IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.301 - IA/952(AHM)2026
In
C.P.(IB)/409(AHM)2025

Under Section 60(5) r. w. Section 14 of IB Code, 2016 r. w. Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

Varun Anil Chopra RP of Demac Technologies Pvt. Ltd ....**Applicant**
V/s
Income Tax Department through Deputy Commissioner Circle, Vadodara ....**Respondent**

Order delivered on: 25/08/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

O R D E R
(Hybrid Mode)

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

Sd/-
SANJEEV SHARMA
MEMBER (TECHNICAL)

Sd/-
SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT–I, AHMEDABAD

IA/952(AHM)2026
In
CP(IB) 409 of 2025

(Application under Section 60(5)(c) read with Section 14 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016)

MEMO OF PARTIES

Varun Anil Chopra
RP of Demac Technologies Private Limited
Having IBBI Regn. No. IBBI/1PA-001/1P-P-02950/2025-2026/14525
Having address at: C-1002,
Ashirvad Avenue, VIP Road,
Opp Shyam Baba Mandir,
Althan, Surat, Gujarat - 395007
Email: ipvarunchopra@gmail.com

.... Applicant

VERSUS

Income Tax Department
Through Deputy Commissioner, Circle 1(1)(1) Vadodara
Having address at:
1st Floor, Room No. 103,
Aaykar Bhawan, Race Course Circle,
Vadodara, Gujarat — 390007
E: BARODA.DCITI. 1.1@incometax.gov.in

.... Respondent

Order Pronounced On: 25.08.2026

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant	:	Ms. Pragati Tiwari, Adv. a.w. Mr. Vedant Dave, Adv.
For the Income Tax Department	:	Ms. Kinjal Trivedi, Jr. Standing Counsel

ORDER
(*Per*: Bench)

1. This Interlocutory Application has been filed on 17.06.2026 by Mr. Varun Anil Chopra, Resolution Professional of Demac Technologies Private Limited (hereinafter referred to as the "Applicant/RP"), under Section 60(5)(c) read with Section 14 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC/Code"), and Rule 11 of the National Company Law Tribunal Rules, 2016, seeking, inter alia, reversal of the adjustment/set-off of **Rs.41,64,728/-** made by the Respondent/Income Tax Department against the income-tax refund payable to the Corporate Debtor and release of the said amount to the Corporate Debtor under the control of the Resolution Professional.

2. The Applicant has, inter alia, sought a declaration that the adjustment/set-off of the income-tax refund against the pre-CIRP income-tax dues of the Corporate Debtor is contrary to

Section 14 of the IBC and is therefore illegal, and a consequential direction to the Respondent to reverse the adjustment and credit/release **Rs.41,64,728/-** to the designated bank account of the Corporate Debtor. The Applicant has also prayed for applicable statutory interest and for appropriate directions restraining recovery, adjustment or appropriation of pre-CIRP dues during the subsistence of the moratorium.

3. The brief facts necessary for adjudication are that **CP(IB) No. 409 of 2025**, filed by Sarens Heavy Lift India Private Limited under Section 9 of the Code against Demac Technologies Private Limited, was admitted by this Adjudicating Authority on **20.01.2026**, whereby CIRP was commenced against the Corporate Debtor and Mr. Chintan Shroff was appointed as the Interim Resolution Professional (IRP). Consequently, moratorium under Section 14 of the Code came into operation from the insolvency commencement date.

4. The IRP made the public announcement on 23.01.2026 under Section 15 of the Code read with Regulation 6 of the

IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, inviting claims from the creditors. The Respondent/Income Tax Department submitted its claim in **Form B on 16.02.2026** in respect of an alleged pre-CIRP tax demand of **Rs.35,11,100/-** pertaining to Assessment Year 2023-24.

5. The record further shows that the said tax demand of Rs.35,11,100/- had arisen pursuant to an order under Section 143(1a) of the Income-tax Act, 1961 dated 30.04.2024. The system-generated demand report accompanying the claim described the demand as collectible.

6. Regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 requires the Resolution Professional to verify claims and maintain the list of creditors, including the amount claimed and the amount admitted. Regulation 13(2)(d) further requires the list of creditors to be filed before the Adjudicating Authority. The record initially reflected the claim of the Respondent for Rs.35,11,100/- as received but not admitted as on

21.02.2026. Subsequently, by communication dated 13.03.2026, the IRP admitted the said claim and, at the same time, objected to the adjustment and sought release of the refund amount.

