Code and the same is placed as under;

Section 60. Adjudicating authority for corporate persons. —

(1) The adjudicating authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall

be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.

(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before the National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before such National Company Law Tribunal.

(3) An insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor pending in any court or tribunal shall stand transferred to the adjudicating authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

(4) The National Company Law Tribunal shall be vested with all the powers of the Debts Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2).

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

(6) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.

70. Section 238 of the IBC is also pertinent and is reproduced as under;

Section 238: Provisions of this Code to override other laws.

“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”.

71. Perusal of Section 60(5) of the Code will reveal that it provides power to the Adjudicating Authority which can be invoked to entertain or dispose of any claim made by or against the corporate debtor or corporate person and also any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code. Section 238 of the Code creates an overriding effect which provides that 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. We are of the firm view that

Embassy Property Developments (P) Ltd. and Gujrat Urja Vikas Nigam (Supra) are the sheet anchor so far as the determination of the jurisdiction of NCLT is concerned. It has been held in **Gujrat Urja Vikas Nigam (Supra)** that the non-obstante clause in Section 60(5) is designed for a different purpose to ensure that the NCLT alone has the jurisdiction when it comes to the applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings. It is held that the NCLT has the jurisdiction to adjudicate such disputes, which arise solely from or which relate to the insolvency of the corporate debtor but it has also been cautioned that while doing so, the Tribunal may not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the corporate debtor and nexus with the insolvency of the corporate debtor must exist.

72. Since much emphasis has been given by Ld. Counsels for the Appellant and Respondent No.3 on the two cases (**Embassy Property Developments (P) Ltd. and Gujrat Urja Vikas Nigam (Supra)**). It is pertinent to mention that in the facts of the case of **Gujrat Urja Vikas Nigam (Supra)** PPA was terminated solely on the ground of insolvency since the event of default contemplated was the commencement of insolvency proceedings against the corporate debtor. In absence of the insolvency of the corporate debtor, there would be no ground to terminate the PPA. The termination was not independent of the insolvency, therefore, the dispute in that case was solely arising out of and relates to the insolvency of the

corporate debtor and it was thus held that the RP can approach the NCLT for adjudication of the dispute which was related to the insolvency resolution.

73. In the case of **Embassy Property Developments Pvt. Ltd. (Supra)**, the corporate debtor was holding a mining lease granted by the Government of Karnataka which was to expire on 25.05.2018. A notice for premature termination of the lease was issued on 09.08.2017, on the allegation of violation of the terms and conditions of the lease deed, no order of termination had been passed till the date of initiation of the CIRP. The IRP wrote many letters to various authorities informing them of the commencement of CIRP. and also for seeking the benefit of deemed extension of the lease in terms of Section 8-A (6) of the mines and minerals (development and regulation) Act, 1957. RP also filed a writ petition seeking a declaration that the mining lease should be deemed to be valid up to 31.03.2020 but during the pendency of the writ petition, Government of Karnataka rejected the proposal for deemed extension. The RP thereafter moved an application before the NCLT for setting aside the order of the Government of Karnataka and seeking a declaration that the lease should be deemed to be valid up to 31.03.2020 which was allowed by the NCLT and ultimately the Adjudicating Authority directed the Government of Karnataka to execute the supplement lease deed. In the background of these facts, the Hon'ble Supreme Court held that in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot through

the RP, take a bypass and approach NCLT for the enforcement of such a right. Similarly, in the case of **Tata Consultancy Service Limited (Supra)** the Hon'ble Supreme Court has reiterated that the RP can approach the NCLT for adjudication of disputes which relate to the insolvency resolution process, but when the dispute arises dehors the insolvency of the corporate debtor, the RP must approach the relevant competent authority, even at an interim stage.

74. Having considered the aforesaid legal position with regard to the jurisdiction of the NCLT as provided under Section 60 (5) of the Code and keeping in view Section 238 of the Code wherein a specific provision has been made that in case of any conflict with the IBC with any other law, the provisions of the IBC would be having overriding effect and notwithstanding anything contained in any other law for the time being enforce the NCLT shall have jurisdiction to entertain or dispose of any question of fact or law arising out of or in relation to the Insolvency Resolution or Liquidation Proceedings of the Corporate Debtor or Corporate Person under this Code, in our, considered opinion, the issue of de-freezing of the Demat account of the CD, wherein the shares, which are admittedly the property of the CD, were lying, was/is a question of fact arising out of and in relation to the insolvency resolution and liquidation proceedings of the corporate debtors, as provided under Section 60 (5) (c) of the Code.

75. We earlier in this judgment while discussing the SEBI Act, SCRA, LODR Regulations and Circulars issued by the SEBI have stated that the main object of framing these Regulations and Act is to streamline the Regulatory framework of the Securities at the exchange and any entity

which will comply with the provisions contained therein would only be entitled to transact business at the exchange and in this regard ample powers have been provided to the appellant to regulate and streamline such business and in doing so the powers have also been given even to impose penalties on those entities which are not compliant with these Regulations /Circulars and the power also lies with the appellant to freeze the demat accounts of such entities in case the annual listing fee has not been paid.

