NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

1. IA/2513/2025 C.P. (IB)/2607(MB)2019

IN THE MATTER OF

Oriental Bank Of Commerce … Petitioner

Vs

Panache Exports Pvt Ltd … Respondent

U/s 7 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 22.09.2026

CORAM:

SH. VINAY GOEL
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant: Adv. Manoj Kumar Mishra (VC)

For the Respondent:

ORDER

IA/2513/2025- The above IA/2513/2025 is listed for pronouncement of order. The same is pronounced in open Court, vide a separate order.

Sd/-
VINAY GOEL
Member (Judicial)

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

//Avdhesh//

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - V

I.A. 2513/2025

IN

C.P. NO. 2607(IB)/MB/2019

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the NCLT Rules, 2016.

Indojewel Jewellery Private Limited
Through its Authorised Person – Mr. Naresh Wadhawa
Having its address at:
Unit-001, Multistoried Building, Andheri East, Seepz-sez, Mumbai, Maharashtra - 400096.
Email: indojewel@gmail.com

... Applicant

Versus

1. **Brihanmumbai Municipal Corporation**
Having its address at:
Asstt. Assessor & Collector, K East Ward, Municipal Office Building, Aazad Road, Gundavali, Andheri (East), Mumbai-400069.
And also, at:
Office of Dy. Assessor & Collector (Octroi), Lodha Complex, Gate No. 3/Station Road, Kanjurmarg (East), Mumbai-400042.
Email: aacke.ac@mcgm.gov.in

... Respondent No. 1

2. **Ajit Gyanchand Jain**
Erstwhile Liquidator of Panache Exports Private Limited

Having address at:
204, Wall Street-I, Ellisbridge, Near Gujarat College, 204, Wall Street-1, Ellisbridge, Near Gujarat College, Ahmadabad, Gujarat - 380006.
Email: ajit@vcanca.com / liquidation.panacheexports@rirp.co.in

... Respondent No. 2

IN THE MATTER OF:

Oriental Bank of Commerce

... Financial Creditor

Versus

Panache Exports Private Limited

... Corporate Debtor

Order Pronounced on: 22.09.2026

Coram:

Vinay Goel	Charanjeet Singh Gulati
Member (Judicial)	Member (Technical)

Appearances:

For Applicant: Adv. Manoj Kumar Mishra i/b Mishra Legals (VC)

For Respondent:

ORDER

1. The present Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") read with Rule 11 of the National Company Law Tribunal Rules, 2016 ("**NCLT Rules**") with following prayers:

   a) *To pass an Order declaring that the demand raised by the Respondent No. 1 vide Billwise Outstanding Report (enclosed in Exhibit-"E") for an amount of Rs. 86,58,080/- (Rupees Eighty-Six Lakhs Fifty-Eight Thousand and Eighty Only) along with any interest/penalty accruing thereon, together with all* *consequential actions, as illegal, void & in violation of Section 53 of IBC, 2016, since the said amount arises prior to Liquidation Date on 23.09.2022 and hence is not liable to be paid by the Applicant;*

b) To pass an Order directing extinguishment of all claims and liabilities of Respondent No. 1 against the Applicant and its Scheduled Property (given in Schedule-I of this Application) arising prior to Liquidation Date of Corporate Debtor on 23.09.2022;

c) To pass an Order directing Respondent No 1 to give NOC in the name of "M/s. Indojewel Jewellery Private Limited" (Applicant) in respect of the old dues of the Scheduled Property (given in Schedule-I of this Application) arising prior to Liquidation Date on 23.09.2022;

d) Pending hearing and disposal of the instant Application, pass an Order granting stay on recovery of outstanding amount arising prior to Liquidation Date on 23.09.2022, as claimed by Respondent No.1 against the Applicant and its Scheduled Property (given in Schedule-I of this Application);

e) To pass any such other or further order(s) as may be deemed fit by this Hon'ble Adjudicating Authority, in the interest of justice and equity.

Brief Facts as per the Application:

2. This Tribunal vide order dated 25.11.2019 admitted Panache Exports Private Limited ("**Corporate Debtor**") into the Corporate Insolvency Resolution Process ("**CIRP**"). Thereafter, Liquidation was initiated against the Corporate Debtor vide order dated 23.09.2022 ("**Liquidation Order**"), and Mr. Ajit Gyanchand Jain ("**Respondent No. 2**") was appointed as the Liquidator of the Corporate Debtor.

