

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
02-01-2024 AT 10:30 AM**

**IA (IBC) 410 & 1879/2023, IA (IBC) 1433/2022 in
CP(IB) No.299/7/HDB/2018
u/s. 7 of IBC, 2016**

IN THE MATTER OF:

Punjab National Bank
(erstwhile Oriental Bank of Commerce)

...Financial Creditor

VS

NCS Sugars Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA(IBC) 410/2023

Orders Pronounced. In the result, **this application is allowed. No costs.**

IA(IBC) 1433/2022

Since a comprehensive order has been passed in IA No 410/2023 no further orders are required in IA No 1433/2022. **With these observations IA No 1433/2022 is disposed of. No costs.**

IA(IBC) 1879/2023

In the light of our findings in IA No 410/2023 we hereby grant leave to the applicant to go for fresh publication of Form-G and thus, invite Expression of Interest the perspective resolution applicant, in the interest of the insolvency resolution of the Corporate Debtor. In so far as the liberty, in respect of the time lines are concerned, let the petitioner file an appropriate application and upon filing the same, the same will be considered on merits. **With these observation IA No 1879/2023 is disposed of. No costs.**

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - I, HYDERABAD**

**I.A. No.410 of 2023
in
CP (IB) No.299/7/ HDB/2018**

In the matter of M/s NCS Sugars Limited

In the matter between:

K. Sivalingam

Resolution Professional of
NCS Sugars Limited.

.. Applicant

VERSUS

- 1. District Collector**
Nishant Kumar, IAS
Office of Collector & District Magistrate
ITDA New Building
Parvathipuram, Manyam District
Andhra Pradesh – 535 501.
- 2. Tahsildar, Bobbili**
Office of Collector & District Magistrate
ITDA New Building
Parvathipuram, Manyam District
Andhra Pradesh – 535 501.
- 3. Tahsildar, Seethanagaram**
Office of Collector & District Magistrate

ITDA New Building
Parvathipuram, Manyam District
Andhra Pradesh – 535 501.

4. M/s Dhatri Real Estate & Developers

Bobbili
10-47/1, Swami Vari Street
Bobbili Vizianagaram
Andhra Pradesh – 535 501.

5. Punjab National Bank

Zonal Sastra Hyderabad
1st Floor, My Home Jupally Complex
Greenlands, Ameerpet
Hyderabad – 500016.

6. M/s Dharti Promoters

Jogimpeta Village
Seethanagaram Mandal
Parvathipuram
Manyam District
Andhra Pradesh.

.. **Respondents**

In the matter of:

Punjab National Bank
(Erstwhile Oriental Bank of Commerce)

.. **Financial Creditor**

Vs.

NCS Sugars Ltd.

.. **Corporate Debtor**

APPLICATION UNDER SECTION
60(5) OF THE INSOLVENCY &
BANKRUPTCY CODE, 2016.

Coram:

**DR.VENKATA RAMAKRISHNA BADARINATH
NANDULA**

Hon'ble Member (Judicial)

SHRI CHARAN SINGH

Hon'ble Member (Technical)

Advocates present:

For the Applicant : Shri Y. Suryanarayana, Advocate
with Shri Yohaana Lunathwala,
Advocate & J.Sagar Associates.

For respondents : Shri. O.Manohar Reddy, Senior
1, 2 & 3 Advocate, for Shri O.P. Subash, and
Shri K. Dilip Naik, Advocates.

For respondents Shri D.V. Seetharam Murthy,
4 and 6. Senior Advocate, for Shri Bendi Ravi
Teja, Advocate.

For respondent 5 : Shri M. Sunil Kumar, Advocate.

Date of Order; 02.01.2024.

Per : Bench

ORDER

1. This Interlocutory Application is filed by the Resolution Professional of the Corporate Debtor/ NCS Sugars Limited praying for the following reliefs:

- (a) Annul the sale of the immovable property belonging to the Corporate Debtor illegally permitted by respondent nos.1 – 3 in favour of respondent nos.4 and 6;
- (b) Declare the sale certificate dated December 3, 2022 with respect to the Immovable Property of the Corporate Debtor issued by respondent no.1, in favour of respondent nos.4 and 6 as illegal and/ or invalid and/ or improper.
- (c) Declare the sale deed having Reg. No.8512 of 2022, executed by and between the respondent no.1, 4 and 6 with respect to the Immovable Property of the Corporate Debtor, as illegal and/ or invalid and/ or improper;
- (d) Declare the proclamation of sale dated December 4, 2022 published by respondent nos.1 – 3 as illegal and/ or invalid and/ or improper;
- (e) Order and grant a permanent injunction restraining respondent nos.4 and 6 from acting upon and/or giving effect to, directly or indirectly, in any manner whatsoever, the sale certificate dated December 3, 2022 illegally issued in favour of respondent nos.4 and 6 by respondent nos.1-3.

2. This Tribunal vide order dated 20.04.2023 has permitted impleading of the sale certificate holder of the impugned sale as 6th respondent and accordingly this petition has been amended and the neat copy of this IA, has been filed on 27.04.2023.

3. As per the averments of this application, the Corporate Debtor is engaged in the business of cane crushing and production of sugar and associated by-products. The Corporate Debtor purchases sugarcane from farmers. The Corporate Debtor committed default in paying the price for the sugarcane supplied by farmers to the units of the corporate debtor. Consequently, respondents no.2 and 3 initiated proceedings under Andhra Pradesh Revenue Recovery Act, 1864, to sell the immovable property in order to pay the amounts due to farmers.

The chronology , of evets right from the commencement of sale till its conclusion and delivery of the subject property to the 6th respondent, as narrated in the pleadings is mentioned hereunder.

04.01.2022 Sale notice No.01/2022/ A8 was issued by R/2, viz. Tahsildar, Bobbili and Sale Notice No.02/2022/A8 was issued by R/3, Tahasildar, Seethanagaram *qua* immovable properties.

18.01.2022 Public auction pursuant to the said sale notice was conducted, wherein 4th respondent was

- declared as the highest bidder for its offer of Rs.20,05,00,000/-.
- 09.02.2022 Public auction was conducted. R/4 (Dhatri Real Estate) was declared as the highest bidder.
- 14.02.2022 Earnest Money Deposit (EMD) of Rs.3,75,000 was paid by 4th respondent.
- 24.06.2022 Order dated 24.06.2022 was passed in CP (IB) No.299/7/ HDB/ 2018 admitting the Corporate Debtor into CIRP. Said Company Petition was filed by Punjab National Bank (erstwhile Oriental Bank of Commerce).
- 13.07.2022 Letter was addressed by the applicant to 1st respondent informing him about commencement of CIRP.
- 29.06.2022 Copy of said order was received. Accordingly, CIRP has commenced against the Corporate Debtor on 29.06.2022.

19.11.2022 Total consideration was Rs.20,05,00,000/-.
EMD was Rs.3,00,75,000/-. Total consideration minus EMD, viz. balance amount of Rs.17,04,25,000/- was deposited by R/4 on 19.11.2022.

03.12.2022 Sale Certificate was issued in favour of respondents no.4, 5 and 6.

05.12.2022 This Tribunal vide order dated 05.12.2022 (Annexure 'C', page 244 of this IA) in IA (IBC) No.1433 of 2022 in CP (IB) No.299/7/HDB/2018 has restrained R/1 to 3 from proceeding further with disbursement of amount deposited by R/4 pursuant to two sale notices dated 04.01.2022.

The respondents did not inform that Sale Certificate has been issued.

02.02.2023 The applicant was apprised of the above development vide Reply dated 02.02.2023

(Annexure 'B' of this IA) filed by respondents no.1, 2 and 3 in IA (IBC) No.1433 of 2022 in CP (IB) No.299/7/HDB/ 2018 (Annexure 'A' of this IA). Balance sale consideration of Rs.17,04,25,000/- was deposited post commencement of CIRP.

4. The applicant contends that the Respondents 1 to 3 had knowledge of CIRP and the effect of moratorium imposed upon the Corporate Debtor, as can be substantiated from the following letters addressed to 1st respondent and the personal meetings held with 1st respondent.

- Letter dated 13.07.2022 was addressed by the applicant to R/1 (District Collector) apprising him about commencement of CIRP.
- Letter dated 08.09.2022 was addressed by the applicant to R/1 seeking information as to what was the action taken by R/1 under the provisions of Recovery Act, under which the

immovable property of the Corporate Debtor was sought to be sold to facilitate payments to farmers.

- Letter dated 17.10.2022 was addressed by the applicant to R/1 reiterating that moratorium is in force by virtue of order dated 24.06.2022 in CP (IB) No.299/7/ HDB/ 2018 and R/1 is required to refrain from taking any steps relating to sale of the impugned immovable property under Recovery Act.
- Letter dated 06.11.2022 was addressed by the applicant to R/1 (District Collector) on the same subject.
- On 10.11.2022, the applicant's representative held meeting with R/1 and emphasized the need to honour the order of admission/ moratorium.

The applicant also addressed letter dated 21.10.2022 to the Cane Commissioner seeking details of proceeds received from R/4 (Dhatri Real Estate). In spite of the same the 1st respondent (District Collector) having recorded Vide order dated 30.11.2022, that an amount of Rs.10,05,00,000/- was paid by

the 4th respondent since the date of order of admission/moratorium, permitted the 2nd & 3rd respondents to distribute a part of sale price deposited by the 4th respondent to certain farmers.

5. Aggrieved by disregard of order dated 24.06.2022 in CP (IB) No.299/7/ HDB/ 2018, shown by R/1 to 3, and their action to proceed to sell the assets of the Corporate Debtor, the applicant/ Resolution Professional was constrained to file IA (IBC) No.1433 of 2022 in CP (IB) No.299/7/HDB/ 2018. Notice issued in the said IA was also served to the respondents on 02.12.2022 by Registered Post. Despite all the above, in contravention of the provisions of the I&B Code, 2016, on 03.12.2022, R/1 has issued Sale Certificate in favour of R/6 (Dhatri Promoters). On the applicant making submissions, this Tribunal, vide order dated 05.12.2022 in IA (IBC) No.1433 of 2022 in CP (IB) No.299/7/HDB/ 2018, has issued certain interim directions to respondents/ State authorities as under:

“Thus, we are satisfied that the petitioner has made out a prima facie case. Therefore, under the circumstances while ordering notice to the respondents through speed post to be taken immediately by the applicant, we direct respondents 1, 2 & 3 not to proceed further in any manner including the distribution of the amount deposited by the 4th respondent pursuant to the two sale notices dated 04.01.2022 till further orders of this Adjudicating Authority.

.. ..”