76. Having considered the scheme of the Regulatory framework of the appellant in view of the SCRA, SEBI Act, LODR Regulations and various circulars issued by the appellant, which we have reproduced herein before, we are of the considered view that aforesaid Act and Regulations and Circular orders are not in contravention to any of the Provisions contained under IBC except Section 14 of the code and Section 28 of the SEBI Act. It is to be recalled that by the effect of Moratorium as provided under Section 14 of the IB Code no recovery of any Fee or Dues can be made during moratorium under Section 28 of the SEBI Act and to that extent by virtue of section 238 of the Code the provision contained under Section 14 of the Code would have overriding effect vis a vis section 28 of the SEBI Act. But present is not a case where effect of Moratorium is required to be examined or considered as the Demat Accounts of the CD's have already been de freezeed by the Ld. Adjudicating Authority and the main contention of appellant is that the Ld. Adjudicating Authority is not having jurisdiction either to entertain any such application or for passing impugned orders. At the cost of repetition, it is stated that by passing the aforesaid SEBI Act or SCRA or DOLR Regulations and by issuance of circular letters the business of listing of the securities has been

controlled and streamlined and any cause of action with regard to conduction or regulation of such business or levying of any penalty or reduction of the same would certainly fall within the domain of the Securities Regulatory Framework. However, where no such cause of action is accruing in the realm of the public law and the Fee or dues towards the CD have been finalised/crystallized and only the recovery of the same is left the matter will fall squarely within the ambit of the IBC and the NCLT by virtue of Section 60 (5) and Section 238 of the Code would have jurisdiction with regard to the same.

77. We notice that on account of non-payment of Annual Listing Fee (ALF) the demat accounts of the CD were debit freezed and such Annual Listing Fee was crystallized and nothing was pending in the realm of the Securities Regulatory Framework for the purpose of quantifying such annual listing fee and therefore, in view of the fact that there was no controversy with regard to the ownership of shares lying in the Demat account, Ld. NCLT was certainly having jurisdiction to entertain an application for de freezing of the aforesaid Demat accounts. We at this juncture, recall that in **Embassy Property Development Pvt. Ltd. (supra)** Hon'ble Supreme Court while considering the jurisdiction of NCLT under Section 60 (5) (C) of the IBC precisely in paragraph no. 37 held that the jurisdiction of the NCLT delineated under Section 60 (5) cannot be stretched so far as to bring absurd results and held that it will be a different matter if proceedings under statutes like Income Tax Act had attained finality, the dues payable to the Government would come within the meaning of the expression operational debt under Section 5 (21) of the Code, making the Government

operational creditor in terms of Section 5 (20) and further clarified that the moment the dues to the Government are crystallized and what remains is only the payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the Resolution Plan as approved by the Adjudicating Authority namely the NCLT.

78. Thus a distinction has been carved out by the Hon'ble Supreme Court in those cases where the dues have not been crystallized vis a vis the cases where the dues has been crystallized, attained finality and nothing remained to be done further in that forum and only the recovery is left and that the dues has become debt due to its finality and in that case it is opined that the NCLT would be having jurisdiction to deal those dues (debt) under the framework of the IBC, as the same is connected with the insolvency of the CD.

79. In the instant case it appears to be admitted situation that the annual listing fee required to be paid by both the CD's was quantified/crystallized and no further proceeding with regard to the payment of this annual listing fee was pending anywhere with any authority created under the Securities Regulatory Framework and what had remained is only the payment or Recovery of the same and it is only on the happening of the default of the payment of the same the Demat accounts of the CD's were debit frozen, therefore keeping in view the law laid down by the Hon'ble Supreme Court in **Embassy Property Development Pvt. Ltd. and Gujarat Urja Vikas Nigam Ltd. (supra)** and keeping an eye on the fact that the ownership of the CD's with regard to the shares lying in the aforesaid Demat accounts have not been disputed by anyone, the de freezing of these Demat accounts of the CD

was a question arising out of and in relation to the Insolvency Resolution of the aforesaid CD's and thus NCLT/Adjudicating Authority was having jurisdiction to pass impugned orders by assuming jurisdiction as provided under Section 60 (5) of the Code and we do not find any illegality in exercise of such jurisdiction by the NCLT.

80. We place on record at this juncture that various submissions were raised by Ld. Counsels for the parties pertaining to section 14 of the Code but since the application to de freeze these Demat accounts were moved by the RP and Liquidator for the benefit of the CD, which action is not barred under Section 14 of the Code and the fate of these appeals was dependent on the issue as to whether Ld. Adjudicating Authority is/ was having jurisdiction under Section 60 of the IBC to pass impugned orders, we do not find it relevant to discuss this aspect of the matter at length, as we have already held that Ld. NCLT was having jurisdiction under section 60(5) of the Code to entertain such applications and the impugned orders have been passed in valid exercise of such jurisdiction.

81. For the reasons mentioned herein before, we do not find any good ground to interfere in the impugned judgments.

82. In result, we do not find any merit in the appeals and the same are **dismissed** as such. There is no order as to costs.

83. Pending I.A.'s if any are hereby closed.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi.
24.03.2026.

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