3. It is submitted that the Respondent No. 1 (Brihanmumbai Municipal Corporation) as an unsecured operational creditor has already lodged

its claim amounting to Rs. 8,21,434/- with the Respondent No. 2 on 20.12.2022.

4. It is submitted that the Respondent No. 2 (Liquidator) published an Auction Notice for the sale of under mentioned asset of the Corporate Debtor on 05.06.2023, inviting bids for E-Auction to be conducted on 05.07.2023.

5. The Applicant expressed its interest in participating in the e-auction of the Corporate Debtor for bid for Asset given in "Option A1" being Unit No. 3, Ground Floor, Multi-storied Building SEEPZ, Marol Industrial Area, Andheri (East), Mumbai – 400096, vide Application Form dated 16.06.2023.

6. The e-auction of above said Property was conducted on 05.07.2023 on the e-auction portal and the Applicant emerged as the Successful Auction Purchaser at the price of Rs. 5,31,00,000/-.

7. The Applicant had deposited pre-requisite EMD of Rs. 53,10,000/- with the Respondent No. 2 through NEFT on 30.06.2023. Subsequently, the Applicant had paid the remaining amount of Rs. 4,77,90,000/- on 19.07.2023, being the entire bid and sale consideration.

8. It is further submitted that the claim for a sum of Rs. 8,21,434/- was submitted by the Respondent No. 1 with the Respondent No. 2, and the same was reflected in the List of Stakeholders as on 26.07.2023, as unsecured operational creditor. Therefore, the Respondent No. 1 held 0.14% share in the total amount of admitted claims and thus was also a part of the Committee of Stakeholders Consultation Committee (“SCC”).

9. It is submitted that the Respondent No. 2 issued Certificate of Sale dated 16.08.2023 in respect of the above said property, which was conducted via “Sale of Assets on Parcel basis” as per Section 35(1)(f) of the Insolvency and Bankruptcy Code, 2016 r/w. Regulation 32(d) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, which was sold on "as is where is basis", "as is what

is basis", "whatever there is basis" and "no recourse basis” along with available licenses, permits, approvals and recourse basis" along with available licenses, permits, approvals and registrations to the extent they are transferable under the applicable law.

10. It is submitted that pursuant to the Certificate of Sale dated 16.08.2023, the Applicant purchased an allotment of unit, being a registered under Sub-Lease dated 03.12.2010, from sub-lessor President of India, through the Development Commissioner, SEEPZ Special Economic Zone for a period of 95 years having possession with effect from date 17.01.2008. Thus, vide the Sale Certificate, all the right, title, interest, privileges, liberties, easements, leases, obligations, claim and demand of the Corporate Debtor over the said Property has been absolutely and forever been transferred, assigned and conveyed unto the Applicant by the Respondent No.2 for the remaining period of Lease. Thereafter, the Respondent No. 2 vide letter dated 02.11.2023, intimated to the Respondent No. 1 of acquisition of said Property by the Applicant.

11. It is submitted that the Corporate Debtor was dissolved by virtue of order dated 04.03.2025 (“**Dissolution Order**”), passed by this Tribunal. The Respondent No. 1 had already filed its claim before the Liquidator, and the entire claim was duly admitted. The claim was thereafter dealt with and settled by the Liquidator in accordance with Section 53 of the Code, following which the Corporate Debtor was dissolved. In these circumstances, Respondent No. 1 cannot seek recovery from the Applicant of any dues arising prior to the Acquisition Date. Having participated in the liquidation process and obtained settlement of its claim under the Code, Respondent No. 1 cannot simultaneously pursue separate proceedings for recovery of the same amount. Further, Respondent No. 1 was a member of the Stakeholders' Consultation Committee (SCC) holding a 0.14% share of the total admitted claims and was therefore aware of the distribution carried out by the Liquidator among all stakeholders in accordance with Section 53 of the Code.

Accordingly, the Applicant seeks appropriate directions from this Tribunal.