6. Even in this application, viz. IA (IBC) No.410 of 2023, this Tribunal has issued certain interim directions to respondent no.6/ the highest bidder vide order dated 20.04.2023, the relevant part of which is as under:

“ Ld. Advocate for the petitioner in IA 410/2023 submitted that the petitioner came to know that the respondents are making efforts to alienate the property covered by the sale certificate by sixth respondent opposed the prayer. Perused the affidavit petitioner. We hereby direct the sixth respondent not to alienate the property covered by the sale certificate, if the same is not so far alienated till next hearing date. In the event if the sixth respondent intends to alienate the sale property, on an application filed, this Tribunal will pass appropriate orders. ..”

7. The applicant contended that the respondents did not inform the Tribunal about issuance of Sale Certificate. The applicant came to know about it only when respondents no.1 to 3 filed Counter in January 2023 (Annexure ‘B’, page 80 of this IA). Even R/4 did not disclose the same. R/4 has filed Counter

dated 09.02.2023 (Annexure 'D', page 246 of this IA) enclosing therewith a copy of Sale Certificate.

8. The applicant submitted that despite the respondents were in full knowledge that CIRP has been in operation and moratorium is in force –

- R/1 has issued Sale Certificate on 03.12.2022 with respect to the Immovable Property of the Corporate Debtor in favour of respondent nos.4 and 6.
- Respondents no.1, 2, 3 and 4 were aware of institution of IA (IBC) No.1433 of 2022 and interim directions dated 05.12.2022 issued therein by this Tribunal, directing respondents 1, 2 & 3 not to proceed further in any manner including distribution (sic., disbursement) of the amount deposited by the 4th respondent, the respondents did not apprise the Tribunal of the developments and had acted in a manner rendering IA (IBC) No.1433 of 2022 infructuous.
- As narrated by the applicant in list of events at para 29 of this IA, events at serial nos.14 to 17, proceedings in IA

(IBC) No.1433 of 2022 and the sale transactions/ issuance of Sale Certificate went parallel and the respondents kept the Tribunal unapprised of such sale proceedings.

9. The applicant has relied on the following decisions to lay emphasis on his contention that I&B Code, 2016 has overriding effect over all laws in case of conflict:

- Innoventive Industries Limited Vs. ICICI Bank & another, (2018) 1 SCC 407 – paras 12, 45, 46, 47, 60 and 61.
- Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd & others, (2021) 9 SCC 657 – paras 71 and 80.
- Principal Commissioner of Income Tax Vs. Monnet Ispat & Energy Limited, (2018) 18 SCC 786 – paras 2 and 3.
- Duncans Industries Limited v. AJ Agrochem, (2019) 9 SCC 725 – paras 7.1 to 7.4.
- Gupta Metallics Power Ltd v. Govt of A.P., 2022 SCC OnLine TYS 22 – paras 108-115.

- M/s Omkara Asset Reconstruction Pvt Ltd. V. ECI Infra Towers Company Pvt Ltd – paras 108-110.
- Hirakud Industrial Works Ltd v. Varsha Fabrics (P) Ltd., (2020) 14 SCC 198.
- Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes & Customs, (2023) 1 SCC 472.

10. The averments in the counter filed by the 1st respondent , in brief are:

11. That the Respondents no.1, 2 and 3 are State authorities/ public functionaries, viz. District Collector and Tehsildars and they are ‘State’ under Article 12 of the Constitution of India. The answering respondents state that the Corporate Debtor / NCS Sugars has defaulted an amount of Rs.16,84,88,385/- to sugarcane growers. R/1 to 3 are obligated to recover the same and accordingly have initiated action against the defaulters under the provisions of Andhra Pradesh Revenue Recovery Act, 1864.

Chronology as narrated by the answering respondents is as under:

- 03.12.2022 Immovable properties were attached and Revenue Officer has taken over charge of the same.
- 06.02.2022 Notice Form No.7-A, which was issued on 04.01.2022 calling for bids, has been published for sale of the said properties.
- 09.02.2022 Auction was conducted, wherein R/4 bagged the bid as highest bidder at Rs.20,05,00,000 crores. The auction purchaser has deposited Rs.3,00,75,000 towards EMD.
- 19.11.2022 Balance amount of Rs.17,04,25,000 was paid.
- 03.12.2022 Sale Certificate was issued vide RC No.55/2020.
- 03.12.2022 Sale Deed was executed vide Reg. No.8512/2022 dated 03.12.2022.

12. The answering respondents have offered comments hereunder:

Para no. of the IA	Answer given by respondents no.1, 2 and 3.
Paras 24-26: As R/1-3 in complete disregard to provisions of Code, continued to proceed to sell assets of the Corporate Debtor, on 24.11.2022, the applicant filed IA No.1433	Averments are misconceived. Assets of Corporate Debtor were sold in public auction on 09.02.2022 itself, viz. much prior to order of CIRP.
Paras 27-28 : Most shockingly, IA 1433 has been listed before this Tribunal several occasions after ad interim order, on which dates respondents	Respondents openly informed the Tribunal through their Advocate on day of appearance that public auction was held prior to admission order and Sale Certificate was issued. In public

<p>were also present. Despite this, the respondents chose not to inform this tribunal of issuance of Sale Certificate. This was only brought to attention of Tribunal/ applicant through reply filed by R/1-3.</p>	<p>interest, the sale concluded in favour of auction purchaser became irrevocable and proceeds so received were disbursed among farmers and for auction related expenses.</p>
<p>Paras 30-33: Prior to submissions it is relevant to set out relevant provisions of the Code and Recovery Act. ... Section 14 (Moratorium) ...</p>	<p>After following procedure under Andhra Pradesh Revenue Recovery Act, 1864 Sale Certificate was issued. Possession was given to Auction Purchaser and he has become absolute owner of the subject properties. Hon'ble Supreme Court in Sagar Mahila Vidyalaya Vs. Pandit Sadashivarao Harshe & others, (1991) 3 SCC 588, held that once order is made confirming sale, the title of the auction purchaser relates back to the date of sale.</p>

Section 18 (duties of RP) ..	
Paras 34-36: 35. By applicant principles enunciated by Hon'ble Supreme Court in judgments cited in para 34, sale by R/1 under Recovery Act cannot be completed once CIRP has been initiated and moratorium imposed. 36. In view thereof, if during pendency of CIRP of Corporate Debtor, respondent proceeds with sale, it would be in abject contravention of the Code.	Financial Creditor did not array the answering respondents as parties to CIRP proceedings. Before commencement of CIRP proceedings, recovery proceedings were initiated. Public auction was held on 09.02.2022. Auction was concluded. Auction purchaser deposited entire amount. Sale Certificate was issued on 03.12.2022. Possession was given. As such imposition of moratorium in the Company Petition does not bind upon the answering respondents.

<p>Paras 37-39 :</p> <p>37. Provisions of Code and Recovery Act are pitted against each other. Sec.238 prescribes that provisions of Code shall have an overriding effect over any other law. ...</p>	<p>While interpreting non-obstante clause, it is deemed necessary to see the intent of the Legislature to have such a clause in the Statute. In State of West Bengal v. Union of India, 1964 SC 371, it was observed that the Court must ascertain the intent of Legislature by directing its attention not merely to clauses to be construed but to the entire statute. In State of MP v. State Bank of Indore, (2002) 10 SCC 441, it was held that even if there is first charge in favour of Bank, the same will not adversely affect statutory charge of the State. In Central Bank of</p>
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	<p>India v. State of Kerala, (2009) 4 SCC 94, concurring with State of MP (supra), it was held that first charge created in favour of State u/s 26B of Kerala Act, has primacy over the right of Bank to recover its dues.</p> <p>Main purpose of moratorium u/s 14 of Code is to keep assets of Corporate Debtor together during CIRP and smooth completion of CIRP. Andhra Pradesh Revenue Recovery Act, 1864 does not conflict with IBC. The respondents are duty bound under the Statute to realise dues/ arrears pending to poor farmers. It cannot</p>
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	be denoted as parallel proceedings as process was initiated prior to commencement of CIRP.
Paras 40 to 47: 40. U/s 38(5) of Recovery Act, sale of can only be confirmed by R/1 once total consideration is paid. Hence sale under Recovery Act is only consummated upon issuance of Sale Certificate.	Prior to commencement of CIRP and imposition of moratorium on 24.06.2022, an amount of Rs.9,20,00,000 was approved and remitted to sugarcane farmers on 20.05.2022. Consequently, the sale had become irrevocable. Last tranche having been paid on 19.11.2022, order dated 30.11.2022 to complete registration process was issued. The answering respondents refuted the applicant's assertion

	<p>that total consideration is not received. The respondents submitted that the entire bid amount has been deposited, sale certificate has been issued to R/6 at the request of auction purchaser (R/4).</p>
<p>Paras 45-59 :</p> <p>45. Resolution Professional had complete knowledge of ongoing CIRP and admission order. Despite the same, R/4 made payments. This evidences that R/4 is in no manner a bona fide purchaser.</p>	<p>RP, u/s 25 of IBC is duty bound to preserve assets of competent authority, as proceedings under Andhra Pradesh Revenue Recovery Act, 1864 were initiated prior to IBC admission order and part of sale proceeds have been remitted to farmers. The respondents relied on Embassy Developments v. State</p>

	<p>of Karnataka, (2020) 13 SCC 308, wherein it was held that:</p> <p>“in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”</p>
<p>Paras 50 to 54:</p> <p>Para 50: If sale certificate is not set aside and possession of immovable property is not returned to the applicant, purpose of Code stands defeated and stakeholders will suffer irreparable loss as it will</p>	<p>Subsequent to receipt of entire sale proceeds from auction purchaser, Sale Certificate was issued on 03.12.2022, Sale Deed was registered vide Reg. No.8512/2022 on 03.12.2022, possession was given on 05.12.2022. Whereas, order in IA No.1433 of 2022 was passed on 05.12.2022, which was received on 08.12.2022 by R/1. Thus, as on date of passing of said order in IA No.1433 of 2022, total sale</p>

deteriorate prospects of Debtor.	resolution of Corporate	consideration was received and amounts have been disbursed to farmers and Sale Certificate was also issued in favour of R/6 (Dhatri Promoters) at request of auction purchaser, viz. R/4 (Dhatri Real Estate).
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13. The averments of the counter filed by the Respondents 4 & 6 in brief are:

13.1 The applicant herein has filed IA No.1433 of 2022, where issue involved is the same and parties to both the proceedings are the same. As such the present IA is hit by the principles of ‘sub-judice’ and ‘constructive res judicata’.