7. The Corporate Debtor had filed its return of income for Assessment Year 2025-26 on 10.12.2025. The return was processed under Section 143(1) of the Income-tax Act, 1961 and a refund of **Rs.56,07,920/-** was determined on 12.02.2026, i.e. after commencement of CIRP.

8. Thereafter, on **13.02.2026**, the Centralised Processing Centre of the Income Tax Department issued an intimation under Section 245 of the Income-tax Act proposing adjustment of the aforesaid refund against the outstanding pre-CIRP demand. The Respondent has stated that the Corporate Debtor was afforded 21 days to furnish its response and that no response was received within the stipulated period.

9. The Respondent has further relied upon the communication dated **02.03.2026** issued by the then IRP, contending that the IRP had conveyed consent/no objection to adjustment of the outstanding demand of Rs.35,11,100/- against the refund.

10. The Respondent thereafter proceeded to adjust **Rs.35,11,100/- towards the principal tax demand and Rs.6,53,628/- towards interest under Section 220(2) of the Income-tax Act**, aggregating to **Rs.41,64,728/-**. Out of the total refund of Rs.56,07,920/-, only Rs.14,43,192/- was released to the Corporate Debtor.

11. The IRP, however, subsequently, by communications dated 13.03.2026, 18.03.2026 and 19.03.2026, objected to the adjustment and requested reversal and release of Rs.41,64,728/-. Further reminders were issued on 16.04.2026 and 22.04.2026. The issue was also considered in the 4th meeting of the Committee of Creditors held on 28.04.2026, wherein proceedings before this Adjudicating Authority were authorised.

12. Subsequently, Mr. Varun Anil Chopra was appointed as the Resolution Professional in place of the IRP vide order dated 08.05.2026. On 14.05.2026, the Applicant/RP again informed the Respondent of his appointment and requested release of the adjusted amount along with applicable interest.

13. The Respondent filed its Report/Reply on 03.07.2026, contending principally that the adjustment was carried out in accordance with Section 245 of the Income-tax Act after issuance of the requisite intimation and expiry of the stipulated period, and further relying upon the communication dated 02.03.2026 of the IRP.

14. The Applicant, in its Rejoinder and Written Submissions, contended that the tax demand was a pre-CIRP claim; the refund was determined only after commencement of CIRP; the Respondent had already invoked the insolvency process by filing its claim; and the subsequent adjustment amounted, in substance, to recovery of a pre-CIRP claim from an asset/receivable of the Corporate Debtor during the moratorium.

15. We have heard the Learned Counsel appearing for the Applicant/RP and the Learned Counsel appearing for the Respondent/Income Tax Department. We have carefully considered the pleadings, documents, Report/Reply, Rejoinder and Written Submissions placed on record.

16. For the sake of convenience and clarity, the material dates and events relevant for adjudication of the present Application are set out hereinbelow: -

Sr. No.	**Date**	**Event**
1	30.04.2024	A tax demand of Rs 35,11,100 was raised under section 143 (1a) of the Income Tax Act, 1961 for Assessment Year 2023-2024 in the case of Demac Technologies Private Limited.
2	10.12.2025	Corporate Debtor filed its return of income for assessment year 2025-2026
3.	20.01.2026	Corporate Debtor, M/s Demac Technologies Private Limited was admitted into CIRP. Consequently, moratorium under Section 14 of the IBC came into force.
4.	23.01.2026	Public announcement was issued under Section 15 of the IBC inviting claims from creditors.
5	03.02.2026	Last date for submission of claim
6.	12.02.2026	The Income Tax Department processed the return of income of the Corporate Debtor for assessment year 2025-2026 and determined an income-tax refund of ₹56,07,920/- under Section 143(1) of the Income-tax Act, 1961.
7.	13.02.2026	The Centralised Processing Centre of the Income Tax Department issued notice under Section 245 of the Income-tax Act proposing adjustment of the refund against outstanding pre-CIRP tax dues.
8.	16.02.2026	The Income Tax Department submitted its Form-B claim of ₹35,11,100/- towards pre-CIRP income-tax dues in the CIRP.
9	21.02.2026	Report on Constitution of Committee of Creditors by the IRP and submission of List of Creditors under Regulation 13 (2) (d) of the CIRP Regulations, filed with the Adjudicating Authority.
10.	02.03.2026	The IRP communicated its consent for adjustment of demand against the refund. The Respondent relies upon this communication as consent for adjustment.
11.	05.03.2026	The Income Tax Department recorded adjustment of ₹35,11,100/- towards tax demand and ₹6,53,628/- towards interest, aggregating to total adjustment of