Analysis and Findings

12. We have heard the Ld. Counsel for the Applicant and perused the documents available on record and appreciated the legal position. It is relevant to take note of the order passed by this Tribunal on 29.07.2025, wherein it observed as under:

> "*Learned counsel for the applicant submits that he has no objection if R-2 is discharged. Accordingly, and in the facts and circumstances of the case, R-2 being Proforma Party against whom, no relief is being sought and since the Corporate Debtor has already been dissolved, the **R-2** is discharged from this IA.*"

13. Further, vide order dated 07.09.2026, this Tribunal proceeded ex-parte against the Respondent No. 1 (BMC) and passed the following order:

> "*IA/2513/2025: - Vide order dated 12.05.2026, it was noted that the BMC has been served vide email on 02.03.2006 and also by post which was delivered on 05.03.2026. On 12.05.2026, one last and final opportunity was granted to the BMC to file reply within 4 weeks. However, we note that no reply has been filed and no one is present on behalf of the BMC, accordingly, the Respondent herein (BMC) is set **ex-parte**.*
> *Heard, learned counsel for the Applicant. Matter is Reserved for Orders.*"

14. It is the case of the Applicant that all dues and charges arising after the Date of Liquidation, i.e., 23.09.2022, have been duly paid. The Applicant further submits that pursuant to the Certificate of Sale dated 16.08.2023, the assets were sold on a parcel basis, "as is where is", "as is what is", "whatever there is", and "no recourse" basis. Accordingly, the Applicant cannot be held liable for the outstanding amount of Rs. 86,58,080/- pertaining to the period prior to the Date of Liquidation. The Applicant further contends that, since Respondent No. 1 had

already filed its claim, which was duly admitted and settled through the liquidation process in accordance with Section 53 of the Code, Respondent No. 1 is precluded from initiating separate proceedings to recover the same dues from the Applicant.

15. In facts and circumstances of the present case, the sole issue that arise for our consideration is:

    "Whether the Applicant as a successful auction purchaser of an asset of the Corporate Debtor is liable to pay the outstanding dues claimed by the R-1 (BMC), which pertain to the period prior to the Liquidation Order or not?".

16. In this context it is important to note that, Respondent No. 1 is a Municipal Authority established under the Mumbai Municipal Corporation Act, 1888 ("**MMC Act**"). Under Section 212 of the said Act, in the event of any outstanding demands or dues, the Municipal Authority has the first charge upon such asset/property. The relevant extract of the said Section is as follows:

    "212. Property taxes to be a first charge on premises on which they are assessed. Property taxes due under this Act in respect of any building or land shall, subject to the prior payment of the land revenue, if any, due to the State Government thereupon be a first charge in the case of any building or land held immediately from the Government upon the interest in such building or land of the person liable for such taxes and upon the goods and chattels, if any, found within or upon such building or land and belonging to such person; and, in the case of any other building or land, upon the said building or land and upon the goods and chattels, if any, found within or upon such building or land and belonging to the person liable for such taxes."

A bare reading of the aforesaid provision makes it clear that any property taxes due under the said Act in respect of any building or land constitute a statutory first charge upon such building or land, subject to the prior payment of land revenue, if any, due to the State Government. Consequently, any transfer of such property would not extinguish or override the statutory charge created in favour of the Municipal Authority in respect of the outstanding property tax dues.

17. Moreover, the method of recovery is specified in sections 203 and 209 of MMC Act which are reproduced below:

> *"**203. Distress and attachment.***
>
> *(1) If the person liable for the payment of the tax for which a bill is served upon him and does not pay the tax together with penalty or interest or both as required under the provisions of this Act to pay the same, and if no appeal is preferred against the said tax, as hereinafter provided, such sum, with all costs of the recovery, may be levied under a warrant in the form of Schedule 3, or to the like effect, to be issued by the Commissioner by distress and sale of the goods and chattels of the defaulter or the attachment and sale of the immovable property of the defaulter, or, if the defaulter be the occupier of any premises in respect of which a property tax is due, by distress and sale of any goods and chattels found on the said premises.*
>
> *(2) Where the person liable to pay the tax according to the bill served upon him pays the tax as required under the provisions of this Act but does not pay the amount of penalty or interest or both either in whole or in part as may be due on the unpaid amount of tax, for such amount which has remained unpaid, a warrant in the form of Schedule J, mutatis mutandis, may be issued by the Commissioner in the same manner as if such sums were due on account of the tax.*
>
> *(3) When a warrant is issued for the attachment and sale of immovable property, the attachment shall be made by an order prohibiting the defaulter from transferring or charging the*

property in any way, and all persons from taking any benefit from such transfer or charge, and declaring that such property will be sold unless the amount of tax due penalty or interest or both, if any, due and payable together with all costs of recovery is paid into the municipal office within twenty-one days.