13.2 It is further submitted that if defaulter does not make an application to set aside the sale within 30 days from the date of sale or in absence of order withdrawing sale proceedings or in absence of dismissal of sale proceedings, the sale is deemed to have been effected from the date of sale. It is further submitted

by the applicant that issuance of Sale Certificate is merely a ministerial act. Title of auction purchaser relates to the date of sale and title of property thereafter vests in the auction purchaser. It is stated that, since the auction purchaser has not filed any application under section 37A or 38(1) of the Andhra Pradesh Revenue Recovery Act, 1864, within 30 days from the date of auction, there was no order setting aside the auction and there was no withdrawal of sale. Therefore, the sale is proper and free from defects.

13.3 It is further submitted that on expiry of 30 days from the date of auction, by applying deeming fiction as provided in law, title and interest in the property ceases to exist in the Corporate Debtor; it will vest in the purchaser, viz. R/6 herein. Date of sale in the present case is 09.02.2022. In the present case CIRP has commenced on 24.06.2022, on which day title of the Corporate Debtor in the property in question ceased to exist. As such the property is not an asset of the Corporate Debtor as on the date of commencement of CIRP. Therefore, the question of violation of

moratorium u/s 14 of the I&B Code does not arise. Hence the application filed by the Resolution Professional is misconceived.

In support of this plea the respondents relied on Sagar Mahila Vidyalaya v. Pandit Sadashivarao Harshe & others, (1991) 3 SCC 588, wherein it was held that,

13.4 It is stated that the Resolution Professional is deemed to be 'other authority' for the purpose of definition of 'State' under Article 12 of the Constitution. The answering respondents relied on K.K. Modi v. K.N. Modi & others, (1998) 3 SCC 573, wherein the Hon'ble Supreme Court held that,

"The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraph 18/19/33 (page 344) explains the phrase "abuse of the process of the court" thus: "This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation..... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."

14. The applicant as well as respondents no.1, 2, 3, 4 and 6 have filed Written Submissions reiterating the contentions put forth by them in their pleadings and oral arguments.

15. In the light of the contest as above, the *following Points* are *framed* for our consideration:

Points:

- (1) Whether the impugned sale of the property of corporate debtor held under Andhra Pradesh Revenue Recovery Act, is **complete** upon receipt of 25% of the bid amount? and receipt of **balance sale price** while the corporate debtor is undergoing CIRP, will not **invalidate** the said sale? If so, whether the present application is maintainable?
- (2) Whether the provisions of Andhra Pradesh Revenue Recovery Act, 1864 override I & B Code?

16. We have heard Shri Y. Suryanarayana, learned Advocate for the applicant, Shri O. Manohar Reddy, Ld. Sr. Advocate, for O.P. Subhash and Shri K. Dilip Naik, learned Advocates for respondents 1, 2 and 3, Shri D.V. Seetharam Murthy, learned Senior Advocate, for Shri Bendi Ravi Teja, learned Advocate for respondents 4 and 6, and Shri M. Sunil Kumar, learned Advocate for respondent no.5. Perused the record, written submissions and the case laws presented before us.

Point (1)

Whether the impugned sale of the property of corporate debtor held under Andhra Pradesh Revenue Recovery Act, is **complete** upon receipt of 25% of the bid amount? and receipt of **balance sale price** while the corporate debtor is undergoing CIRP, will not **invalidate** the said sale? If so, whether the present application is maintainable?

17. *The brief factual background.*

17.1 The sale of immovable property admeasuring, in all, about 26 acres situate in different Survey Numbers of Seethanagaram and Bobbili Mandals of Vijayanagaram District, Andhra Pradesh, admittedly belonging to the Corporate Debtor (which is presently undergoing corporate insolvency resolution process pursuant to the order of this Tribunal, in CP No.299/7/HDB/2018 dated 24.06.2022), under the provisions of Andhra Pradesh Revenue Recovery Act, 1864, by the District Collector, Parvathipuram, Manyam District, Andhra Pradesh, for *realization* of the dues/ arrears of sugarcane farmers/ growers who have supplied sugarcane to the corporate debtor and whose

dues were certified by the Inspector under Andhra Pradesh Sugarcane Act, 1961, is the *subject matter* of challenge in the present application.

17.2 The process of the *impugned* sale though *commenced prior* to passing of the order in CP No.299/7/HDB/ 2018 dated 24.06.2022, wherein the corporate debtor has been admitted into CIRP, however since *concluded post admission* of the corporate debtor into CIRP, we hereunder state the acts and the events that *preceded* the admission of the corporate debtor into CIRP, and also the *post* admission events sale price for better appreciation of the respective contentions.

Sl. No.	Date	Event
Pre-CIRP		
1	04.01.2022	The 2 nd & 3 rd Respondents have issued sale notice for sale of the subject property in terms of Section of APRR Act.

2	09.02.2022	A Public auction pursuant to the said sale notice was conducted, wherein the 4 th respondent was declared as the highest bidder for its offer of Rs.20,05,00,000/-.
3	14.02.2022	Earnest Money Deposit (EMD) of Rs.3,75,000 was made by 4 th respondent.
Post-CIRP		
4	24.06.2022	Order admitting CP (IB) No.299/7/HDB/ 2018, filed by the 5 th respondent admitting the Corporate Debtor into CIRP, imposing moratorium and appointing IRP, has been passed by this Tribunal.

5		Public announcement in terms of Section 15 of IB Code, has been made by the IRP.
6.	13.07.2022	IRP addressed letter to 1 st respondent informing him about commencement of CIRP.
9.	29.06.2022	Copy of said order was received. Accordingly, CIRP has commenced against the Corporate Debtor on 29.06.2022.
10.	19.11.2022	Total consideration was Rs.20,05,00,000/-. EMD was Rs.3,00,75,000/-. Total consideration minus EMD, viz. balance amount of Rs.17,04,25,000/- was deposited by R/4 on 19.11.2022.

11.	03.12.2022	Sale Deed was executed vide Reg. No.8512/ 2022, in favour of respondent no.6 (Dhatri Promoters).
		Sale Certificate was issued in favour of respondents no.4, 5, bearing RC No.55/ 2020. Possession was delivered.
		Immovable properties were attached and Revenue Officer has taken over charge of the same.

18. *The submissions*

Shri Y. Suryanarayana, Ld. Advocate for the Applicant, submitted that the respondents 1 to 3, despite being fully aware and apprised of the CIRP order dated 24.06.2022 passed by this Tribunal, admitting the corporate debtor herein into CIRP have proceeded with the process of sale of the property of the Corporate Debtor which has been commenced on 09.02.2022,

i.e. *prior* to the order of admitting the Corporate Debtor into CIRP, by *receiving the balance sale price* from the 4th respondent which is the highest bidder of the public auction held on 09.02.2022 *issued sale certificate, distributed the sale proceeds* to the suppliers of sugarcane to the corporate debtor, and to others, besides *delivered* the subject property to the 6th respondent.

In support of this submission the learned Advocate relied on the following:

- Order imposing moratorium by this Tribunal dated 24.06.2022;
- Interim order dated 05.12.2022 in IA (IBC) No.1155/2022, and in 1433/2022 in CP (IB) No.299/7/ HDB/2018.
- Interim order dated 20.04.2023 in IA (IBC) No.478/ 2023 in CP (IB) No.299/7/ HDB/2018.

- letter dated 13.07.2022 addressed by the applicant to the 1st respondent (District Collector) apprising him about commencement of CIRP;
- letter dated 08.09.2022 addressed by the applicant to 1st respondent.
- letter dated 17.10.2022 addressed by the applicant to 1st respondent.
- letter dated 06.11.2022 addressed by the applicant to 1st respondent.

And also on the personal meetings held on 10.11.2022, with 1st respondent and wherein the applicant claimed to have emphasized the need to honor the order of admission/moratorium.

19. Ld. Advocate further submitted that, the contention that the sale process of the impugned sale since commenced prior to the CIRP order, in view of Section 54 of the TP Act, the impugned sale stood completed and confirmed upon receipt of

the 25% of the bid amount by the respondent 1 to 3, the sale is complete notwithstanding the fact that the balance sale price was received *post* passing of order of moratorium by this Tribunal, and as such the order of moratorium dated 24.02.2022 is not applicable to the impugned sale, is *untenable* and *un sustainable* under law. According to the learned Advocate, reliance placed by the respondents on the ruling in re, *The Sagar Mahila Vidyalaya, Sagar Vs. Pandit Sadashiv Rao Harshe & others* (supra) is thoroughly misconceived. In this regard Ld. Advocate relied on the ruling in re, Indian Overseas Bank, *supra*, wherein *Hon'ble Supreme Court, held that,*

“9. Insofar as the judgment of this Court in the case of Vidhyadhar (supra) is concerned, no doubt that it has been held that even if the full price of the property has not been paid, the transaction of the sale will take effect and the title 9 (2021) 9 SCC 657 would pass on that transaction. This Court has further held that the real test is the intention of the parties. It has been held that the parties must intend to transfer ownership of the property and that they must also intend that the price would be paid either in praesenti or in future. However, it is to be noted that in the said case, the defendant No.2 had not only executed the sale deed in favour of the plaintiff but had presented it for registration,

admitted its execution before the Sub Registrar before whom the remaining part of the sale consideration was paid and thereafter, the document was registered.”

20. According to the Ld. Advocate, the ruling in re, Indian Overseas Bank, *supra*, in fact, is applicable with all its force to the present case and provides complete answer to all the pleas raised in this matter and in the light of the said judgment, the impugned sale is liable to be *annulled*. Thus, contending, the Ld. Advocate prayed that the impugned sale be *annulled* and the subject property be *restored* to the applicant, for the CIRP of the Corporate Debtor.

21. Shri O. Manohar Reddy, Ld. Sr. Advocate, for the respondents 1 to 3, while admitting that, this Tribunal, vide order dated 24.06.2022 in C.P.(IB) No. 299/7/HDB/2018, admitted the above Company Petition filed under Section 7 of Insolvency and Bankruptcy Code by the 5th respondent, and initiated CIRP (Corporate Insolvency Resolution Process) against NCS Sugars, for short the corporate debtor, appointed an IRP and declared Moratorium in terms of Section 14 of the IB Code, firmly denied

the contention of the applicant that, despite efforts made by the applicant, the respondents herein continued the sale proceedings under RR Act for the sale of the immovable property of the Corporate Debtor, as such on the post admission proceedings are unsustainable under law.