		₹41,64,728/- against the refund.
12.	06.03.2026	The Income Tax Department issued refunds of only ₹14,43,192/- , while ₹41,64,728/- was set off towards pre-CIRP tax dues, out of total refund determined of Rs 56,07,920.
13.	13.03.2026	The IRP admitted claim of Rs 35,11,100 but objected to the adjustment against the total refunds and requested reversal/release of ₹41,64,728/-.
14.	18.03.2026 & 19.03.2026	Further communications were issued by the IRP seeking reversal of the adjustment and release of the withheld refund.
15.	16.04.2026 & 22.04.2026	Further reminders were issued to the Respondent, reiterating that the Corporate Debtor was undergoing CIRP and seeking release of the refund.
16.	28.04.2026	In the 4th CoC Meeting, the issue of adjustment of ₹41,64,728/- was considered and proceedings before the Adjudicating Authority were authorised.
17.	08.05.2026	Mr. Varun Anil Chopra was appointed as the Resolution Professional in place of the IRP.
18.	14.05.2026	The newly appointed RP informed the Respondent of his appointment and again requested release of ₹41,64,728/- with applicable interest.
19.	17.06.2026	The present I.A. No. 952 of 2026 was filed under Section 60(5)(c) read with Section 14 of the IBC seeking reversal of the adjustment and release of ₹41,64,728/-.

17. The principal issue for consideration is: -

> **Whether the Respondent/Income Tax Department could, during the subsistence of the moratorium under Section 14 of the IBC, adjust/appropriate the income-tax refund of Rs.56,07,920/- determined after commencement of CIRP towards its pre-CIRP tax demand of Rs.35,11,100/- together with interest of Rs.6,53,628/-, notwithstanding Section 245 of the Income-tax Act, 1961?**

18. At the outset, it is clarified that this Adjudicating Authority is not examining the correctness, validity or quantum of the underlying tax demand. The Respondent is entitled to determine its statutory dues in accordance with the Income-tax Act and to lodge its claim in the CIRP. The issue before us is confined to the **mode and timing of recovery**, namely, whether a pre-CIRP claim could be recovered by appropriating the refund payable to the Corporate Debtor during the subsistence of the statutory moratorium.

19. Section 14(1) of the IBC declares a moratorium from the insolvency commencement date. Section 14(1)(a) prohibits institution or continuation of suits or proceedings against the Corporate Debtor, including execution of any judgment, decree or order, while Section 14(1)(b) prohibits transfer, encumbrance, alienation or disposal by the Corporate Debtor of its assets or legal or beneficial interests therein. Section 14(1)(c) prohibits action to foreclose, recover or enforce security interests, and Section 14(1)(d) prohibits recovery of property by an owner or lessor in the circumstances specified therein.

20. The statutory scheme of the Code further requires the IRP/RP to take control and custody of the assets of the Corporate Debtor, preserve and protect such assets and operate the Corporate Debtor as a going concern. Sections 17, 18, 20 and 25 of the Code, read together, reinforce the obligation to preserve the insolvency estate for the benefit of the collective insolvency process.

21. The refund determined under Section 143(1) of the Income-tax Act is a receivable of the Corporate Debtor. Once the refund of Rs.56,07,920/- was determined on 12.02.2026, after commencement of CIRP, the amount represented an enforceable receivable/asset of the Corporate Debtor and consequently formed part of the pool of assets available for the CIRP.

22. Section 245 of the Income-tax Act empowers the competent Income-tax authority, in the circumstances specified therein, to set off a refund due to a person against a sum remaining payable under the Income-tax Act, after giving the prescribed intimation. Section 245(2) further contemplates withholding of refund in specified circumstances relating to pending assessment or reassessment proceedings. We are not concerned here with the existence of the statutory power in an ordinary debtor-creditor relationship. The question is whether that power can be exercised in a manner inconsistent with the mandatory moratorium and collective insolvency mechanism under the IBC.

23. The answer has to be considered in the light of Section 238 of the Code, which gives the IBC overriding effect over anything inconsistent contained in any other law for the time being in force. The Hon'ble Supreme Court in ***Principal Commissioner of Income Tax v. Monnet Ispat and Energy Ltd.,*** (2018) 18 SCC 786, recognised the overriding effect of the IBC over inconsistent provisions of other enactments, including the Income-tax Act.

