



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

ITEM No.307- IA/996(AHM)2025  
In  
C.P.(IB) 14(AHM) of 2018

**Under Sec. 60(5) of IBC r/w Rule 11 NCLT**

**IN THE MATTER OF:**

Wind World (India) Limited  
Through Ravi Sethia RP

.....Applicant

V/s

The Income Tax Department  
Through Deputy Commissioner  
Of Income Tax

.....Respondent

**Order delivered on 06/03/2026**

**Coram:**

Mr. Shammi Khan, Hon'ble Member (J)

Mr. Sanjeev Sharma, Hon'ble Member (T)

**ORDER**  
**(Hybrid Mode)**

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

**SANJEEV SHARMA**  
**MEMBER (TECHNICAL)**

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

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

**IA No. 996 of 2025  
in  
CP(IB) No. 14 of 2018**

*[An application filed under Section 60(5) of the Insolvency and  
Bankruptcy Code, 2016 r.w. Rule 11 of the NCLT Rules, 2016]*

In the matter of:

**Wind World (India) Limited**  
Through Mr. Ravi Sethia RP  
Having office at:  
Building No. 10, 8<sup>th</sup> Floor,  
Tower CDLF Cyber City,  
Phase II, Gurgaon, Haryana,  
India, 122002

**.... Applicant**

**VERSUS**

**The Income Tax Department  
Through The Deputy  
Commissioner of Income Tax**  
Central Circle 3(1), Kautilya  
Bhawan  
Bandra Kurla Complex, Bandra  
(East), Mumbai-400051

**.... Respondent**

**Order Pronounced on: 06.03.2026**

**CORAM:**

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)  
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCE:**

For the Applicant/RP : Ms. Neha Naik, Advocate  
For the Respondent/IT : Mr. Abhishek Mishra, Advocate



**ORDER**  
**[Per: BENCH]**

1. This Interlocutory Application has been filed on 25.08.2025 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC) by the Resolution Professional of the Corporate Debtor, namely Wind World (India) Limited. (Corporate Debtor), seeking following reliefs: -

- a. *Direct the Respondent to release the refund of income tax amounting to Rs.35,67,07,796/- (Rupees Thirty Five Crores Sixty Seven Lakhs Seven Thousand Seven Hundred and Ninety Six) /- along with applicable interest under section 244A of the Income-tax Act, 1961 till such time the said refund stands refunded to the account of the Applicant under the control and management of the Resolution Professional in view of the ongoing moratorium period;*
- b. *Direct the Respondent to refrain from issuing any further notices under Section 245 of the Income Tax Act, 1961 for adjusting the refund;*
- c. *Pass any other order/directions as this Hon'ble Tribunal may deem fit in the interest of justice in the facts and circumstances of the instant case.*

2. The Applicant has placed the facts through this I.A. in the following manner: -

- 2.1. It is stated that this Adjudicating Authority was pleased to admit an insolvency application filed by IDBI Bank Ltd. against the Corporate Debtor under Section 7 of the IBC vide an order dated 20 February 2018 (Admission Order). Vide the Admission Order, Mr. Shailen Shah was

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appointed as the interim resolution professional and subsequently, he was appointed as the Resolution Professional of the Corporate Debtor by the committee of creditors (CoC) in the first meeting of the CoC held on 23 March 2018.

- 2.2. It is pertinent to note that by an order dated 3<sup>rd</sup> June 2025 passed by the Adjudicating Authority, the Adjudicating Authority confirmed the appointment of Mr. Ravi Sethia as the Resolution Professional in place of the erstwhile resolution professional Mr. Shailen Shah (erstwhile Resolution Professional), pertaining to the CIRP of the Corporate Debtor.
- 2.3. The erstwhile Resolution Professional thereafter, published a public announcement dated 23 February, 2018 inviting claims from the creditors of the Applicant/Corporate Debtor. As per the public announcement, the last date for submission of claims was 8 March 2018.

#### **Claim filed by Respondent**

- 2.4. Pursuant to the public announcement, the Income Tax Department filed its claim under Form B/F97/1068 with the erstwhile Resolution Professional of the Corporate Debtor for an amount of INR 11,28,28,77,841/-. The said claim filed by the Respondent has not been admitted and has been categorized as a contingent debt with a notional amount of Rs.1/-. This was done in line



with the order of the Hon'ble Supreme Court in the matter of Committee of Creditors of Essar Steel India Limited through Authorised Signatory vs. Satish Kumar Gupta (Civil Appeal No. 8766-67 of 2019) wherein contingent liabilities were to be admitted at Rs.1/-. Given the fact that Applicant has filed appeals against the said assessment orders basis which Respondent had filed its claim, Respondent's debt was categorized as contingent and admitted at INR 1/-.

### **Approval of resolution plan by the COC**

2.5. In view of the on-going CIRP, between March 2018 to November 2018, various resolution plans submitted by prospective resolution applicants were examined by the committee of creditors (**CoC**) of the Applicant. On 17 November 2018, the resolution plan submitted by Suraksha Consortium' consisting of (i) Suraksha Asset Reconstruction Private Limited (ii) Suraksha Realty Limited and (iii) Lakshdeep Investments and Finance Private Limited (Suraksha) (Suraksha Resolution Plan) came to be approved by the CoC. Accordingly, the Resolution Professional filed its application before the NCLT seeking approval of Suraksha's Resolution Plan.

2.6. The application for approval of the Resolution Plan was heard before the NCLT. On 24 August 2022, the Adjudicating Authority passed an order rejecting the Resolution Plan on various grounds. The Resolution

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Professional and Committee of Creditors have filed an appeal before the National Company Law Appellate Tribunal (NCLAT) against the order dated 24 August 2022 passed by the NCLT rejecting the Resolution Plan. As and by way of an interim measure, the NCLAT passed an order on 30 September 2022 staying the consequence and effect of the order passed by the NCLT. In light of the said order passed by the Hon'ble NCLAT, the moratorium under Section 14 of the IBC still subsists. A copy of the order dated 30 September 2022 passed by the NCLAT is annexed as **Exhibit-A.**

### **CONTENTION OF THE APPLICANT IN THE PRESENT APPLICATION**

2.7. During the course of the CIRP of the Applicant, the erstwhile Resolution Professional had filed income tax returns of the Applicant for the following assessment years claiming tax refunds as stated in the table below along with interest under Section 244A. After processing the returns filed by the erstwhile Resolution Professional, the Respondent addressed the intimation under Section 143(1) of the Income Tax Act to the Applicant for the said assessment years, acknowledging the actual refund amount due to the Corporate Debtor:-