22. According to the Ld. Sr. Advocate the Respondents herein initiated appropriate proceedings as the corporate debtor has fallen due on payments to be made statutorily under the AP Sugarcane Act from the years 2012-2013-season to the sugarcane farmers/growers. The total outstanding dues which were pending were tuning to Rs. 66.8 crores, however after lapse of time, the corporate debtors could only clear the dues tuning to Rs.50.49 crores and tune of Rs.16,84,88,385/-crores still were to be paid to the 2626 farmers/growers in the 2019-2020 and 2020-21 seasons. Consequently, the farmers in the district on several occasions staged 'Dharnas' and 'Rasta Roko's', whereby creating law and order problem in the district. Considering the above, to mitigate the situation arisen and as there is statutory

duty cast upon the District Administration under Section 19 of the Andhra Pradesh Sugarcane Act, 1961, for recovery of the amounts due to the farmers/ growers the Respondents herein have invoked the proceedings under the Andhra Pradesh Revenue Recovery Act, 1864 as there is a first charge created over the properties of the corporate debtor for recovery of the arrears/dues pending in terms of the Andhra Pradesh Sugarcane Act, 1961 in the interest of public.

23. Ld. Sr. Advocate reiterated that, since much before the commencement of the CIRP Proceedings, the recovery proceedings were initiated, the public auction was held on 09.02.2022 and the auction was concluded and the auction purchaser had also deposited part amounts initially, thereafter the entire amounts have been deposited in terms of the bid amount and the sale certificate was also issued to the auction purchaser on 03.12.2022 and the possession was also delivered, the order of moratorium under the above Company Petition proceedings will not bind the respondents herein.

24. Learned Sr. Advocate further contended that in view of section 54 of the TP Act, the impugned sale is **complete upon receipt** 25% of the bid amount and on confirmation of the sale by the respondents 1 to 3. Learned Sr Advocate further contended that, merely because the balance sale consideration was paid and Sale Certificate has been issued post admission of the Corporate Debtor into CIRP, the same will not invalidate the subject sale. In support of this plea learned Sr. Advocate placed reliance on the ruling in *The Sagar Mahila Vidyalaya, Sagar Vs. Pandit Sadashiv Rao Harshe & others*, (1991) 3 SCC 588, wherein it was held that,

“Once an order is made confirming the sale, the title of the auction purchaser relates back to the date of sale; the title in the property thereafter vests in the auction purchaser”

25. Ld. Sr. Advocate also contended that by virtue of involvement of public interest, the impugned sale concluded in favour of the auction purchaser became irrevocable and the

proceeds so received were also disbursed among the farmers and for auction related expenses.

26. As regards that, contention of the applicant that the respondents have not disclosed that the sale certificate has been issued until filing of their counter, Ld. Sr. Advocate contends that, Respondents have openly informed the Tribunal through their Advocate on the day of appearance itself that public auction was held much prior to admission order and that sale certificate was also issued.

27. Learned senior Advocate also contended that the parties to the Corporate Insolvency Resolution Proceedings, despite knowing the fact that the District Authority, who falls within the meaning of 'State' under Article 12 of the Constitution of India, has already initiated recovery proceeding in the year 2021, itself in terms of the Andhra Pradesh Sugarcane Act, 1961 and rules made thereunder and attached the immovable properties of the Corporate Debtor to recover the dues/ arrears to the sugarcane

farmers under the APRR Act, all throughout the proceedings before this Tribunal and till passing of the admission order i.e., on 24.06.2022, it is understood that the parties to the CIRP proceedings remained unspoken about the recovery proceedings initiated by the District Authorities.

28. Shri D.V.Seetharam Murty, Ld. Sr. counsel for the 4th & 6th respondents, while endorsing the submissions made on behalf of the respondents 1 to 3, reiterated that the sale of the immovable property in question effected on 09th February: 2022 in favour of the highest bidder i.e., the 4th Respondent stood concluded on 09th February 2022, the title stood transferred in favour of the 4th and 6th Respondents, prior to moratorium and all subsequent acts including issuance of Sale Certificate are only ministerial in nature, as such the plea that the impugned sale is held in violation the moratorium order passed by this Tribunal has no force at all.

29. Ld. Sr. Counsel also contended that, the provisions of the Andhra Pradesh Revenue Recovery Act, 1864, make it clear that, if no application is filed by the defaulter to set aside the sale within 30 days from the date of sale or in absence of order withdrawing the sale proceedings or in absence of the dismissal of the sale proceedings, the sale stands concluded on date of auction i.e., 09th February 2022, and in the instant case, there was no application filed by the Corporate Debtor under Section 37A or 38(1) of the Revenue Recovery Act, within 30 days of the auction and there was no order setting aside the sale auction and there was no withdrawal of the sale, therefore, the sale is proper and without being any defects in the sale, the transfer of title of the immovable property stood transferred on date of sale i.e., 09th February 2022 in favour of the Respondent No. 3.

30. Ld. Sr. Counsel in this regard, placed reliance on the ruling of the Division Bench of Hon'ble High Court of Andhra Pradesh, in the matter of Kalwa Deuadattam & Ors., v. Union of India & Ors., 1957 ALT 554, wherein, while interpreting Section 36(4) of the Andhra Pradesh Revenue Recovery Act, 1864, it was held that;

*"33 The clause "the property shall be resold at the expense and hazard of such purchaser" etc. only implies that the resale is at the risk and hazard of the first purchaser. It **does not mean that the Collector is compelled to hold resale in the event of the first purchaser not depositing the remainder of the purchase money within thirty days.** It is in the discretion of the Officer concerned to act under that rule and he is under no obligation to put into operation. He has surely discretion to extend the time for paying the balance of the purchase price in proper case.*

*34. This opinion of ours is reinforced by the judgment of the Madras High Court in Soorayya v. Kalamelam. There the learned judges remarked that the intendment of the section was not to deprive the Government of an election to give a credit to the person in whose favour the property was knocked down and «to compel the government in every case to proceed to a resale even where there may be no risk of eventual failure of payment." Moreover, that rule does not envisage the eventuality of the sale itself becoming void. Assuming it was compulsory for the Collector to have a resale and he has failed to do it, that could not result in the sale being rendered void. **So long as the resale is not held the original sale stands.** The circumstances also brings out the force of the reason that the intention of the legislature was not to deprive the officer concerned of power to treat the first sale as subsisting despite the default of the first purchaser to make the necessary deposit within the prescribed time."*

31. Therefore, according to the Ld. Sr. Counsel, so long as the resale is not held the original sale stands and in the instant case there was neither forfeiture of the deposit or resale conducted, the title of the immovable property in question is vested in the 6th Respondent from the date of sale i.e., 09th February 2022.

32. On the plea that the deposit of balance purchase money by the 6th Respondent is in violation of Section 14 of the I&B Code, Ld. Sr. Counsel, submits that, as on Insolvency Commencement Date of the Corporate Debtor, viz. 24th June 2022, the title of the immovable property in question has already stood transferred in favour of the 6th Respondent and as such the said immovable property is not an asset of the Corporate Debtor as on the Insolvency Commencement Date and therefore, the question

of violation of moratorium under Section 14 does not arise.

33. According to the learned Sr. Counsel mere receipt of the purchase money by the 1st Respondent on behalf of the Corporate Debtor, would not violate moratorium, as Section 14 of the Code prohibits the transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein. On contrary, the 6th Respondent has paid the purchase money to the 1st Respondent, who is statutorily acting on behalf of Corporate Debtor to collect the monies in accordance with the provisions of the A.P. Sugarcane Act, 1961, A.P. Sugarcane Rules, 1961 and Andhra Pradesh Revenue Recovery Act, 1864. As such there is no transfer, encumbrances, alienation or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein. Therefore, the actions of

the Respondents No. 4 & 6 are not in conflict with law, and it is untenable for the Applicant to challenge the Sale Certificate dated 03rd December 2022 as issuance of Sale Certificate is merely a ministerial act.

Our findings

34. Having heard the Id. Advocates for both sides for a considerable length of time, and on careful consideration of the *factual matrix and the legal issues* put forth by the respective parties, we wish to state that, in the matter between M/S RCM Infrastructure Ltd and another vs Indian Overseas Bank, this Tribunal, had the opportunity to deal with **the very same pleas** now *put forth*, before us *namely*,

- (i) whether a sale governed by statutory provisions would be complete on receipt of 25% of the bid amount and mere receipt of balance of the sale consideration *subsequently*, would not affect such sale?

(ii) Whether Section 14(1)(c) of IBC, *interdicts* all pending *further proceedings* in a sale held under the statutory provisions?

and the Bench vide Order in I.A. No.832 of 2019 in C.P. (IB) No. 601/10/HDB/2018) dated 15th July 2020, held that,

*“the submission on behalf of the Bank that the sale was complete upon receipt of the part payment in terms of section 54 of TP Act, and that moratorium under section 14(1) (c) of IB Code, will not interdict further pending proceedings in a sale which has commenced prior to the date of moratorium, is **unsustainable under law** and accordingly rejected the above contentions.”*

35. Being aggrieved thereby, the Indian Overseas Bank filed an Appeal being Company Appeal (AT) (Insolvency) No. 736 of 2020 before Hon’ble NCLAT and the same was *dismissed* and as against the said order, the Indian Overseas Bank preferred an Appeal before Hon’ble Supreme Court of India.

36. Hereinbelow, we have reproduced the *submissions* made in the above matter by the Ld. Sr Advocates who have represented the respective parties before Hon'ble Supreme Court of India, as referred to by the Hon'ble Supreme Court in its Order dated, 18th May 2022, and the finding of the Hon'ble Supreme Court, as the same are quite identical to the pleas raised in this application, which are as under:

(i) Submissions on when the sale under the statutory process is complete.

“12. Shri Mehta submitted that in view of the provision of Section 54 of the IBC, the sale was complete after the appellant Bank had received 25% of the bid amount and the said was confirmed. He submitted that merely because a part of the sale consideration was received subsequently, it could not affect the sale. A reference in this respect is placed on the judgments of this Court in the cases of Vidhyadhar v. Manikrao and Another, B. Arvind Kumar v. Govt. of India and Others and Kaliaperumal v. Rajagopal and Another.

It is lastly submitted by Shri Mehta that Section 14(1)(c) of the IBC interdicts any action to foreclose, recover or enforce any security interest including any action under SARFAESI. However, it does not undo actions which have already stood completed.

Shri Vaidyanathan, learned Senior Advocate also supported the submissions of the learned Solicitor General made on behalf of the appellant Bank. It is submitted that the applicants were bona fide purchasers and put into possession and therefore should not be disturbed.

15. *Relying on paragraph (21) of the Insolvency Law Committee Report, 2018, Shri Vaidyanathan submitted that the rights and priorities of creditors established prior to insolvency under commercial laws should be upheld to*

preserve the legitimate expectations of creditors and encourage greater predictability in commercial relationship.