24. The principle has further been explained by the Hon'ble Supreme Court in ***Sundaresh Bhatt, Liquidator of ABG Shipyard Ltd. v. Central Board of Indirect Taxes and Customs,*** Civil Appeal No. 7667 of 2021, decided on 26.08.2022, wherein the Hon'ble Court held that once the moratorium operates, the concerned statutory authority may assess or determine the quantum of statutory dues, but cannot proceed to recover such dues in a manner inconsistent with the moratorium and the insolvency process. The statutory authority is required to submit its claim in accordance with the mechanism prescribed under the Code.

25. Thus, a distinction must be maintained between **determination of a statutory liability** and **recovery or appropriation of the Corporate Debtor's assets towards that liability**. The former may continue in accordance with the applicable statute; the latter, during moratorium, must conform to the provisions of the IBC.

26. The Respondent's reliance upon Section 245 of the Income-tax Act, therefore, cannot be examined in isolation. The fact that the adjustment may have been carried out through the statutory mechanism under Section 245 does not, by itself, confer upon the Respondent an overriding right to recover its pre-CIRP claim from an asset of the Corporate Debtor during CIRP. The operation of Section 245 is necessarily subject to Section 238 of the IBC to the extent of inconsistency.

27. The judgment of the Hon'ble NCLAT in ***Mr. Devarajan***

Raman, Liquidator of Kotak Urja Pvt. Ltd. v. Principal Commissioner of Income Tax & Ors., Company Appeal (AT) (Insolvency) No. 977 of 2023, decided on 24.05.2024, is directly relevant. In that case, the Income Tax Department had adjusted an income-tax refund against outstanding tax dues during the period when the moratorium was operative. The Hon'ble NCLAT held that such adjustment reduced the funds available for the other creditors, placed the Department in a more beneficial position and amounted to recovery in violation of the moratorium. The adjusted amount was directed to be restored to the Corporate Debtor, while liberty was reserved to the Department to pursue its claim in accordance with the insolvency process.

28. The Respondent's reliance upon Regulation 29 of the IBBI (Liquidation Process) Regulations, 2016 also does not advance its case. Regulation 29 concerns mutual dealings and set-off in the context of the **liquidation process**. The present case is at the CIRP stage. A provision forming part of the liquidation framework cannot be mechanically imported into CIRP to create a right of insolvency set-off which otherwise defeats the moratorium. The distinction was also noticed by the Hon'ble NCLAT in *Devarajan Raman.*

29. The judgment of this Adjudicating Authority in ***Wind World (India) Ltd. v. Income Tax Department,*** IA No. 996 of 2025 in CP(IB) No. 14 of 2018, decided on 06.03.2026, is of particular relevance. In that case, this Bench held that income-tax refunds determined during CIRP constitute receivables/assets of the Corporate Debtor and that adjustment of such refunds towards pre-CIRP tax dues during the subsistence of moratorium amounts to recovery and is impermissible under Sections 14 and 238 of the Code. The Income Tax Department was consequently directed to restore the adjusted amount with statutory interest in accordance with law.

30. The decisions of the Hon'ble NCLT, Hyderabad Bench in ***Krishna Mohan Gollamudi, Resolution Professional of Leo Meridian Infrastructure Projects*** & ***Hotels Ltd. v. Income Tax Department,*** IA No. 1777 of 2023, and the Hon'ble NCLT, Indore Bench in ***Gautam Mittal, RP of***

Sanwaria Consumers Ltd. v. Chief Commissioner of Income Tax & Anr., IA No. 498 of 2025, decided on 23.04.2026, also proceed on the principle that an income-tax refund, once determined, constitutes an asset/receivable of the Corporate Debtor and cannot be appropriated by the statutory authority towards pre-CIRP dues during the subsistence of the moratorium.

31. The facts of the present case attract the aforesaid principles with considerable force. The CIRP commenced on **20.01.2026**. The refund of **Rs.56,07,920/-** was determined only thereafter, on **12.02.2026**. The Respondent submitted its pre-CIRP claim of Rs.35,11,100/- on **16.02.2026**. The Section 245 intimation was issued during CIRP, and the adjustment of Rs.41,64,728/- was subsequently effected during the subsistence of the moratorium. Thus, the Respondent sought to appropriate a receivable which had crystallised in favour of the Corporate Debtor during CIRP towards an antecedent liability.