Financial Year	Assessment year	Refund amount claimed as per Income Tax Return	Refund Amount (As per notice under Section	Date of order 143(1) Assessment Order	Status of refund
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		filed by the Applicant	143(1)		
2018-2019	2019-20	9,23,54,560	9,23,54,555	30/09/2020	Adjusted with pre-CIRP demand
2019-2020	2020-21	9,88,89,324	9,88,89,324	15/02/2024	Refund received
2020-2021	2021-22	7,74,77,005	6,69,48,398	15/03/2022	Adjusted with pre-CIRP demand
2021-2022	2022-23	9,67,61,398	9,66,26,795	29/07/2023	Adjusted with pre-CIRP demand
2022-2023	2023-24	10,14,09,930	10,13,78,048	20/12/2023	Proposed to adjust with pre-CIRP
2023-2024	2024-25	11,14,49,790	10,74,93,435	16/04/2025	Refund received

A copy of the intimation notices received by the Corporate Debtor under Section 143(1) acknowledging the aforesaid refunds due to the Corporate Debtor are annexed hereto, for FY 2018-19/AY 2019/20 as **Exhibit-B**, for FY 2019-20/ AY-2020-21 as **Exhibit-C**, for FY 2020-21/AY 2021-22 as **Exhibit-D**, FY 2021-22/AY 2022-23 as **Exhibit E**, FY 2022-23/ AY 2023-24 as **Exhibit F** and FY 2023-24/ AY 2024-25 as **Exhibit G**.

2.8. While the intimation notices clearly state the amount of



income tax refund along with interest under Section 244A payable to the Corporate Debtor, the Respondent has (except for the assessment years 2020-21 and 2024-25) failed to refund the amount payable with interest under Section 244A of the Income Tax Act under the assessment orders for AY 2019- 20, AY 2021-22, AY 2022-23 and AY 2023-24.

2.9. On 22 December 2023, the Respondent issued an intimation under Section 245 of the Income Tax Act to the Applicant, seeking to adjust the income-tax refund payable to the Applicant for AY 2023-24 with earlier demands for a pre- CIRP period more particularly for the assessment years 2007, 2009, 2010, 2011, 2012, 2013, 2014, 2016 and 2017. The Respondent has thus kept the refund payable to the Applicant on hold. A copy of the email dated 22 December 2023 is annexed hereto as **Exhibit H.**

2.10. In light of the above intimation, the erstwhile Resolution Professional of the Applicant addressed a letter to the Respondent informing the Respondent that in view of the provisions of Section 14 read with Section 238 of the IBC, the moratorium remains applicable for the purpose recovery of any dues, or execution of any judgment, decree, or order of any court, tribunal or authority which would also include recovery of pre CIRP dues payable to the Income Tax department. By the said letter, the erstwhile Resolution Professional called upon the



Respondent to refund the amounts payable to the Applicant without any adjustments of any outstanding demand for the pre-CIRP period as the same would be in contravention to Section 14 of the IBC. A copy of the letter dated 3 January 2024 is annexed hereto as **Exhibit I.**

2.11. The Respondent has also adjusted the income tax refund payable to the Applicant for AY 2019-20, AY 2021-22 and AY 2022-23 with the alleged pre-CIRP income tax dues more particularly for the assessment years 2006-07, 2007-08 and 2015-16. Copy of the intimation orders received under Section 245 for refund adjusted for AY 2021-22 dated 10 November 2023 is annexed hereto as **Exhibit J** and for AY 2022-23 dated 11 November 2023 is annexed hereto as **Exhibit K.** The details of adjustment of refund due to the Applicant for AY 2019-20 is detailed in the intimation under Section 143(1) for AY 2019-20 (Exhibit B hereto).

2.12. The Respondent has till date not refunded the amounts payable to the Applicant for the assessment years — 2019-20, 2021-22, 2022-23 and 2023-24, despite having acknowledged the said income tax refunds as due to the Applicant vide the intimation notices issued under Section 143(1) of the Income Tax Act.

2.13. It is trite law that the Respondent cannot adjust pre-CIRP dues owed by the corporate debtor against the tax



refunds which are to be paid to the Corporate Debtor during the CIRP period. This is a direct contravention of the section 14 of the IBC and in fact amounts to recovery which is specifically barred under Section 14 of the IBC.

2.14. The Applicant states that several orders passed by the Adjudicating Authority, which are available in the public domain, have directed the Respondent to refund amounts that were adjusted against pre-CIRP income tax dues during the moratorium period, holding that such amounts are liable to be refunded to the corporate debtors.

2.15. The Applicant states that in ***Ram Ratan Kanoongo vs. Deputy Commissioner of Income Tax IA 241 of 2022***, the Hon'ble NCLT Mumbai held that the action of the income tax department in adjusting the refunds due to the corporate debtor with the income tax dues for the pre-CIRP period is against the law laid down by the Hon'ble NCLAT in the case of ***Indian Overseas Bank vs. Mr. Dinkar T Venkatsubramaniam [Company Appeal (AT) (Insolvency) 267 of 2017]***, which held:-

*"5. Having heard learned counsel for the Appellant, we do not accept the submission made on behalf of the appellant in view of the fact that after admission of an application under Section 7 of the "I&B" Code, once moratorium has been declared it is not open to any person including 'Financial Creditor' and the appellant bank to recover any amount from the account of the 'Corporate Debtor', nor it can appropriate any amount towards its own dues."*



Accordingly, the Adjudicating Authority directed the Deputy Commissioner of Income Tax to refund the income tax amount. A copy of the order passed by the Hon'ble NCLT Mumbai in **Ram Ratan Kanoongo vs. Deputy Commissioner of Income Tax IA 241 of 2022** is annexed hereto as **Exhibit L**.