16. *Shri Viswanathan, learned Senior Advocate has supported the impugned judgment passed by the learned NCLAT as well as the order passed by the learned NCLT. He submitted that the title of the secured assets cannot be conveyed to the auction purchasers merely upon confirmation of sale even before receiving full sale consideration. He submitted that the title would be passed over only after receipt of the full consideration and issuance of sale certificate. The learned Senior Advocate submitted that such contentions are totally contrary in view of various provisions of the SARFAESI Act, the said Rules as well as Sections 14(1)(c), 31(1) and 238 of the IBC. He submitted that only after the transfer takes place under Rules 8 and 9 of the said Rules, the title would be passed over to the auction purchasers. He relies on the judgment of this Court in the case of Hindon Forge Private Limited and Another v. State of Uttar Pradesh through District Magistrate, Ghaziabad and Another.*

Shri Viswanathan further submitted that the continuation of any proceeding including the proceeding under the SARFAESI Act is totally illegal in view of Section 14(1)(c) of the IBC. It is, therefore, submitted that the continuation of any action under the SARFAESI Act by the appellant Bank and the receipt of the balance sale consideration was violative of Section 14(1)(c) of the IBC. He submitted that the amount payable by the Corporate Debtor to the other Financial Creditors is much more than the amount received by the appellant Bank during the pendency of the CIRP. He submitted that under the provisions of the IBC, all the Financial Creditors would be entitled to a share 6 (2020) 14 SCC 198 in the amount received upon realization of the assets of the Corporate Debtor and the appellant Bank cannot keep it in entirety.

21. *Shri Verma, learned Advocate also supported the impugned judgment passed by the learned NCLAT as well as the order passed by the learned NCLT and the submissions made by Shri Viswanathan. The said was confirmed. only when the auction purchaser makes the entire payment and the authorised officer, exercising the power of sale, shall issue a certificate of sale of the property in favour of the purchaser in the Form given in Appendix V.”*

(ii) Finding by Hon’ble Supreme Court:

“32. It is further to be noted that the present case arises out of a statutory sale. The sale would be governed by Rules 8 and 9 of the said Rules. **The sale would be complete only when the auction purchaser makes the entire payment and the authorised officer, exercising the power of sale, shall issue a certificate of sale of the property in favour of the purchaser in the Form given in Appendix V to the said Rules”. (Emphasis is Ours)**

34. *Undisputedly, in the present case, the balance amount has been accepted by the appellant Bank on 8th March 2019. The sale under the statutory scheme*

as contemplated under Rules 8 and 9 of the said Rules would stand completed only on 8th March 2019. Admittedly, this date falls much after 3rd January 2019, i.e., on which date CIRP commenced and moratorium was ordered. As such, we are unable to accept the argument on behalf of the appellant Bank that the sale was complete upon receipt of the part payment.”

“35. In view of the provisions of Section 14(1)(c) of the IBC, which have overriding effect over any other law, any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the SARFAESI Act is prohibited. We are of the view that the appellant Bank could not have continued the proceedings under the SARFAESI Act once the CIRP was initiated and the moratorium was ordered.”

(iii) Submission on the effect of the order of admission of petition filed for initiation of CIRP, by the NCLT, on pending sale proceedings.

“28. It is the contention of the appellant Bank that the sale in question was complete on its confirmation on 13th December 2018 and as such, the admission of the petition on 3rd January 2019 by the learned NCLT would not affect the said sale. Relying on the provisions of Section 54 of the TP Act, the learned Solicitor General submitted that merely because a part of the payment was received subsequently after initiation of CIRP, it will not deprive the appellant Bank from receiving the said money in pursuance to the sale which has already been completed. A reliance in this respect is placed on various judgments of this Court.”

(iv) Finding by Hon’ble Supreme Court:

24. It is clear that once the CIRP is commenced, there is complete prohibition for any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property. The words “including any action under the SARFAESI Act” are significant. The legislative intent is clear that after the CIRP is initiated, all actions including any action under the SARFAESI Act to foreclose, recover or enforce any security interest are prohibited.”

(v) Finding on application of the ruling in re, Vidhyadhar (supra).

“9. Insofar as the judgment of this Court in the case of Vidhyadhar (supra) is concerned, no doubt that it has been held that even if the full price of the property has not been paid, the transaction of the sale will take effect and the title 9 (2021) 9 SCC 657 would pass on that transaction. This Court has further

held that the real test is the intention of the parties. It has been held that the parties must intend to transfer ownership of the property and that they must also intend that the price would be paid either in praesenti or in future. However, it is to be noted that in the said case, the defendant No.2 had not only executed the sale deed in favour of the plaintiff but had presented it for registration, admitted its execution before the Sub Registrar before whom the remaining part of the sale consideration was paid and thereafter, the document was registered.”

(vi) Finding by Hon’ble Supreme Court on the order of this Bench and the Hon’ble NCLAT.

37. “We, therefore, find that no case is made out for interfering with the concurrent orders passed by the learned NCLT dated 15th July 2020 and learned NCLAT dated 26th March 2021”.

37. Admittedly, the sale impugned in this case, like, *in re*, Indian Oversea Bank, *supra*, is governed by the provisions of a statute, *namely*, Andhra Pradesh Revenue Recovery Act, 1864 (for short ‘APRR Act) and only a part of the sale price (25%) has been received by the respondents 1 to 3, by the date of admission of the Corporate Debtor into CIRP. A bare perusal of section 36 of the APRR Act, states that the *‘where the remainder of the purchase-money may not be paid within thirty days, the money so deposited shall be liable for forfeiture”*.

It is not in dispute that the respondent Authorities (R/1 to R/3), while the order of moratorium, *supra*, ordered by this Tribunal is in force, received the balance sale price, issued sale certificate,

delivered possession and also issued proclamation in respect of the said sale. Here, we usefully refer to Indian Overseas Bank, supra wherein it was held that,

*“It is further to be noted that the present case arises out of a statutory sale. The sale would be governed by Rules 8 and 9 of the said Rules. **The sale would be complete only when the auction purchaser makes the entire payment and the authorised officer, exercising the power of sale, shall issue a certificate of sale of the property in favour of the purchaser in the Form given in Appendix V to the said Rules**”*,

Therefore, the sale in this case if incomplete by the date of admission of the corporate debtor into CIRP, cannot be proceeded further as the order of moratorium expressly prohibits the Authorities from proceedings further.

38. However , according to the learned Senior Advocate for the respondents 4 & 6, it is untenable to compare the rules of sale under SARFAESI proceedings, as they are governed by the Rule 8 & 9 of the SARFAESI Rule, 2002 and the same are not analogous to the provisions of the Andhra Pradesh Revenue Recovery Act, 1864. Therefore, a hard and fast rule governing SARFAESI Act vis-a-vis IBC proceedings of sale shall not be

applicable to the present case, as the operating provisions governing the sale in the present case are emerging from a different statute i.e., the Andhra Pradesh Revenue Recovery Act, 1864.

39. Learned Sr. Counsel further submits that the provisions of the SARFAESI Rules, 2002 and the Andhra Pradesh Revenue Recovery Act, 1864, are not analogous and shall not be put on equal footing. Therefore, the principles of SARFAESI sale vis-a-vis IBC cannot be applied to the present case and the sale in present case is governed by the Andhra Pradesh Revenue Recovery Act, 1864, and as no order setting aside sale is passed by the District Collector, the title and interest in the immovable property stood transferred in favor of Respondent No. 6 as on the date of sale by auction i.e., 09th February 2022.

40. Ld. Sr. Advocate also relied on the ruling

of the Division Bench of Hon'ble High Court of Andhra Pradesh, in the matter of *Kalwa Devadattam & Ors., v. Union of India & Ors., 1957 ALT 554*, where in it was that:

" ... Moreover, that rule does not envisage the eventuality of that sale itself becoming void. Assuming it was compulsory for the Collector to have a resale and he has failed to do it, that could not result in the sale being rendered void. So long as the resale is not held the original sale stands."

Thereby making the act of sale confirmation and issuance of sale certificate, a mere ministerial act.

41. Reliance also has been placed on the Insolvency Law Committee Report, February 2020, report as mentioned hereinbelow:

*"8.11. Further, the purpose of the moratorium is to keep the assets of the debtor together for successful insolvency resolution, and it **does not** bar all actions, especially where countervailing public policy concerns are involved. For instance, criminal proceedings are not considered to be barred by the moratorium, since they do not constitute "money claims or recovery" proceedings. In this regard, the Committee also noted that in some jurisdictions, laws allow "regulatory claims, such as those which are not designed to collect money for the estate but to protect vital and urgent public interests, restraining activities causing environmental damage or activities that are detrimental to public health and safety" to be continued during the moratorium period."*

42. According to the Ld. Sr. Counsel, one of the objectives of the Code, is to strike balance between stakeholders and as such section 14 provides for an overarching public interest within its contours from the inception of its enactment, as the provision has to be read in light of the objective upon which the Code has been enacted. Furthermore, it is submitted that, it is an expropriator legislation that is being interpreted and while expounding such a legislation, the public interest ought to be protected.

43. In order to render an appropriate finding on the point, we usefully refer to Section 36 of Andhra Pradesh Revenue Recovery Act, 1864, which is as below.

“36. Procedure in sale of immovable property: - In the sale of immovable property under this Act the following rules shall be observed.

***First-Publication:** - The sale shall be by public auction to the highest bidder. The time and place of sale shall be fixed by the Collector of the district in which the property is situated, or other officer empowered by the Collector in that behalf. The time may be either previous to or after the expiration of the fasli year.*

***Second-Notification one month before sale:** - Previous to the sale the Collector, or other officer empowered by the Collector in that behalf, shall issue a notice thereof in English and in the language of the district, specifying*

the name of the defaulter; the position and extent of land of his buildings thereon; the amount of revenue assessed on the land, or upon its different sections. The proportion of the public revenue due during the remainder of the current fasli ; and the time, place, and conditions of sale. This notice shall be fixed up one month at least before the sale in the Collector's office and in the Taluk cutcherry, in the nearest police station house, and on some conspicuous part of the land.

Third-Deposit by purchaser: - A sum of money equal to fifteen per cent of the price of the land shall be deposited by the purchaser in the hands of the Collector, or other officer empowered by the Collector in that behalf at the time of the purchase, and where the remainder of the purchase-money may not be paid within thirty days, the money so deposited shall be liable to forfeiture.

Fourth-Re-sale in default of payment: - When the purchaser may refuse or omit to deposit the said sum of money or to complete the payment of the remaining purchase money, the property shall be re-sold at the expense and hazard of such purchaser, and the amount of all loss or expenses which attend such refusal or omission shall be recoverable from such purchaser in the same manner as arrears of public revenue. Where the lands may, on the second sale, sell for a higher price than at the first sale, the difference shall be the property of him on whose account the said first sale was made.

Fifth-Agents to name principals: - All persons bidding at a sale may be required to state whether they are bidding on their own behalf or as agents, and, in the latter case, to deposit a written authority signed by their principals. If such requisition be not complied with, their bids may be rejected.”