(4) Such order shall be proclaimed by fixing at some conspicuous part of the property and upon a conspicuous part of the municipal office and also, when the property is land, paying revenue to the State Government, in the office of the Collector.

(5) Any transfer of or charge on the property attached or any interest therein made without the written permission of the Commissioner shall be void as against all claims of the Corporation enforceable under the attachment."

18. As can be seen from the above provision, Section 203 of the MMC Act empowers the BMC to recover unpaid property taxes by attachment and sale of the immovable property of the defaulter. Thus, the statutory scheme expressly contemplates recovery of outstanding property tax dues through the attachment and sale of the property against which such dues are recoverable.

19. In this regard, it is important to take note of the judgment of Hon'ble High Court of Calcutta in ***Cotton Casuals India Pvt. Ltd. & Ors. Vs. State of West Bengal & Ors. WPO 1235 of 2024***, wherein it has held that:

*"40. Where a **statutory first charge** is created on the property, such as in respect of property tax under Section 232 of the Kolkata Municipal Corporation Act, 1980, the municipal authority is **entitled to enforce such charge independently** in accordance with the statutory mechanism provided therein. In such a situation, there is no inconsistency between the*

> *provisions of the IBC and the KMC Act, and, therefore, the overriding effect of Section 238 of the IBC is not attracted.*
>
> *41. Where a statutory charge is created on the property, as in the case of property tax under the KMC Act, the Respondent corporation* ***may either submit its claim before the Official Liquidator under the IBC or enforce the charge independently through the statutory mechanism****. In such cases, there is no inconsistency between the IBC and the KMC Act, and Section 238 of the IBC is not attracted.*"
>
> *[**Emphasis Supplied**]*

In the aforesaid judgment, the Hon'ble High Court considered the interplay between the provisions of the IBC and a statutory first charge created under Section 232 of the KMC Act, 1980. The Court held that where a statute creates a first charge on the property itself, the authority in whose favour such charge exists is not confined only to the remedy of lodging its claim before the Liquidator under the IBC. Such authority may either submit its claim in the liquidation process or independently enforce the statutory charge in accordance with the mechanism provided under the concerned statute. The rationale is that a statutory charge attached to the property constitutes an encumbrance running with the property and is distinct from a mere personal claim against the Corporate Debtor, and that there is no inconsistency between the enforcement of such statutory charge and the provisions of the IBC, and therefore the overriding effect of Section 238 of the Code is not attracted.

20. Applying the aforesaid principle to the facts of the present case, Section 212 of the Mumbai Municipal Corporation Act, 1888, creates a statutory first charge in favour of the Municipal Authority in respect of its outstanding dues. Once such a charge comes into existence, the Municipal Authority is entitled to enforce the same against the property, notwithstanding that it had also lodged its claim before the Liquidator. Accordingly, the mere fact that Respondent No. 1 participated in the

liquidation process does not result in extinguishment of the statutory charge created under Section 212 of the Mumbai Municipal Corporation Act, 1888, nor does it preclude the Municipal Authority from seeking enforcement of the charge against the property.

21. Further, it would be relevant to take note of the Auction notice dated 05.06.2023 and Certificate of Sale dated 16.08.2023. Given below is the relevant extract of the said documents:

Auction Notice dated 05.06.2023:

E -AUCTION - SALE OF ASSETS UNDER IBC, 2016

Date and Time of Auction: 5th July, 2023 (Wednesday) at 10:00 A.M. to 03:00 P.M.
(with unlimited extension of 5 minutes each)

E-Auction Sale of Assets by **PANACHE EXPORTS PRIVATE LIMITED** (In Liquidation) forming part of Liquidation Estate under section 35(f) of IBC 2016 read with Regulation 33 of Liquidation Process Regulations. E-Auction will be conducted on **"AS IS WHERE IS, AS IS WHAT IS, WHATEVER THERE IS AND NO RECOURSE BASIS".**
The Sale will be done by undersigned through e-auction service provider via National E- Governance Services Limited website https://www.nesl.co.in.