2.16. Similarly, NCLT Hyderabad in **Krishna Mohan Gollamudi, Resolution Professional of Leo Meridian Infrastructure Projects & Hotels Ltd. vs. The Income Tax Department—IA 1777 of 2023**, the Income Tax Department adjusted the income tax refunds along with interest owed to the corporate debtor with income tax dues for pre-CIRP period. The Hon'ble NCLT Hyderabad held:

*"When section 14 is read with Section 238 of IBC, it is clear that no tax proceedings under any statute can be initiated once 'moratorium' under Section 13(1)(a) of the IBC has been declared by the Adjudicating Authority until the completion of the Corporate Insolvency Resolution Process or approval of the resolution plan under sub-section (1) of section 31 or order for liquidation of the Corporate Debtor under section 33, as the case may be. This is in the context of overriding effect given to the IBC under section 238 and therefore, anything inconsistent contained in any other enactment including the Income Tax Act will be subject to the provisions of the IBC".*

The Hon'ble NCLT Hyderabad thus directed the income tax department to refund the amount to the corporate debtor. A copy of the order passed by the Hon'ble NCLT in **Krishna Mohan Gollamudi, Resolution**



***Professional of Leo Meridian Infrastructure Projects & Hotels Ltd. vs. The Income Tax Department*** — IA 1777 of 2023 is annexed hereto as **Exhibit M.**

**Respondent's actions are contrary to the provisions of the IBC**

2.17. The Respondent has, by its arbitrary actions refused to refund an amount of Rs. 35,67,07,796/- (Rupees Thirty Five Crores Sixty Seven Lakhs Seven Thousand Seven Hundred and Ninety Six) towards income tax refunds due to the Applicant along with interest payable thereon for the years in the CIRP period, despite the Applicant being in CIRP. The Respondent in attempting to adjust the alleged pre-CIRP income tax dues (despite making a claim in the CIRP of the Corporate Debtor) with the income tax refunds due to the Applicant for assessment years — 2019-20, 2021-22, 2022-23 and 2023-24 (CIRP period) is in violation of the provisions of the IBC.

2.18. The Applicant submits that as soon as an application of CIRP is admitted under Section 7 of the IBC, a moratorium in terms of Section 14 of the IBC is declared by the adjudicating authority prohibiting the institution of suits or continuation of pending suits or proceedings against the corporate debtor including the execution of any judgment, decree or order in any court of law, tribunal or other authority.

2.19. Moreover, under Section 238 of the IBC which operates



as a *non-obstante clause*, it is stated that the IBC which is a central legislation has an overriding effect and will prevail over any law or any instrument having effect by such law which is inconsistent with the IBC.

2.20. Therefore, in light of the provisions of Section 14 read with Section 238 of the IBC, the moratorium will be applicable and no court/ tribunal/ authority can make claims upon the Applicant. Consequently, the Respondent's action in adjusting the alleged pre-CIRP income tax dues with the income tax refunds payable by the Respondent to the Applicant after the commencement of CIRP and during the moratorium is in contravention of the provisions of Section 14 of the IBC.

**Acknowledgment by the Respondent that the Applicant is entitled to income tax refunds**

2.21. The Respondent, being fully aware of the Applicant's eligibility for income tax refunds, has itself refunded the income tax amount for assessment years 2020-21 and 2024-25. The said refund has been made after due processing of the income tax returns filed during the CIRP by the erstwhile Resolution Professional, and issuance of intimation under Section 143(1) of the Income Tax Act. Such refund clearly evidences and acknowledges that the Applicant is entitled to receive the said income tax refunds. Consequently, once such entitlement stands admitted by the Respondent through actual

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disbursement of refund, there remains no legal or factual basis for the Respondent to withhold or adjust the remaining income tax refunds due to the Applicant against alleged pre CIRP demands, particularly during the subsistence of the moratorium under Section 14 of the IBC.

### **Adjustment Despite Admission of Notional Claim**

2.22. The claim of the Respondent has been admitted in the CIRP as a notional claim of Rs.1/-, given the disputed nature and pendency of the underlying tax claims in terms of Note No.7 in the list of creditor claims till 17 November 2018. In this backdrop, the Respondent's continued attempt to adjust the alleged pre-CIRP tax dues with the income tax refunds admittedly payable to the Applicant is wholly impermissible and arbitrary. Such adjustment amounts to self-adjudication and execution of a disputed claim, and is in complete violation of the provisions of Section 14 of the IBC. The Respondent is fully aware of the disputed status of its claim, and yet it seeks to recover the same indirectly by appropriating income tax refunds for pre-CIRP period. This conduct of the Respondent is legally untenable and in complete violation of the provisions of the IBC.

2.23. The conduct of the Respondent in attempting to adjust the alleged pre-CIRP income tax dues of the Corporate Debtor with the income tax refunds payable by the



Respondent to the Corporate Debtor is intrinsically linked to the on-going CIRP of the Applicant. The said act of the Respondent while being in complete contravention to the provisions of the IBC, is highly prejudicial to the Applicant's business and its revival under the IBC framework. Thus, this Adjudicating Authority has sole jurisdiction to determine and adjudicate the instance issue.

2.24. The Applicant has *bonafidely* approached this Adjudicating Authority under Section 60 (5) of IBC read with Section 14 and Rule 11 of NCLT Rules to seek necessary orders and directions in the instant case wherein issues of question of law and facts in terms of Section 60(5)(c) warrant adjudication. This Adjudicating Authority accordingly has appropriate and absolute jurisdiction to decide the prayers as sought vide the instant Application.

3. That the **Affidavit in Reply** of the Respondent/Income Tax Department was received through e-mode on 28.01.2026 whereby the Respondent deny all the averments made and contentions raised by the Applicant. The Respondent/Income Tax Department has placed the facts through this Reply in the following manner: -

3.1. It is stated that the Return of Income was processed under Section 143(1) of Income Tax Act 1961 for

Assessment Year 2019-20, 2021-22, 2022-23 and 2023-24 by CPC. Bangalore. The Processing u/s 143(1) has resulted in Refunds.

3.2. It is further stated that the assessee failed to pay 20 % of disputed demands. The refunds are adjusted against the outstanding demands. The details submitted by the applicant in this regard are reproduced hereunder:

Financial Year	Assessment Year	Refund amount Claimed as per income tax return filed by the applicant	Refund amount As per intimation u/s 143(1)	Date of order u/s 143(1)	Status of Refund
2018-19	2019-20	9,23,54,560	9,23,54,555 244A 83,11,905 Rs. 10,06,66,460	30.09.2020	Adjusted by CPC against the outstanding arrears
2019-20	202-21	9,88,89,324	9,88,89,324 244A 93,94,486 Rs. 10,82,83,810	15.02.2021	Refund issued by CPC to the assessee
2020-21	2021-22	7,74,77,005	6,63,48,398 244A 66,34,832 Rs. 7,29,83,230	15.03.2022	Adjusted by CPC against the outstanding arrears
2021-22	2022-23	9,67,61,398	9,66,26,795 244A 77,30,136 Rs. 10,43,56,931	29.07.2023	Adjusted by CPC against the outstanding arrears
2022-23	2023-24	10,14,09,930	10,13,78,048 244A 45,62,010 Rs. 10,59,40,058	22.12.2023	Proposed to be adjusted by CPC against the outstanding arrears

2023-24	2024-25	11,14,49,790	10,74,93,435 244A 69,87,071 Rs. 11,44,80,506	16.04.2025	Refund issued by CPC to the assessee
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3.3. It is further submitted that the Refunds so determined



have been adjusted against outstanding income tax dues for the above assessment year by Income Tax Department.