32. The fact that the refund related to a return filed for an assessment year preceding the commencement of CIRP does not alter the character of the **receivable which crystallised only after commencement of CIRP**. What is material for the present controversy is that the refund became payable/determined after the insolvency commencement date and was appropriated during the moratorium towards a pre-CIRP liability.

33. We are also unable to accept the contention that the adjustment is permissible merely because the Respondent's claim had not been finally admitted on the date of adjustment. The Respondent had already invoked the insolvency mechanism by filing its claim in Form B on 16.02.2026. The verification or admission of a claim cannot confer upon an individual creditor a right to secure payment outside the collective process established under the Code.

34. Equally, the communication dated 02.03.2026 relied upon by the Respondent cannot alter the legal position. Even assuming that the said communication amounted to a no-objection or consent for adjustment, such consent cannot override a mandatory statutory moratorium imposed by Section 14 of the Code. A statutory moratorium operates by force of law and cannot be waived or contracted out of so as to prejudice the collective rights of the creditors.

35. The subsequent communication dated 13.03.2026 is also material. The IRP admitted/acknowledged the Respondent's claim of Rs.35,11,100/- and simultaneously objected to the adjustment and sought release of Rs.41,64,728/-. The subsequent communications dated 18.03.2026 and 19.03.2026, followed by the reminders dated 16.04.2026 and 22.04.2026, demonstrate that the adjustment was not acquiesced in and was consistently disputed on behalf of the Corporate Debtor.

36. The adjustment of Rs.41,64,728/- had the effect of reducing the assets available for the CIRP while giving the Respondent recovery of its pre-CIRP dues outside the collective insolvency mechanism. Such unilateral appropriation would place the Respondent in a position superior to other similarly situated creditors and would defeat the object of the Code, including preservation of the insolvency estate, value maximisation and equitable treatment of stakeholders.

37. We therefore find that the nomenclature "set-off" or "adjustment" cannot determine the legal character of the transaction. In substance and effect, the impugned action resulted in **appropriation of an asset/receivable of the Corporate Debtor towards satisfaction of a pre-CIRP claim during the subsistence of the moratorium**.

38. We make it clear that nothing contained in this order shall prevent the Respondent from determining its statutory dues in accordance with the Income-tax Act, 1961 or from pursuing its claim of Rs.35,11,100/- and other legally admissible amounts in accordance with the provisions of the IBC and the applicable Regulations. The underlying tax liability is not being adjudicated upon by this Adjudicating Authority.

39. As regards the claim for interest, Section 244A of the Income-tax Act governs statutory interest on refund, subject to the conditions and computation prescribed therein. Therefore, the Applicant shall be entitled to such statutory interest, if any, as is admissible under the Income-tax Act, to be determined by the competent Income-tax authority in

accordance with law. No independent or additional interest is being awarded by this Adjudicating Authority.

40. In view of the foregoing discussion, the adjustment/appropriation of **Rs.41,64,728/-** by the Respondent towards the pre-CIRP tax dues of the Corporate Debtor, during the subsistence of the moratorium under Section 14 of the IBC, is held to be impermissible and contrary to the scheme of Sections 14 and 238 of the Code.

41. Accordingly, the following directions are issued: -

(i) The adjustment/appropriation of **Rs.41,64,728/-** made by the Respondent/Income Tax Department against the income-tax refund of the Corporate Debtor towards its pre-CIRP tax dues is hereby **set aside**.

(ii) The Respondent/Income Tax Department shall **reverse the aforesaid adjustment and release/credit Rs.41,64,728/-** to the designated bank account of the Corporate Debtor under the control of the Resolution Professional.

(iii) The aforesaid amount shall be released within **two weeks** from the date of receipt of a copy of this order.

(iv) The Applicant shall be entitled to such **statutory interest under Section 244A of the Income-tax Act,**

1961, if otherwise admissible, from the date on which the refund became due till the date of actual payment, subject to determination and computation by the competent authority in accordance with law.

(v) Nothing contained in this order shall be construed as an adjudication upon the validity or quantum of the underlying tax demand.

(vi) During the subsistence of the moratorium under Section 14 of the IBC, the Respondent shall not appropriate any income-tax refund payable to the Corporate Debtor towards its pre-CIRP dues in a manner inconsistent with the provisions of the IBC.

42. In view of the aforesaid findings and directions, **I.A. No. 952(AHM) of 2026** is **allowed** and **disposed of** accordingly.

No order as to costs

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)
Aditi Jain/LRA

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)