(Amount in INR)

Options.	Asset	Sq feet	Reserve Price	EMD Amount	Incremental Bid Amount
A.	**Sale of Assets in parcels** **Date and Time of Auction: 5th July 2023 at 10:00 A.M. to 12:00 P.M**				
A1.	Unit No. 3, Ground floor, "Multi-storied Building" SEEPZ, MarolIndustrial Area, Andheri (East), Mumbai – 400096	8,285.00	5,31,00,000	53,10,000	10,00,000

Certificate of Sale dated 16.08.2023:

*"i. "SAID PROPERTY" is sold and is further transferred, assigned and conveyed as "**AS IS WHERE IS BASIS**", "AS IS WHAT IS BASIS", "WHATEVER THERE IS BASIS" and "NO RECOURSE BASIS".*

ii. "SAID PROPERTY" is otherwise free from any charges, mortgages, encumbrances, liability, litigation, lis pendens, claims, adverse claims etc.

*iii. **All costs of stamp duty, registration fees, additional stamp duty, fees, cess, charges, including all other racially and incidental charges, expenses and cost of transfer, assignment and conveyance of SAID PROPERTY shall be paid, remitted and borne by Purchaser over and above the consideration amount including but only limited***

to any Municipal Taxes, Dues, GST, TDS as may be applicable at present or way come into existence later on or any present period, presiding period or future in respect of SAID PROPERTY*.*

iv. The Purchaser shall hence forth comply with all the obligation, covenants, discharges, rules and regulations ***as are in existence*** *and/or as may be framed and directed by SEEPZ and also as guaranteed by the "Company in Liquidation in the said Registered Sub-Lease Deed"."*

22. Upon perusal of the Auction Notice dated 05.06.2023 and the Certificate of Sale dated 16.08.2023, it is evident that the E-Auction and the subsequent sale of the property were expressly conducted on "AS IS WHERE IS, AS IS WHAT IS, WHATEVER THERE IS and NO RECOURSE BASIS". The Applicant was, therefore, expected to conduct due diligence before submitting its bid and cannot subsequently claim ignorance of the liabilities associated with the property.

23. In the aforesaid circumstances it is relevant to take note of the judgment of the Hon'ble Supreme Court in ***K.C. Ninan Vs. Kerala State Electricity Board & Ors. (2023) 14 SCC 431***, wherein the Apex Court has observed as under:

"146. To conclude, all prospective auction purchasers are put on notice of the liability to pay the pending dues when an appropriate "as is where is" clause is incorporated in the auction sale agreement. ***It is for the intending auction purchaser to satisfy themselves in all respects about circumstances such as title, encumbrances and pending statutory dues in respect of the property they propose to purchase****.* ***In a public auction sale, auction purchasers have the opportunity to inspect the premises and ascertain the facilities available****, including whether electricity is supplied to the premises. Information about the disconnection of power is*

easily discoverable with due diligence, which puts a prudent auction purchaser on a reasonable enquiry about the reasons for the disconnection. When electricity supply to a premises has been disconnected, it would be implausible for the purchaser to assert that they were oblivious of the existence of outstanding electricity dues."

In the aforesaid judgment Hon'ble Supreme Court has observed that where a property is sold on an "as is where is" basis, the intending auction purchaser is under an obligation to conduct due diligence by inspecting the property and ascertaining all encumbrances, statutory dues and other liabilities attached to it.

24. It is also relevant to take note of the judgment of the Hon'ble High Court of Calcutta in ***Cotton Casuals India Pvt. Ltd. & Ors (Supra)***, has also taken similar view:

*"51. In view of the law laid down by the Hon'ble Supreme Court in the aforementioned cases, it is well-settled that a sale conducted on an "**AS IS WHERE IS**" basis entails that the purchaser acquires the asset along with all existing rights, liabilities, and obligations. **When property is sold on such a basis, any encumbrances or charges attaching to the property stand transferred to the purchaser at the time of sale**.*