44. Thus, it is quite clear from the *provision* above that, where the remainder of the purchase-money may not be paid *within thirty days*, the money already deposited towards the purchase price by the auction purchaser shall be liable to be *forfeited* and where the purchaser may refuse or omit to deposit the said sum of money or to complete the payment of the *remaining purchase*

money, the property shall be **re-sold** at the expense and hazard of such purchaser. \

Therefore, from language used by the Legislature in the above provision it is quite clear that, *payment of the entire purchase money, within 30 days is the sine qua non, for completion of sale* and default in payment of the balance price shall result in forfeiture of the amount already deposited and resale of the said property. In terms of *sub clause 3* of section 36 of AP Revenue Recovery Act, only upon receipt of **full sale price** within 30 days or within the time extended, and if no application to set aside sale is made under Section 37A or under Clause (1) of section 37 or if such application has been made and rejected, the Collector shall make an order **confirming** the sale.

45. Thus, ‘confirmation’ of sale by the Collector shall be in respect of “**the property sold**’. As per the *fourth limb* of section 36 of APRR Act, a “**sale**” is liable to be cancelled if the purchaser fails to **complete** the payment of the **remaining**

purchase money. Therefore, it is abundantly clear that **payment of full sale price,** is the **condition precedent** for a ‘Sale’ to be ‘confirmed’ or ‘concluded’ and mere payment of 25% of the sale price will not result in **completion** of a sale.

46. As already stated, *moratorium* imposed in terms of Section 14 of IB Code on the assets of the corporate debtor in this case by this Tribunal, restrained/prohibited the respondents 1 to 3, from continuing of the sale process initiated on 09.02.2022 effective from 24.06.2022.

47. The payment of balance purchase price in this case was admittedly, post CIRP order. As per the Hon’ble Supreme Court, *in re, Indian Overseas Bank, supra,* is prohibited. So much so the impugned **sale since not complete** is non-est, in the eye of law. Hence the subject property continues to remain as the property of the Corporate Debtor.

Insofar as the ruling of the Division Bench of the Hon’ble High Court of Andhra Pradesh, in the matter of Kalwa Deuadattam &

others v. Union of India & others, 1957 ALT 554, wherein while dealing with Section 36(4) of the Andhra Pradesh Revenue Recovery Act, 1864, wherein it was held that:

"33 The clause "the property shall be resold at the expense and hazard of such purchaser" etc. only implies that the resale is at the risk and hazard of the first purchaser. It does not mean that the Collector is compelled to hold resale in the event of the first, purchaser not depositing the remainder of the purchase money within thirty days. It is in the discretion of the Officer concerned to act under that rule and he is under no obligation to put into operation. He has surely discretion to extend the time for paying the balance of the purchase price in proper case".

only states that, resale of the property when the first purchaser failed in depositing the balance sale price within 30 days, is discretionary and the collector can extend the time for paying the balance of the purchase price in proper case and it never says that, the sale under 36 of AP RR Act, is complete when the same was confirmed upon payment of the 25% of the sale price. Hence, the ruling, in re, *Kalwa Deuadattam & Ors*, supra, unlike the ruling in re Indian Overseas Bank, supra, is not an answer to the settled

proposition that, a sale held under a Statute is not complete upon payment of 25% of the purchase price.

Therefore, in the light of our discussions as above, and the case law referred to, we are unable to accept the submissions of the ld. Sr. advocates for the Respondents 1 to 3 and 4 & 6. Accordingly, we hereby reject the same.

As a *sequel*, the impugned sale in favour of the 4th and 6th respondents as well as the sale certificate dated 03.12.2022 issued in favour of the 6th respondent, are *null and void*, under law.

The point is answered accordingly.

Point (2) :

Whether the provisions of Andhra Pradesh Revenue Recovery Act, 1864 override I&B Code 2016?

The submissions.

48. Ld. Advocate for the applicant submits that, the contention that, the impugned sale which has been held, under the

provisions of Andhra Pradesh Revenue Recovery Act, 1864, pursuant to the order of attachment under the provisions of AP Sugarcane Act, being for realisation of the arrears of the amount due and payable by the corporate debtor to the suppliers of sugarcane, who are farmers and were agitating, by resorting to Dharanas and Rasta Roko's, which resulted in Law & Order problem, the provisions of Andhra Pradesh Revenue Recovery Act, 1864 will prevail over the IB Code, as such the moratorium order passed by this Tribunal, under the provisions of IB Code, does not bind the respondents, is *unsustainable under law*, in view of the law laid down by Hon'ble Supreme court of India, in the following rulings:

- In *Anand Rao Korada v. Varsha Fabrics Pvt. Ltd.*, (2020) 14 SCC 198, it was held that:

“Section 14 provides that on the insolvency commencement date, the Adjudicating Authority shall by order, declare a moratorium prohibiting the institution of suits, or continuation of pending suits or “proceedings” against the corporate debtor, including execution of any judgment, decree, or order in any court of law, tribunal, arbitration panel, or any other authority. [Section 14](#) reads as follows :

“14. Moratorium. – (1) Subject to provisions of subsections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor. (2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of subsection (1) shall not apply to —

(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;

(b) a surety in a contract of guarantee to a corporate debtor.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process: Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under subsection (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

7. Section 238 gives an overriding effect to the IBC over all other laws. The provisions of the IBC vest exclusive jurisdiction on the NCLT and the NCLAT to deal with all issues pertaining to the insolvency process of a corporate debtor, and the mode and manner of disposal of its assets. Section 238 reads as follows :

“238. Provisions of this Code to override other laws. – The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

8. Section 231 of the IBC bars the jurisdiction of civil courts in respect of any matter in which the Adjudicating Authority i.e. the NCLT or the NCLAT is

empowered by the Code to pass any Order. Section 231 is set out hereinbelow for ready reference :

“231. Bar of jurisdiction. – No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority or the Board is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority or the Board under this Code.”

9. In view of the provisions of the IBC, the High Court ought not to have proceeded with the auction of the property of the Corporate Debtor – Respondent No. 4 herein, once the proceedings under the IBC had commenced, and an Order declaring moratorium was passed by the NCLT. The High Court passed the impugned Interim Orders dated 14.08.2019 and 05.09.2019 after the CIRP had commenced in this case. The moratorium having been declared by the NCLT on 04.06.2019, the High Court was not justified in passing the Orders dated 14.08.2019 and 05.09.2019 for of carrying out auction of the assets of the Respondent No. 4–Company i.e. the Corporate Debtor before the NCLT. The subject matter of the auction proceedings before the High Court is a vast chunk of land admeasuring about 330 acres, including Railway lines and buildings.

If the assets of the Respondent No. 4 – Company are alienated during the pendency of the proceedings under the IBC, it will seriously jeopardise the interest of all the stakeholders.

As a consequence, we set aside the impugned Interim Orders dated 14.08.2019 and 05.09.2019 passed by the Odisha High Court, as parallel proceedings with respect to the main issue cannot take place in the High Court. The sale or liquidation of the assets of Respondent No. 4 will now be governed by the provisions of the IBC.”

- *Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd & others, (2021) 9 SCC 657, the applicant has relied on paras 71 & 80:*

“71. Perusal of the SOR would reveal, that one of the prime objects of I&B Code was to provide for implementation of insolvency resolution process in a time bound manner for maximisation of value of assets in order to balance the interests of all stakeholders. However, it was noticed, that in some cases there was extensive litigation causing undue delays resultantly hampering the value maximisation. It was also found necessary to ensure, that all creditors are treated fairly. It was therefore in view of the various difficulties faced and in order to fill the critical gaps in the corporate insolvency framework, it was necessary to amend certain provisions of the I&B Code. Clause (f) of para 3 of the SOR of the Insolvency and Bankruptcy Code (Amendment) Bill, 2019

would amply make it clear, that the legislative intent in amending subsection (1) of Section 31 of I&B Code was to clarify, that the resolution plan approved by the Adjudicating Authority shall also be binding on the Central Government, any State Government or any local authority to whom a debt is owed in respect of payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, including tax authorities.”

“80. The faulty drafting in the provision was capable of being interpreted, that the legislative embargo imposed on a person from procreating and giving birth to a third child in the context of holding the office of a member of a municipality remained in operation for a period of one year only and thereafter it was lifted. It could be interpreted, that on the date on which [Section 13A](#) was brought on the statute book i.e. dated 5.4.1994, even if a person became disqualified, the disqualification ceased to operate and he became qualified once again to contest the election and hold the office of member of a municipality on the expiry of one year from 5.4.1994. After realizing the error, [Section 13A](#) came to be amended as under:

“2. In the proviso to clause (c) of subsection (1) of [Section 13A](#) of the Haryana Municipal Act, 1973 (hereinafter called the principal Act), for the word ‘after’, the word ‘upto’ shall be substituted.” [emphasis supplied]”

- **Innoventive Industries Limited Vs. ICICI Bank & another,** (2018) 1 SCC 407, the applicant has relied paras 12, 45, 46, 47:

“The question of repugnancy under Art. 254(1) between a law made by Parliament and a law made by the State Legislature arises only in case both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List, and there is direct conflict between the two laws. It is only when both these requirements are fulfilled that the State law will, to the extent of repugnancy become void. Art. 254(1) has no application to cases of repugnancy due to overlapping found between List II on the one hand and List I and List III on the other. If such overlapping exists in any particular case, the State law will be ultra vires because of the non-obstante clause in Art. 246(1) read with the opening words “Subject to” in Art. 246(3). In such a case, the State law will fail not because of repugnance to the Union law but due to want of legislative competence. It is no doubt true that the expression “a law made by Parliament which Parliament is

competent to enact” in Art. 254(1) is susceptible of a construction that repugnance between a State law and a law made by Parliament may take place outside the concurrent sphere because Parliament is competent to enact law with respect to subjects included in List III as well as “List I”. But if Art. 254(1) is read as a whole, it will be seen that it is expressly made subject to cl. (2) which makes reference to repugnancy in the field of Concurrent List—in other words, if cl. (2) is to be the guide in the determination of scope of cl. (1), the repugnancy between Union and State law must be taken to refer only to the Concurrent field. Art. 254(1) speaks of a State law being repugnant to (a) a law made by Parliament or (b) an existing law.

There was a controversy at one time as to whether the succeeding words “with respect to one of the matters enumerated in the Concurrent List” govern both (a) and

(b) or (b) alone. It is now settled that the words “with respect to” qualify both the clauses in Art. 254(1) viz. a law made by Parliament which Parliament is competent to enact as well as any provision of an existing law. The underlying principle is that the question of repugnancy arises only when both the Legislatures are competent to legislate in the same field i.e. with respect to one of the matters enumerated in the Concurrent List. Hence, Art. 254(1) can not apply unless both the Union and the State laws relate to a subject specified in the Concurrent List, and they occupy the same field.