- 3.4. It is further submitted that the applicant has failed to pay the 20% of disputed demand as specified in the CBTD's instruction No. 1914 OM dated 29.02.2016.
- 3.5. Section 245 of Income tax Act 1961 empowers the Income tax authorities to adjust the current year's Income tax refund against any outstanding tax Demand from previous assessment years, after giving the tax prayer written intimation. Accordingly, the A.O has intimated the assessee vide order dated 10.11.2023 and 11.11.2023.
- 3.6. It is further submitted that the application of CIRP is admitted under section of IBC, a moratorium in terms of section 14 of IBC is declared by adjudicating authority prohibiting the institution of suits or continuation of pending suits or proceedings against the corporate debtor including the execution of any judgment, decree or order in any court of law, tribunal or other authority.
- 3.7. It is submitted that the Respondent has submitted its claim in respect of outstanding arrears demand payable by the petitioner in Form B. However, the claim of respondent has been admitted in the CIRP as a notional claim of Rs.1/- given disputed nature and



pendency of underlying tax claims in terms of Note No.7, it cannot be denied that the applicant has totally ignored the payments of income tax arrears outstanding against him.

3.8. In view of the foregoing submissions, the assesses claim for refund stands invalid negated, as the refunds have been duly adjusted against the outstanding demands. It is humbly prayed that the instant application be dismissed with costs.

4. Thereafter, the **Rejoinder** was filed by the Applicant in reply to the Respondent on 29.01.2026 vide inward No. D 776 denying contentions raised by the Respondent in his reply. The contents of the Rejoinder are reproduced as follows: -

4.1. It is stated that the Respondent vide its Reply seeks to justify the adjustment of refunds payable to the Applicant for AY 2019-20, AY 2021-22, AY 2022-23 and AY 2023-24 on the following grounds:-

a) The Applicant has failed to pay 20% of the disputed demand as allegedly specified in the CBDT's instruction no. 1914 OM dated 29 February 2016;

b) Section 245 of the Income Tax Act, 1961 empowers the Income Tax authorities to adjust the current year's income tax against outstanding tax demands

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for previous years; and

- c) The Applicant has ignored the payment of income tax arrears outstanding since the Respondent's claim has been admitted in the CIRP as a notional claim of Rs.1/- given the disputed nature and pendency of underlying tax claims in terms of Note No.7 in the list of creditor claims.

- 4.2. The Applicant submits that none of the aforesaid grounds constitute a lawful basis for adjusting refunds against pre-CIRP demands.

**Applicant's failure to pay 20% of the disputed demand**

- 4.3. The alleged disputed demand admittedly pertains to the period prior to commencement of CIRP. It is settled law that once moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) is in force, no recovery, enforcement or adjustment of pre-CIRP dues can be undertaken. Any adjustment of refunds towards pre-CIRP tax demands amounts to recovery and is squarely prohibited by Section 14 of the IBC. Consequently, alleged non-payment of 20% of disputed demand is wholly irrelevant and cannot override the moratorium.

**Reliance on Section 245 of the Income Tax Act, 1961**

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4.4. It is stated that Section 238 of the IBC contains a non-obstante clause providing that the provisions of the IBC shall prevail over anything inconsistent contained in any other law. Therefore, even assuming Section 245 of the Income-tax Act permits adjustment in ordinary circumstances, such power stands eclipsed during the moratorium period. Accordingly, Section 245 cannot be invoked to defeat the statutory protection granted under Section 14 of the IBC. The Supreme Court in the matter of ***Pr. Commissioner of Income Tax vs. Monnet Ispat and Energy Ltd. (2018) 18 SCC 786*** held that given Section 238 of the Code, the provisions of the Insolvency and Bankruptcy Code will override anything inconsistent contained in any other enactment including the Income Tax Act. Further, in the matter of ***Vinod Kumar Kothari v. Assessing Officer Income Tax Department and Ors., (I.A. (IB) No. 1168/KB/2020 in C.P(IB) No. 3/KB/2017)***, the Hon'ble NCLT, Kolkata Bench while considering the provisions of Section 245 of the Income Tax Act held that pursuant to Section 238 of the IBC, the provisions of the IBC shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force.

**Admission of claim at notional value of INR 1/-**

4.5. The Supreme Court in ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors (Civil Appeal No. 8766-67 of 2019)*** has recognized



that claims which are disputed or contingent may be admitted at a notional value of INR 1/-. In the present case, appeals against the relevant assessment orders were pending, and therefore the Respondent's claim was rightly categorized as contingent and admitted at a notional value of INR 1/- in the CIRP.

4.6. Admission of the Respondent's claim at a notional value of INR 1/- does not confer any right upon the Respondent to unilaterally recover or adjust alleged pre-CIRP dues during moratorium.

4.7. In view of the foregoing, the Respondent has failed to demonstrate any legal grounds for adjusting refunds payable to the Applicant against pre-CIRP tax demands. The adjustments made are illegal, arbitrary and in direct violation of Section 14 read with Section 238 of the IBC.

5. The Applicant has filed a **written submissions** on 11.02.2026, vide inward diary No.D-1135. The relevant portion of the same are reproduced as under:

5.1. It is stated that the amount of Rs.35,67,07,796/- along with applicable interest under Section 244A of the Income Tax Act, 1961 is an asset of the Applicant (Corporate Debtor) and is required to be utilised by the Corporate Debtor to maximize the value of the assets in accordance with the spirit of the Insolvency and Bankruptcy Code, 2016 (IBC).



**Communications addressed by the Respondent expressing refund proposed/ made with the pre-CIRP income tax dues**

- 5.2. **Intimation dated 22 December 2023 (Exhibit H/ Pg. 197 of the IA)** — The Respondent issued an intimation under Section 245 of the Income Tax Act to the Applicant, seeking to adjust the income-tax refund payable to the Applicant for AY 2023-24 with earlier demands for a pre- CIRP period more particularly for the assessment years 2007, 2009, 2010, 2011, 2012, 2013, 2014, 2016 and 2017
- 5.3. **Intimation order under Section 245 received for AY 2021-22 dated 10 November 2023 (Ex. J/ Pg. 295-296 of the IA)** — The Respondent adjusted the income tax refund payable to the Applicant for AY 2021-22 with the alleged pre-CIRP income tax dues for the assessment years 2015-16.
- 5.4. **Intimation order under Section 245 for AY 2022-23 dated 11 November 2023 (Ex. K/ Pg. 297-298 of the IA)** - The Respondent adjusted the income tax refund payable to the Applicant for AY 2021-22 with the alleged pre CIRP income tax dues more particularly for the assessment years 2015-16.
- 5.5. **Income Tax refund for AY 2019-20 adjusted with alleged pre-CIRP income tax dues for 2006-07 and 2007-08 (Ex. B/ Pg. 29 of the IA)** - The Respondent



adjusted the income tax refund payable to the Applicant for AY 2019-20 with the alleged pre-CIRP income tax dues more particularly for the assessment years 2006-07 and 2007-08.