*55. In view of the detailed discussion herein above, this Court is of the considered view that the Petitioner, **being the auction purchaser of the premises in question, is liable to pay the outstanding property tax dues**. The Official Liquidator through Sale Notice and EOI has made it very evident and clear that all the bidders are supposed to make their respective bids based on their own investigation and due diligence. As discussed herein above, the Hon'ble Supreme Court in Union of India (supra) and K.C Ninan (supra), **when assets are sold on 'as is***

> ***where is basis', the purchaser acquires them with full knowledge that they are being sold without any warranties, representations, or indemnities, and that the purchaser alone bears the responsibility of verifying the condition, liabilities, and encumbrances attached to the assets****. Further Section 232 of the KMC Act makes the property tax dues as first charge on the property and hence make it an encumbrance attached to the property. Hence, the Petitioner is liable to make the payment towards the outstanding property tax dues for the pre- liquidation period also.*"
>
> [***Emphasis Supplied***]

The Hon'ble Calcutta High Court, in the above judgment, has thus held that when assets are sold during liquidation on an "as is where is" basis, the purchaser acquires the property along with existing liabilities and charges/encumbrances.

25. Moreover, the Respondent No. 2 issued Letter of Intent dated 07.07.2023 in favour of the Applicant as Successful Auction Purchaser. The relevant extract thereof is reproduced below:

> *"The successful bidder/ Purchaser will also be responsible for evaluating completeness of applicability of taxes in India at the time of closure and will be responsible for paying all such taxes.* ***It is expressly stated that the Liquidator does not take or assume any responsibility for any dues, statutory or otherwise of the Company, including such dues, if any, which may affect transfer of the Liquidation assets in the name of the Successful Bidder and such dues, if any, will have to be borne/paid by the Successful Bidder****."*

Upon perusal of the Letter of Intent dated 07.07.2023 and the Sale Certificate dated 16.08.2023, it is evident that the said property was sold on an "as is where is" basis. Admittedly, Respondent No. 1 had submitted its claim to Respondent No. 2, and the outstanding dues and liabilities attached to the property were reflected in the List of Stakeholders dated 26.07.2023. Accordingly, the Applicant was required to undertake its own due diligence prior to purchasing the said property.

26. The Applicant further submitted that the entire claim of Respondent No. 1 has already been dealt with by the Liquidator in accordance with Section 53 of the Code. It was contended that Respondent No. 1 cannot seek recovery from the Applicant of any dues that arose prior to the Acquisition Date i.e. 23.09.2022. The Applicant argued that the demand raised by Respondent No. 1 is contrary to Section 53 of the Code and relied upon various judicial precedents to contend that, where the Corporate Debtor is sold as a "going concern", the successful auction purchaser cannot be saddled with any dues, liabilities, or claims relating to the period prior to such sale.

27. In this regard it is relevant to take note of the judgment of the Hon'ble High Court of Calcutta in ***Cotton Casuals India Pvt. Ltd. & Ors. (Supra)***, wherein it held that:

> *"39. On the other hand, the IBC envisages that liquidation proceedings are to be carried out in accordance with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, which prescribe the procedure for submission of claims to the Liquidator, verification thereof, and distribution of the liquidation estate amongst the creditors. In such proceedings, creditors are ordinarily required to lodge their claims before the Liquidator, who, after collating and verifying the same, distributes the proceeds of the liquidation estate in the order of priority laid down* ***under Section 53*** *of the IBC. For this purpose, the Liquidator sells the assets of the Corporate Debtor and records the liabilities to the best of his knowledge.* ***However, since liquidation is not an exercise of revival but of realisation and distribution, it is possible that certain liabilities may not be fully known or disclosed at the time***

of sale. Consequently, assets are sold on an "as is where is, whatever there is" basis, meaning that the purchaser acquires the property along with such liabilities or encumbrances as may be attached to it, save and except where the terms of sale provide otherwise.

*[**Emphasis Supplied**]*

28. The Court drew a distinction between liquidation and resolution and observed that liquidation is a process of realization and distribution of assets. It further held that where assets are sold on an "as is where is" and "whatever there is" basis, the purchaser acquires the property along with the liabilities attached to it.