This construction of ours is supported by the observations of Venkatarama Ayyar, J. speaking for the Court in A. S. Krishna’s case, supra, while dealing with s. 107(1) of the Government of India Act, 1935 to the effect:

“For this section to apply, two conditions must be fulfilled: (1) The provisions of the Provincial law and those of the Central legislation must both be in respect of a matter which is enumerated in the Concurrent List, and (2) they must be repugnant to each other. It is only when both these requirements are satisfied that the Provincial law will, to the extent of the repugnancy, become void.” In Ch. Tika Ramji’s case, supra, the Court observed that no question of repugnancy under Art. 254 of the Constitution could arise where parliamentary legislation and State legislation occupy different fields and deal with separate and distinct matters even though of a cognate and allied character and that where, as in that case, there was no inconsistency in the actual terms of the Acts enacted by Parliament and the State Legislature relatable to Entry 33 of List III, the test of repugnancy would be whether Parliament and State Legislature, in legislating on an entry in the Concurrent List, exercised their powers over the same

subject-matter or whether the laws enacted by Parliament were intended to be exhausted as to cover the entire field, and added:

“The pith and substance argument cannot be imported here for the simple reason that, when both the Centre as well as the State Legislatures were operating in the concurrent field, there was no question of any trespass upon the exclusive jurisdiction of the Centre under Entry 52 of List I, the only question which survived being whether put in both the pieces of legislation enacted by the Centre and the State Legislature, there was any such repugnancy.” This observation lends support to the view that in cases of overlapping between List II on the one hand and Lists I and III on the other, there is no question of repugnancy under Art. 254(1). Subba Rao, J. speaking for the Court in Deep Chand’s case, supra, interpreted Art. 254(1) in these terms:

“Art. 254(1) lays down a general rule. Clause (2) is an exception to that Article and the proviso qualified the said exception. If there is repugnancy between the law made by the State and that made by the Parliament with respect to one of the matters enumerated in the Concurrent List, the law made by Parliament shall prevail to the extent of the repugnancy and law made by the State shall, to the extent of such repugnancy, be void.” (at pages 179-183) (Emphasis Supplied)

46. In Vijay Kumar Sharma & Ors. Etc v. State Of Karnataka, (1990) 2 SCC 562, this Court held that the Karnataka Contract Carriages (Acquisition) Act, 1976 enacted under Entry 42 of List III was not repugnant to the Motor Vehicles Act, 1988 enacted under Entry 35 of the same List. In so holding, Sawant, J. laid down:

“32.Thus the Karnataka Act and the MV Act, 1988 deal with two different subject matters. As stated earlier the Karnataka Act is enacted by the State Legislature for acquisition of contract carriages under Entry 42 of the Concurrent List read with Article 31 of the Constitution to give effect to the provisions of Articles 39(b) and (c) thereof. The MV Act 1988 on the other hand is enacted by the Parliament under Entry 35 of the Concurrent List to regulate the operation of the motor vehicles. The objects and the subject matters of the two enactments are materially different. Hence the provisions of Article 254 do not come into play in the present case and hence there is no question of repugnancy between the two legislations.” (at page 581)

47. Ranganath Misra, J., in a concurring judgment, posed the question as to whether when the State law is under one head of legislation in the Concurrent List and the Parliamentary legislation is under another head in the same list, can there be repugnancy at all?

The question was answered thus:

“13. In cl. (1) of Art. 254 it has been clearly indicated that the competing legislations must be in respect of one of the matters enumerated in the Concurrent List. The seven Judge Bench examining the vires of the Karnataka Act did hold that the State Act was an Act for acquisition and came within Entry 42 of the Concurrent List. That position is not disputed before us. There is unanimity at the bar that the Motor Vehicles Act is a legislation coming within Entry 35 of the Concurrent List. Therefore, the Acquisition Act and the 1988 Act as such do not relate to one common head of legislation enumerated in the Concurrent List and the State Act and the parliamentary statute deal with different matters of legislation.” “19. A number of precedents have been cited at the hearing and those have been examined and even some which were not referred to at the bar. There is no clear authority in support of the stand of the petitioners — where the State law is under one head of legislation in the Concurrent List, the subsequent Parliamentary legislation is under another head of legislation in the same list and in the working of the two it is said to give rise to a question of repugnancy.” (at pages 575 and 577)”

- **Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes & Customs, (2023) 1 SCC 472, the following paras were relied on:**

“40. From the above, it is to be noted that the Customs Act and the IBC act in their own spheres. In case of any conflict, the IBC overrides the Customs Act. In present context, this Court has to ascertain as to whether there is a conflict in the operation of two different statutes in the given circumstances. As the first effort, this Court is mandated to harmoniously read the two legislations, unless this Court finds a clear conflict in its operation. 41. At the cost of repetition, we may note that the demand notices issued by the respondent are plainly in the teeth of Section 14 of the IBC as they were issued after the initiation of the CIRP proceedings. Moratorium under Section 14 of the IBC was imposed when insolvency proceedings were initiated on 01.08.2017. The first notice sent by the respondent authority was on 29.03.2019. Further, when insolvency resolution failed and the liquidation process began, the NCLT passed an order on 25.04.2019 imposing moratorium under Section 33(5) of the IBC. It is only after this order that the respondent issued a notice under Section 72 of the Customs Act against the Corporate Debtor. The various demand notices have therefore clearly been issued by the respondent after the initiation of the insolvency proceedings, with some notices issued even after the liquidation

moratorium was imposed. 42. We are of the clear opinion that the demand notices to seek enforcement of custom dues during the moratorium period would clearly violate the provisions of Sections 14 or 33(5) of the IBC, as the case may be. This is because the demand notices are an initiation of legal proceedings against the Corporate Debtor. However, the above analysis would not be complete unless this Court examines the extent of powers which the respondent authority can exercise during the moratorium period under the IBC. 43. In the above context, the judgment of this Court in S.V. Kondaskar v. V.M. Deshpande, AIR 1972 SC 878, is extremely relevant. In that case, this Court, while expounding the interplay of Section 446 of the Companies Act 1956 (bankruptcy provision) with the Income Tax Act, 1961, held as follows:

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“7. ...Looking at the legislative history and the scheme of the Indian Companies Act, particularly the language of Section 446, read as a whole, it appears to us that the expression “other legal proceeding” in sub-section (1) and the expression “legal proceeding” in sub-section (2) convey the same sense and the proceedings in both the subsections must be such as can appropriately be dealt with by the winding up court. The Income Tax Act is, in our opinion, a complete code and it is particularly so with respect to the assessment and reassessment of income tax with which alone we are concerned in the present case. The fact that after the amount of tax payable by an assessee has been determined or quantified its realisation from a company in liquidation is governed by the Act because the income tax payable also being a debt has to rank pari passu with other debts due from the company does not mean that the assessment proceedings for computing the amount of tax must be held to be such other legal proceedings as can only be started or continued with the leave of the liquidation court under Section 446 of the Act. The liquidation court, in our opinion, cannot perform the functions of Income Tax Officers while assessing the amount of tax payable by the assessee even if the assessee be the company which is being wound up by the Court. The orders made by the Income Tax Officer in the course of assessment or reassessment proceedings are subject to appeal to the higher hierarchy under the Income Tax Act. There are also provisions for reference to the High Court and for appeals from the decisions of the High Court to the Supreme Court and then there are provisions for revision by the Commissioner of Income Tax. It would lead to anomalous consequences if the winding up court were to be held empowered to transfer the assessment proceedings to itself and assess the company to income tax. The argument on behalf of the appellant by Shri Desai is that the winding up court is empowered in its discretion to decline to transfer the assessment proceedings in a given case but the power on the plain language of Section 446 of the Act must be held to vest in that court to be exercised only if considered expedient. We are not impressed by this argument. The language of Section 446 must be so construed as to eliminate such startling consequences as investing the winding up court with the powers of an Income Tax Officer conferred on him by the Income

Tax Act, because in our view the legislature could not have intended such a result.

8. The argument that the proceedings for assessment or reassessment of a company which is being wound up can only be started or continued with the leave of the liquidation court is also, on the scheme both of the Act and of the Income Tax Act, unacceptable. We have not been shown any principle on which the liquidation court should be vested with the power to stop assessment proceedings for determining the amount of tax payable by the company which is being wound up. The liquidation court would have full power to scrutinise the claim of the revenue after income tax has been determined and its payment demanded from the liquidator. It would be open to the liquidation court then to decide how far under the law the amount of income tax determined by the Department should be accepted as a lawful liability on the funds of the company in liquidation. At that stage the winding up court can fully safeguard the interests of the company and its creditors under the Act. Incidentally, it may be pointed out that at the Bar no English decision was brought to our notice under which the assessment proceedings were held to be controlled by the winding up court. On the view that we have taken, the decisions in the case of Seth Spinning Mills Ltd., (In Liquidation) (1962) 46 ITR 193 (Punj) (Supra) and the Mysore Spun Silk Mills Ltd., (In Liquidation) (1968) 68 ITR 295 (Mys) (supra) do not seem to lay down the correct rule of law that the Income Tax Officers must obtain leave of the winding up court for commencing or continuing assessment or reassessment proceedings.” IBC Laws®/ www.ibclaw.in 44. Therefore, this Court held that the authorities can only take steps to determine the tax, interest, fines or any penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium. We are of the opinion that the above ratio squarely applies to the interplay between the IBC and the Customs Act in this context.”

However, the Ld. Sr. Advocates for the respondents 1 to 3 and 4th & 6th, in *chorus*, have strongly refuted the above contention of the applicant that the I & B Code, has overriding effect over the provisions of the Recovery Act and that Section 238 of the I

& B Code, being a *non-obstante* clause has the effect of rendering a statute ineffective in the event of any *repugnancy*.

According to the Ld. Sr. Advocates, Hon'ble Supreme Court of India, in *catena* of its Judgments held that a *non-obstante* clause is generally incorporated in a statute to give overriding effect to a section or a statute in general. However, while interpreting *non-obstante* clause, it is deemed necessary to see the intention of the legislature to have such a clause in the statute and the context in which the non obstante clause shall be used.

In this regard Ld. Sr. Advocate relied on the ruling in State of West Bengal v. Union of India [1964] 1 SCR 371, wherein it was observed that:

“the Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs.”

49. Ld. Sr. Advocate also relied on *Municipal Corporation of Delhi v. Pramod Kumar Gupta*, 1991 AIR 401 : 1990 SCR Suppl. (3) 547, wherein it was held that,

“The expression 'instrument of sale of immovable property' under section 147 of the Municipal Corporation Act, 1957 means a document effecting transfer. The title to the property in question has to be conveyed under the document. The document has to be a vehicle for the transfer of the right, title and interest, A document merely stating as a fact that transfer has already taken place cannot be included within this expression.”