**Case Laws directing tax authorities to refund amounts that were adjusted against pre-CIRP income tax dues during the moratorium period**

**5.6. Ram Ratan Kanoongo vs. Deputy Commissioner of Income Tax - IA 241 of 2022**

The Hon'ble NCLT Mumbai held that the action of the income tax department in adjusting the refunds due to the corporate debtor with the income tax dues for the pre-CIRP period is against the law laid down by the Hon'ble NCLAT in the case of Indian Overseas Bank vs. Mr. Dinkar T Venkatsubramaniam [Company Appeal (AT) (Insolvency) 267 of 2017], which held:-

*"5. Having heard learned counsel for the Appellant, we do not accept the 3 submission made on behalf of the appellant in view of the fact that after admission of an application under Section 7 of the "I&B" Code, once moratorium has been declared it is not open to any person including 'Financial Creditor' and the appellant bank to recover any amount from the account of the 'Corporate Debtor', nor it can appropriate any amount towards its own dues."*

Accordingly, the Hon'ble NCLT directed the Deputy Commissioner of Income Tax to refund the income tax amount



5.7. **Krishna Mohan Gollamudi, Resolution Professional of  
Leo Meridian Infrastructure Projects & Hotels Ltd.  
vs. The Income Tax Department — IA 1777 of 2023**

The Income Tax Department adjusted the income tax refunds along with interest owed to the corporate debtor with income tax dues for pre-CIRP period. The Hon'ble NCLT Hyderabad held:

*"When section 14 is read with Section 238 of IBC, it is clear that no tax proceedings under any statute can be initiated once 'moratorium' under Section 13(1)(a) of the IBC has been declared by the Adjudicating Authority until the completion of the Corporate Insolvency Resolution Process or approval of the resolution plan under sub-section (1) of section 31 or order for liquidation of the Corporate Debtor under section 33, as the case may be. This is in the context of overriding effect given to the IBC under section 238 and therefore, anything inconsistent contained in any other enactment including the Income Tax Act will be subject to the provisions of the IBC". The Hon'ble NCLT Hyderabad, thus directed the income tax department to refund the amount to the corporate debtor.*

**Submissions in response to Respondent's justification to adjust the refund payable to the Applicant during the CIRP with the alleged pre CIRP income tax dues**

5.8. **Respondent's contention regarding the Applicant's failure to pay 20% of the disputed demand as allegedly specified in the CBDT's instruction no. 1914 OM dated 29 February 2016**

The alleged disputed demand admittedly pertains to the period prior to commencement of CIRP. It is settled law



that once moratorium under Section 14 of IBC is in force, no recovery, enforcement or adjustment of pre-CIRP dues can be undertaken. Any adjustment of refunds towards pre-CIRP tax demands amounts to recovery and is squarely prohibited by Section 14 of the IBC. Consequently, alleged non-payment of 20% of disputed demand is wholly irrelevant and cannot override the moratorium.

5.9. **Respondent's contention that Section 245 of the Income Tax Act, 1961 empowers the Income Tax authorities to adjust the current year's income tax against outstanding tax demands for previous years**

Section 238 of the IBC contains a non-obstante clause providing that the provisions of the IBC shall prevail over anything inconsistent contained in any other law. Therefore, even assuming Section 245 of the Income-tax Act permits adjustment in ordinary circumstances, such power stands eclipsed during the moratorium period. Accordingly, Section 245 cannot be invoked to defeat the statutory protection granted under Section 14 of the IBC. The Supreme Court in the matter of ***Pr. Commissioner of Income Tax vs. Monnet Ispat and Energy Ltd. (2018) 18 SCC 786*** held that the IBC will override anything inconsistent contained in any other enactment including the Income Tax Act. Further, in the matter of ***Vinod Kumar Kothari v. Assessing Officer Income Tax Department and Ors., (LA. (IB) No.***

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**1168/KB/2020 in C.P(IB) No. 3/KB/2017**), the Hon'ble NCLT, Kolkata Bench while considering the provisions of Section 245 of the Income Tax Act held that pursuant to Section 238 of the IBC, the provisions of the IBC shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force

- 5.10. **Respondent's contention that the Applicant has ignored the payment of income tax arrears outstanding since the Respondent's claim has been admitted in the CIRP as a notional claim of Rs.1/- given the disputed nature and pendency of underlying tax claims in terms of Note No.7 in the list of creditor claims**

The Supreme Court in **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors (Civil Appeal No. 8766-67 of 2019)** has recognized that claims which are disputed or contingent may be admitted at a notional value of INR 1/-. In the present case, appeals against the relevant assessment orders were pending, and therefore the Respondent's claim was rightly categorized as contingent and admitted at a notional value of INR 1/- in the CIRP. Admission of the Respondent's claim at a notional value of INR 1/- does not confer any right upon the Respondent to unilaterally recover or adjust alleged pre-CIRP dues during moratorium.



5.11. The Respondent has failed to demonstrate any legal grounds for adjusting refunds payable to the Applicant against pre-CIRP tax demands. The adjustments made are illegal, arbitrary and in direct violation of Section 14 read with Section 238 of the IBC.

6. We have heard Ld. Counsel for the Applicant/RP and Ld. Counsel for the Income Tax Department, considered pleadings, documents placed on record, written submissions and the arguments advanced by both sides. The Issues which are taken into the considerations as under: –

- (i) **Issue No.1:** Whether the powers conferred upon the Income Tax Department under Section 245 of the Income Tax Act, 1961 can be exercised during the Corporate Insolvency Resolution Process, notwithstanding the overriding effect of Section 238 of the Insolvency and Bankruptcy Code, 2016?
- (ii) **Issue No.2:** Whether the Income Tax Department is entitled to adjust or appropriate the income-tax refunds payable to the Corporate Debtor for the assessment years 2019-20, 2021-22, 2022-23 and 2023-24 against alleged pre-CIRP income-tax dues during the subsistence of the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016?
- (iii) **Issue No.3:** Whether the income-tax refunds determined during CIRP constitute assets of the Corporate Debtor forming part of the insolvency estate?



7. For deciding the issues framed above, we consider appropriate to state the relevant facts below.

7.1. Wind World (India) Limited was admitted into corporate insolvency resolution process on 20.02.2018 and an order declaring moratorium under section 14 of the IBC, 2016 was declared.