29. The Applicant further argued that he is not liable to pay the dues relating to the Corporate Debtor. Therefore, it is necessary to take note of Section 32A (2) of the Code, which deals with liability of a Corporate Debtor. Given below is the relevant extract of the said provision:

*"**32A. Liability for prior offences, etc***

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not –

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Explanation.-For the purposes of this sub-section, it is hereby clarified that,-

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable"

*[**Emphasis Supplied**]*

A bare reading of the aforesaid provision makes it clear that no action can be taken against the property of the Corporate Debtor in relation to an "offence" committed prior to the commencement of the CIRP. Therefore, the immunity granted under this provision is limited to liability arising from such prior "offences" and does not extend to outstanding charges or dues, as involved in the present case.

30. The Applicant has relied on the following judgments to contend that the Successful Auction Purchaser is not liable to pay any dues arising prior to the Liquidation Date. These judgments are considered below:

    i. In the case of *Eastern Power Distribution Co. of A.P. Ltd. v. Maithan Alloys Ltd., (2023) 21 Comp Cas-OL 674 and Chinar Steel Segments Centre (P) Ltd. v. Samir Kumar Agarwal, 2023 SCC OnLine NCLAT 2593*, the issue before the Hon'ble NCLAT was with regards to the recovery of electricity dues from the Successful Auction Purchaser who had purchased the Corporate Debtor 'on a going concern basis'. However, in the present case, the Respondent No. 1 has a statutory first charge over the said property for the unpaid statutory dues and 'asset' of the Corporate Debtor was sold on 'as is where is' basis after which dissolution order has been passed.

ii. In the case of *State of Gujrat v. OL of kengold (India) Ltd. reported in 2008 SCC OnLine Guj 309*, the Hon'ble High Court of Gujarat, while dealing with sales tax dues and taking into consideration provisions contained in the Bombay Land Revenue Code, Companies Act, 1956 and Income Tax Act, 1961, held that dues of the secured creditors shall have precedence over the dues to the Government. In the present case, as noted above the Municipal Authority had statutory first charge over the asset/said property.

iii. In the case of *Melkar TTI Biofuels Limited v. Gulshan Kumar Gupta & Others in ILA. 1040 OF 2023 in C.P.(IB) No. 977/MB/2019*, the Corporate Debtor was sold as a going concern and issue for consideration before NCLT Mumbai, Bench -I, was with regards to the electricity and the sales tax dues, wherein, it was specified that the issue relating to the statutory lien was not before consideration. However, in the present case, the statutory first charge over the asset is duly considered.

iv. Further, reliance is place on the judgment of NCLT Mumbai, Bench-II in *JSK Estate Private Limited v. Mr. Sundaresh Bhat, Liquidator of EMCO & Anr. in Interlocutory Application No. 5330 of 2023*, to contend that the successful bidder is at liberty to seek certain reliefs on the principle of clean slate. However, in the present case the 'asset' of the Corporate Debtor was sold on 'as is where is' basis and subsequently, the Corporate Debtor was liquidated. Therefore, the Successful bidder of liquidation assets cannot be placed on a same footing as that the Resolution Applicant.

v. Further, the Hon'ble High Court of Calcutta in *Rashidhan Sales (P) Ltd. v. Damodar Valley Corpn. & Ors., in WPA No. 12683 of 2022*, specifically noted that the electricity dues do not pass with the property as a charge thereon and the principle of caveat emptor cannot be applied in the case of the auction purchaser in an asset sale because it is not possible for an auction purchaser to have a prior idea of any existing liability which, in any event, was not there. Whereas, in the present case, the first charge attached to the property has passed on the Applicant as a Successful Auction Purchaser of an asset on 'as is where is' basis.

31. In view of the above discussion and legal position, the R-1 Municipal Authority has a statutory first charge over the property in question and the property was sold on "as is where is basis" meaning that, all the liabilities are to be borne by Auction Purchaser and the Applicant was well aware of the claim of R-1 Municipal Authority and Applicant never raised any objection before the Liquidator. Now, the Applicant cannot be allowed to take plea that he is not liable to pay the statutory dues of R-1 Municipal Authority. Therefore, we answer the question framed at para 15 in affirmative.

32. The present I.A. has no merit whatsoever and is liable to be dismissed. Hence, the same is **dismissed** and **disposed of** accordingly.

Sd/-	**Sd/-**
Vinay Goel	**Charanjeet Singh Gulati**
Member (Judicial)	**Member (Technical)**

OmkarD.