7.2. Public announcement inviting claims from the creditors of the company was made on 23.02.2018 and the last date for submission of claims was 08.03.2018.

7.3. The Income Tax Department/Respondent filed claims in Form B for an amount of Rs 1128,28,77,841. The Resolution Professional admitted claims categorizing those as contingent debt with a notional amount of Rs. 1/-. (as appeals were filed by the Corporate Debtor against the claims and in view of the decision of the Hon'ble Supreme Court in the case of Committee of Creditors of Essar Steel India Limited through Authorised Signatory vs. Satish Kumar Gupta [Civil Appeal No. 8766-67 of 2019] wherein contingent liabilities were to be admitted at Rs. 1/-).

7.4. The Income Tax Department granted refunds for financial years 2019-2020 (assessment year 2020-2021) and 2023-2024 (assessment year 2024-2025) based on the orders under section 143(1) of the Income Tax Act, 1961 passed on 15.02.2021 and 16.04.2025 respectively

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and the Applicant claims to have received this refund of tax.

7.5. Refunds arising for financial years 2018-2019 (assessment year 2019-2020), 2020-2021 (assessment year 2021-2022), 2021-2022 (assessment year 2022-23) determined under section 143(1) of the Income Tax Act on 30.09.2020, 15.03.2022, 29.07.2023 were adjusted against the demands for assessment years prior to the **CIRP commencement date.**

7.6. A refund for financial year 2022-2023 (assessment year 2023-2024) determined under section 143(1) on 22.12.2023 was proposed to be adjusted against the demands for assessment years prior to the CIRP commencement date.

8. There is no dispute on facts that the refund of tax and interest pertain to the financial years after the CIRP commencement date and were also determined after the CIRP commencement date. It is not a case of set off of the refunds for the years prior to the CIRP commencement date against the tax demands/claims for the pre-CIRP commencement.

9. There is also no dispute that the CIRP was ongoing on the dates when the adjustment of refunds was made or



proposed to be made and the order of moratorium was in effect as the CIRP was not completed on those dates (section 14 (4) of the IBC, 2016).

**10.** The resolution plan submitted by Suraksha Lakshdeep Investments and Finance Private Limited was rejected by this Adjudicating Authority on 24.08.2022. This order was stayed by the Hon'ble NCLAT on 30.09.2022 on an appeal filed by the CoC. The CoC withdrew the appeal on 08.09.2025 (IA No. 5423/2025 in Company Appeal (AT) (Ins)No. 1191 of 2022). The CIRP is in progress as on the date of this order.

**11.** This Tribunal also notes that the dispute raised in the present application arises directly out of the CIRP of the Corporate Debtor and concerns protection of the assets of the Corporate Debtor during moratorium. Therefore, this Tribunal has jurisdiction under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 to adjudicate the present application.

**12. The observations of the Tribunal on the framed issues are as under: -**



**Issue No. 1:** Whether the powers conferred upon the Income Tax Department under Section 245 of the Income Tax Act, 1961 can be exercised during the Corporate Insolvency Resolution Process, notwithstanding the overriding effect of Section 238 of the Insolvency and Bankruptcy Code, 2016?

a. Section 245 of the Income Tax Act, 1961 provides that-

*245. (1) Where under any of the provisions of this Act, a refund becomes due or is found to be due to any person, the Assessing Officer or Commissioner or Principal Commissioner or Chief Commissioner or Principal Chief Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this sub-section.*

*(2) Where a part of the refund is set off under the provisions of sub-section (1), or where no such amount is set off, and refund becomes due to a person, and the Assessing Officer, having regard to the fact that proceedings for assessment or reassessment are pending in the case of such person, he may, for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or the Commissioner, as the case may be, withhold the refund up to [sixty days from] the date on which such assessment or reassessment is made.]*

b. The Section 245 of the Income Tax Act, 1961 (set off and withholding of refunds in certain cases) empowers the Income Tax Department to adjust any refund due to an assessee against any sum remaining payable under the said Act. However, such power is not absolute and is subject to the operation of other overriding statutory provisions. The Insolvency and Bankruptcy Code, 2016 is a subsequent and special legislation enacted with the object of providing a time-bound and consolidated framework for insolvency resolution.



- c. Section 238 of the Insolvency and Bankruptcy Code, 2016 contains a non-obstante clause which unequivocally provides that the provisions of the Code shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force. The legislative intent behind Section 238 is to accord primacy to the IBC over all other statutes in matters relating to insolvency resolution, including recovery of dues by statutory authorities.
- d. Once an application under Section 7, 9 or 10 of the IBC is admitted and a moratorium is declared under Section 14, all actions which have the effect of recovery, enforcement or execution of pre-CIRP claims against the Corporate Debtor are expressly prohibited. Any statutory power exercised by an authority, howsoever sourced, must necessarily yield to the moratorium and the overriding effect of Section 238 of the IBC.
- e. In the present case, the Respondent has sought to invoke Section 245 of the Income Tax Act to justify the adjustment of income-tax refunds payable to the Corporate Debtor during CIRP against alleged pre-CIRP tax demands. This Tribunal is of the considered view that such invocation is legally impermissible. The exercise of powers under Section 245 during the moratorium period directly defeats the protection afforded to the Corporate Debtor under Section 14 and



frustrates the object of maintaining the status quo of the Corporate Debtor's assets during CIRP.

- f. The Hon'ble Supreme Court in ***Principal Commissioner of Income Tax v. Monnet Ispat and Energy Ltd. (2018) 18 SCC 786*** has categorically held that in view of Section 238 of the IBC, the provisions of the Code shall override anything inconsistent contained in any other enactment, including the Income Tax Act. Further, the NCLT and NCLAT have consistently taken the view that statutory authorities cannot invoke recovery or set-off mechanisms under their respective statutes once moratorium under the IBC is in force.
- g. The Hon'ble Supreme Court in ***Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. (2021) 9 SCC 657*** has held that once the provisions of the Insolvency and Bankruptcy Code are triggered, statutory authorities including tax authorities are bound by the framework of the IBC and their claims must be dealt with strictly in accordance with the mechanism provided under the Code.
- h. The Hon'ble Supreme Court in the case of ***Sundaresh Bhatt, Liquidator of ABG Shipyard vs. Central Board of Indirect Taxes and Customs (2023) 1 SCC 472*** had held that once moratorium is imposed in terms of Section 33(5) of the IBC during liquidation,



the Custom Department enjoyed limited jurisdiction to assess and determine quantum of tax dues but did not have power to initiate recovery of those dues. The Hon'ble NCLAT in the case of Avil Menezes (Liquidator) v. Principal Chief Commissioner of Income Tax, Mumbai (2024) ibclaw.in 441 NCLAT held that section 14 of the IBC, 2016 prohibits both institution and continuation of pending suits or proceedings against the corporate debtor. The Hon'ble Tribunal after analysing the provisions of Section 33 and 14 noted that the reach and gamut of stay under Section 33 differs from Section 14 in that there is no moratorium on continuation of suits/proceedings under section 33. The Hon'ble NCLAT held that in view of Regulation 29 of the Liquidation Regulations, the concept of set-off in the liquidation process stands on the premise of mutual credits and dealings undertaken between the parties. We note that there are no analogous provisions in IBBI (Resolution Process for Corporate Persons) Regulations, 2016 similar to Regulation 29 of the Liquidation Regulations and hence no set off of claims is permitted in the CIRP.

- i. The Hon'ble NCLAT in the case of Mr. Devarajan Raman (Liquidator) v. Principal Commissioner Income Tax and Ors, (2024) ibclaw.in 332 NCLAT held that adjustment of a tax refund against outstanding tax demands during the moratorium period violated the



moratorium under Section 14 of the IBC. The Tribunal emphasized that the assets of the Corporate Debtor, including tax refunds, cannot be appropriated by any creditor during this period as it would amount to frittering away the assets of the Corporate Debtor. In this case, the Income Tax Department was directed to refund the amount adjusted improperly.

- j. This Tribunal also finds merit in the submission of the Applicant that even assuming Section 245 permits adjustment in ordinary circumstances, such power stands eclipsed during the CIRP period. The Income Tax Department cannot be permitted to achieve indirectly, through adjustment of refunds, what it is expressly barred from doing directly during moratorium.
- k. In view of the overriding effect of Section 238 of the Insolvency and Bankruptcy Code, 2016 and precedents on the issue, this Tribunal holds that the powers conferred upon the Income Tax Department under Section 245 of the Income Tax Act, 1961 cannot be exercised during the Corporate Insolvency Resolution Process so as to adjust or appropriate refunds payable to the Corporate Debtor against pre-CIRP tax demands.
- l. The Respondent has referred to instruction no. 1914 of 29.02.2016 issued by the CBDT requiring payment of 20% of the demand and has claimed that the refunds



have been adjusted because the demand was not paid. We have gone through the instruction. The said instruction contains guidelines issued by the CBDT regarding procedure to be followed for recovery of outstanding demand, including procedure for grant of stay of demand. The instruction deals with stay of demand against payment of a part of the demand (15% of the demand). The instruction nowhere grants a power exceeding those of available under section 245 of the Income Tax Act, 1961 and therefore such a claim is rejected.

- m. Accordingly, **Issue No. 1** is answered in favour of the Applicant and against the Respondent, and it is held that the Respondent's reliance on Section 245 of the Income Tax Act during the subsistence of CIRP is misplaced and unsustainable in law.

**13. Issue No.2** - Whether the Income Tax Department is entitled to adjust or appropriate the income-tax refunds payable to the Corporate Debtor for the assessment years 2019-20, 2021-22, 2022-23 and 2023-24 against alleged pre-CIRP income-tax dues during the subsistence of the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016?

- a. Upon the careful examination of the record, this Tribunal notes that the income-tax returns filed by the Resolution Professional during the CIRP of the Corporate Debtor were processed by the Respondent under Section 143(1) of the Income Tax Act, 1961,



resulting in determination of refunds payable to the Corporate Debtor for the assessment years 2019-20, 2021-22, 2022-23 and 2023-24. The determination of such refunds is evidenced from the intimation notices placed on record as Annexures B, D, E and F of the Application.

- b. It is further borne out from the material on record that the Respondent has not merely proposed adjustment of the said refunds, but has in fact actually adjusted substantial portions of the refunds against alleged income-tax demands pertaining to the pre-CIRP period.
- c. Section 143 of Income Tax Act, 1961 is reproduced as

**Sec. 143 Assessment.**— (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

(a) the total income or loss shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the return; 4 \*\*\*

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return; 5

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:



*Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made;]*

*[Provided also that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;]*

*(b) the tax 2 [, interest and fee], if any, shall be computed on the basis of the total income computed under clause (a);*

*(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax 2 [, interest and fee], if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax 3 [, interest or fee];*

*(d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and*

*(e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:*

*Provided that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax 3 [, interest or fee] is payable by, or no refund is due to, him:*

*Provided further that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.*

## Amounts Actually Adjusted / Withheld

Based on the Section 143(1) intimations and Section 245 adjustment orders:

### 1. AY 2019-20

- i. Refund determined: Rs. 9,23,54,555/-



- ii. Status: Adjusted against pre-CIRP demands (AYs 2006-07 & 2007-08)

**Reference:** Section 143(1) intimation – Annexure B

**2. AY 2021-22**

- i. Refund determined: Rs. 6,63,48,398/-
- ii. Status: Adjusted against pre-CIRP demand (AY 2015-16)

**Reference:** Section 143(1) intimation & Section 245 order – Annexure D & Annexure J

**3. AY 2022-23**

- i. Refund determined: Rs. 9,66,26,795/-
- ii. Status: Adjusted against pre-CIRP demand (AY 2015-16)

**Reference:** Section 143(1) intimation & Section 245 order – Annexure E & Annexure K

**4. AY 2023-24**

- i. Refund determined: Rs. 10,13,78,048/-
- ii. Status: Proposed to be adjusted against pre-CIRP demands (AYs 2007 to 2017); refund kept on hold

**Reference:** Section 143(1) intimation & Section 245 intimation dated 22.12.2023 – **Annexure F & Annexure H.**

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## Net Position

i. **Refunds actually adjusted:**

Rs. 9,23,54,555 + Rs. 6,63,48,398 + Rs. 9,66,26,795  
= Rs. 25,53,29,748/-

ii. **Refund proposed to be adjusted / withheld:**

Rs. 10,13,78,048/-

iii. **Total refunds affected:**

Rs. 35,67,07,796/- (excluding statutory interest under  
Section 244A)

d. Once refunds are determined under Section 143(1), they crystallize into amounts payable to the Corporate Debtor and constitute assets of the Corporate Debtor. The Tribunal observes that the unilateral adjustment and withholding of such refunds by the Respondent amounts to appropriation of the Corporate Debtor's assets during the moratorium period.

e. The Income Tax Department had submitted its claims comprising of the tax demands for the same years against which the refunds have been adjusted or proposed to the adjusted. The claims made are required to be considered in the resolution plan submitted or to be submitted by the Resolution Applicant and the amounts available for distribution to the creditors of all types including the Income Tax Department will be distributed as per the priority

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mechanism (waterfall mechanism) prescribed in section 53 of the IBC, 2016.

- f. Section 14 of the Insolvency and Bankruptcy Code, 2016 expressly prohibits any action to recover or enforce any claim against the Corporate Debtor in respect of pre-CIRP dues. The adjustment of refunds against pre-CIRP tax demands is nothing but a mode of recovery, irrespective of the statutory provision under which it is sought to be justified.
- g. The Tribunal further observes that the moratorium in the present case continues to remain in force in view of the interim order passed by the Hon'ble NCLAT dated on 30.09.2022, placed on record as Annexure A of the Application, and therefore the embargo under Section 14 is fully operative.
- h. The Respondent's reliance on Section 245 of the Income Tax Act to justify the adjustments is misplaced. In view of the overriding effect of Section 238 of the Insolvency and Bankruptcy Code, the provisions of the Income Tax Act must yield to the IBC to the extent of inconsistency. The Respondent cannot be permitted to do indirectly, through adjustment of refunds, what it is barred from doing directly during the moratorium.
- i. Accordingly, this Tribunal observes that the actual adjustment of refunds amounting to Rs. 25,53,29,748/- and the withholding of refund amounting to Rs. 10,13,78,048/- during CIRP are in



clear violation of Section 14 read with Section 238 of the Insolvency and Bankruptcy Code, 2016. The actions of the Respondent, as reflected in Annexures B, D, E, F, H, J and K of the application, are prima facie illegal and unsustainable.

- j. This Tribunal also takes note of the fact that the moratorium continues to subsist in the present case in view of the interim order passed by the Hon'ble NCLAT, as placed on record at **Annexure A**, and therefore the embargo under Section 14 remains fully operative.
- k. The judicial precedents relied upon by the Applicant, including ***Ram Ratan Kanoongo v. Deputy Commissioner of Income Tax (supra) and Krishna Mohan Gollamudi, Resolution Professional v. Income Tax Department (supra)***, copies of which are placed on record as Annexures L and M, clearly lay down that adjustment of tax refunds against pre-CIRP dues during moratorium is impermissible in law and violation of Section 14 read with Section 238 of the IBC. The facts of the present case are squarely covered by the ratio laid down in the aforesaid decisions.
- l. Further, Hon'ble NCLAT in ***Mr. Devarajan Raman (Liquidator) v. Principal Commissioner Income Tax and Ors., (2024) ibclaw.in 332 NCLAT***, Tax refund adjusted during moratorium declared illegal and department directed to return amount.

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- m. In light of the above discussion, this Tribunal has no hesitation in holding that the Income Tax Department was not entitled, either in law or on facts, to adjust or appropriate the income-tax refunds payable to the Corporate Debtor for the assessment years 2019-20, 2021-22, 2022-23 and 2023-24 against alleged pre-CIRP income-tax dues during the subsistence of the moratorium. The actions of the Respondent, as evidenced from Annexures B, D, E, F, H, J and K of the application, are held to be illegal, arbitrary and in clear violation of Section 14 read with Section 238 of the Insolvency and Bankruptcy Code, 2016.
- n. The amounts already adjusted by the Respondent during the CIRP period are liable to be restored to the Corporate Debtor as such adjustments are void in view of the moratorium under Section 14 of the IBC.
- o. Accordingly, Issue No. 2 is answered in favour of the Applicant and against the Respondent.

**14. Issue No.3:** Whether the income-tax refunds determined during CIRP constitute assets of the Corporate Debtor forming part of the insolvency estate?

- a. The Tribunal notes that the refunds in the present case arose from income tax returns filed during the Corporate Insolvency Resolution Process by the Resolution Professional. Upon processing of such returns under Section 143(1) of the Income Tax Act,

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1961, the refund amount becomes a crystallized receivable payable to the assessee.

- b. Under Section 18(1)(f) of the Insolvency and Bankruptcy Code, 2016, the Interim Resolution Professional is required to take control and custody of any asset over which the Corporate Debtor has ownership rights. Similarly, Section 25(2)(a) casts a duty upon the Resolution Professional to preserve and protect the assets of the Corporate Debtor, including the continued business operations of the Corporate Debtor.
- c. Once the refund is determined under Section 143(1) of the Income Tax Act, the said amount constitutes a receivable of the Corporate Debtor and therefore forms part of the assets of the Corporate Debtor which must remain available for the insolvency resolution process.
- d. Any unilateral adjustment or appropriation of such refunds during the moratorium period would amount to depletion of the assets of the Corporate Debtor and would frustrate the objective of value maximization under the Insolvency and Bankruptcy Code.
- e. Accordingly, this Tribunal holds that the income tax refunds determined during the CIRP period constitute assets of the Corporate Debtor forming part of the insolvency estate and are required to remain under the control of the Resolution Professional.



f. Therefore, **Issue No.3** is answered in favour of the Applicant and against the Respondent.

**15.** In view of the above discussion and findings recorded on the issues framed, this Adjudicating Authority holds as follows and issue the following directions: -

- (i)** It is hereby declared that the action of the Respondent–Income Tax Department in adjusting income-tax refunds payable to the Corporate Debtor for the assessment years **2019-20, 2021-22 and 2022-23**, and in proposing to adjust / withholding the refund for the assessment year 2023-24, against alleged pre-CIRP income-tax dues, during the subsistence of the moratorium, is in violation of Section 14 read with Section 238 of the Insolvency and Bankruptcy Code, 2016.
- (ii)** The Respondent is hereby directed to refund a sum of Rs. 35,67,07,796/- (Rupees Thirty-Five Crores Sixty-Seven Lakhs Seven Thousand Seven Hundred and Ninety-Six Only) along with statutory interest payable under Section 244A of the Income Tax Act, 1961 from the date on which the refund became due till the date of actual payment, being the income-tax refunds determined under Section 143(1) of the Income Tax Act, 1961 for the assessment years 2019-20, 2021-22,



2022-23 and 2023-24, which were either adjusted or withheld during CIRP.

- (iii) The aforesaid refund shall be released within a period of four weeks from the date of receipt of this order.
- (iv) The Respondent shall not invoke Section 245 of the Income Tax Act for adjustment of refunds during the subsistence of the moratorium under Section 14 of the IBC.
- (v) However, it is clarified that the Respondent shall be at liberty to pursue its claim strictly in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016, and not otherwise.

**16. Accordingly, Interlocutory Application No. 996 of 2025 is allowed** in above terms. No order as to costs.

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**SANJEEV SHARMA**  
**MEMBER (TECHNICAL)**  
Vinit/Soumya

-sd-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**