As regards the reliance placed by the applicant in the case of *Sundaresh Bhatt, supra*, Ld. Sr. Advocates, contend that the same is diversely distinguishable on the facts and circumstances of the present case. According to the Ld. Sr. Advocate, the proceedings initiated therein under the Customs Act has been initiated after the initiation of the CIRP proceedings and the point which fell for consideration thereunder is that notices have not been issued by the Customs authority against the corporate debtor with respect to the warehoused goods *prior* to the initiation of the CIRP and all the duty demand notices were issued after initiation of the CIRP. In the light of the context

referred above the Hon'ble Supreme court called upon to ascertain whether the IBC overrides the customs Act or *Vice Versa*.

Ld. Sr. Advocate, also contended that the present case, by virtue of the default committed by the corporate debtor, the dues/ arrears which were due from the years 2012-13 season to the sugarcane farmers are bound to be recovered in terms Statutorily created charge on the 'State' for recovery and distribution of dues/ arrears pending to the Sugarcane farmers/growers, under Section 19 read with Rule 39-B of the Sugarcane Act, the District Collector is obligated to recover the arrears of the Cane supplied by the sugarcane farmers and to settle such dues on priority basis under the Sugarcane Act and the same will have precedence over all other charges on the property including mortgages.

As regards the charge over the assets of the corporate debtor for recovery of the dues of the sugarcane suppliers, Ld, Sr. Advocate also relied on the following rulings ;

State of M.P. v. State Bank of Indore, (2002) 10 SCC 441,

wherein the Hon'ble Supreme Court held that:

“even if there is first charge in favour of the bank, the same will not adversely affect the statutory first charge of the State. Accordingly, refused to interfere with the proposed sale of the mortgaged properties.”

- Central Bank of India v. State of Kerala and Others, judgement dated 27.02.2019 of the Hon'ble Supreme Court of India in C.A. No.2811 of 2006 and other CAs [arising out of S.L.P.(C) No. 24767 of 2005], wherein it was held that:

“Statutory first charge created in favour of the State under Section 26B of the Kerala Act has primacy over the right of the bank to recover its dues and further held that the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 [Hereinafter referred to as "DRT Act"] and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002[Hereinafter referred to as ..Securitization Act"] do not create first charge in favour of banks, financial institutions and other secured creditors and the provisions contained in Section 38C of the Bombay Act and Section 26B of the Kerala Act are not inconsistent with the provisions of the ORT Act and Securitization Act so as to attract non obstante clauses contained in Section 34(1) of the ORT Act or Section 35 of the Securitization Act. As such, the statutorily created charge created on the State cannot be termed as inconsistent.”

Ld. Sr. Advocate submits that, Section 14 of the I&B Code, 2016, which prescribes moratorium aims to keep the assets of the

corporate debtor together during the insolvency resolution process and smooth completion of the process as envisaged under the statute and to see that no parallel proceedings are undertaken and to reduce the possibility of conflicting outcomes in the process. According to the learned Advocate initiation of sale process under the Andhra Pradesh Revenue Recovery Act, 1864 does not come in conflict with the I&B Code, 2016 since, the respondents 1 to 3 herein are duty bound under the Statute to realize the dues/arrears pending to the poor farmers and it cannot be denoted as parallel proceedings inasmuch as the said process was initiated much prior to the commencement of the CIRP, in the year 2021 and only after issuance of public notices and public auction was finally conducted on 09.02.2022 by duly following due procedure.

According to the Ld. Sr. Advocate, the Resolution Professional ought to have taken recourse under the public law remedies instead of filing the present application before this Tribunal and the same is nothing but taking a bypass for the enforcement of a

right by taking advantage of Section 60(5) of the I&B Code when right has to be exercised in the judicial or quasi judicial proceedings.

In this context Ld. Sr. Advocate placed reliance on Embassy Property Developments Pvt Ltd Vs. State of Karnataka and others, Civil Appeal No.9170 of 2019 and other appeals, wherein Hon'ble Supreme Court of India has held that:

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

As regards the reliance placed on the ruling in Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited & Ors., (2021) 9 SCC 657, learned Sr. Counsel contended that:

The facts, circumstances and the question of law in the referred case are not similar to the present case, as the issue before the Hon'ble Supreme Court is pertaining to the scope and ambit of the Section 31 of the Code and the Hon'ble Supreme Court held that, "once a resolution plan is duly

approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue and proceedings in respect to a claim, which is not part of the resolution plan.

Clearly, the facts of the present case are not similar to the referred case, therefore, the referred case law ought not to be relied.

On *Innoventive Industries Limited v. ICICI Bank & Anr.*, (2018) 1 sec 407, learned Sr. Counsel contended that:

The facts, circumstances and the question of law in the referred case are not similar to the present case, as the issue before the Hon'ble Supreme Court is pertaining to repugnancy under Article 254 of the Constitution, where a state legislation i.e., *Maharashtra Reliefs Undertaking (Special Provisions) Act, 1958*, which is enacted by the State Legislature of Maharashtra on subject of

"Bankruptcy" which is entry 9 in List-III, concurrent list, and the provisions are inconsistent of the provisions of the Code. Therefore, the Hon'ble Supreme Court held that:

"It is clear that the later non-obstante clause of the Parliamentary enactment will also prevail over the limited non-obstante clause contained in Section 4 of the Maharashtra Act. For these reasons, we are of the view that the Maharashtra Act cannot stand in the way of the corporate insolvency resolution process under the Code."

Clearly, the facts of the present case are not similar to the referred case, therefore, the referred case law ought not to be relied. There is no conflict between the provisions of the Code and the Andhra Pradesh Revenue Recovery Act, 1864 and as such there are no inconsistencies between the legislations, and also both the legislations are not acting in the same sphere to attract repugnancy as contemplated in Article 254 of the Constitution. Further, it is the case of the respondents that the process of sale as per the provisions of Andhra Pradesh Revenue Recovery Act, 1864, have been completed on the

date of sale by auction i.e., 09th February 2022 as per Section 36(1) of the Andhra Pradesh Revenue Recovery Act, 1864, which is prior to the Insolvency Commencement Date.

On the ruling in re., Principal Commissioner of Income Tax v. Monnet Ispat and Energy Limited, (2018) 18 sec 786, learned Sr. Counsel contended that:

The facts, circumstances and the question of law in the reference case are not similar to the present case, as the issue before the Hon'ble Supreme Court is pertaining to an appeal from the dismissal of Income Tax Appeal preferred by the Income Tax Department post initiation of CIRP before the Hon'ble High Court of Delhi and as such the Hon'ble Supreme Court held that "Given Section 238 of the Insolvency and Bankruptcy Code, 2016, it is obvious that the Code will override anything inconsistent contained in any other enactment, including the Income-Tax Act.

Clearly, the facts of the present case are not similar to the referred case, therefore, the referred case law ought not to be relied. There is no conflict between the provisions of the Code and the Andhra Pradesh Revenue Recovery Act, 1864 and it is the case of the Respondents that the process of the sale as per the

provisions of the Andhra Pradesh Revenue Recovery Act, 1864, have been completed on the date of sale by auction i.e., 09th February 2022 as per Section 36(1) of the Andhra Pradesh Revenue Recovery Act, 1864, which is prior to the Insolvency Commencement Date.

On the ruling in re. Sundaresh Bhatt, Liquidator of ABG Shipyard vs. Central Board of Indirect Taxes and Customs, (2023) 1 sec 472, learned Sr. Counsel submits that:

The facts, circumstances and the question of law in the referred case are not similar to the present case, as the issue before the Hon'ble Supreme Court is pertaining to warehoused goods belonging to the Corporate Debtor, which is under liquidation, are sought to be sold by the Customs Authorities in lieu of custom dues. The Hon'ble Supreme Court observed that the Customs Authorities for the first

time issued notices to the Corporate Debtor regarding non-fulfilment of export obligations in terms of the EPCG license demanding customs duty of Rs. 17,13,989/- with interest, whereas the Insolvency Commencement Date was 01 August 2017. Therefore, the Hon'ble Supreme Court held that,

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

Clearly, the facts of the present case are not similar to the referred case, therefore, the referred case law ought not to be relied. It is pertinent to mention that the process of the sale as per the provisions of the Andhra Pradesh Revenue Recovery Act, 1864, have been completed on the date of sale by auction i.e., 09th February 2022 as per Section 36(1) of the Andhra Pradesh Revenue Recovery Act, 1864,

which is prior to the Insolvency Commencement Date.

On *Duncans Industries Limited vs. A J Agrochem*, (2019) 9 SCC 725, relied on by the applicant, learned Sr. Counsel contends that:

The facts, circumstances and the question of law in the referred case are not similar to the present case, as the issue before the Hon'ble Supreme Court is Whether before initiation of the proceedings under Section 9 of the IBC, a prior consent of the Central Government as provided under Section 16G(1)(c) of the Tea Act is required or not and/or in absence of any such consent of the Central Government, the proceedings under Section 9 of the IBC shall be maintainable or not. The Supreme Court held that,

"The sum and substance of the above discussion would be that the provisions of the IBC would have an over-riding effect over the Tea Act, 1953 and that no prior consent of the Central Government before initiation of the proceedings under Section 7 or Section 9 of the IBC would be required and even without such consent of the Central Govt, the insolvency proceedings under Section 7 or Section 9

of the IBC initiated by the Operational creditor shall be maintainable."

Clearly, the facts of the present case are not similar to the referred case, therefore, the referred case law ought not to be relied. There is no conflict between the provisions of the Code and the Andhra Pradesh Revenue Recovery Act, 1864 and it is the case of the Respondents that the process of the sale as per the provisions of the Andhra Pradesh Revenue Recovery Act, 1864, have been completed on the date of sale by auction i.e., 09th February 2022 as per Section 36(1) of the Andhra Pradesh Revenue Recovery Act, 1864, which is prior to the Insolvency Commencement Date.

On *Paschimanchal Vidyut Vitran Nigam v. Raman Ispat Pvt. Ltd.*, (2023). *SCC OnLine* 842, relied on by the applicant, learned Sr. Counsel contends that:

The facts, circumstances and the question of law in the referred case are not similar to the present case, as the issue before the Hon'ble Supreme Court is priority of the stakeholders and the treatment during the liquidation process. Clearly, the facts of the present case are not similar to the referred case, therefore, the referred case law ought not to be relied.

(vii) Anand Rao Korada v. Varsha Fabrics Pvt. Ltd., (2020) 14 SCC 198.

The facts, circumstances and the question of law in the referred case are not similar to the present case, as the issue before the Hon'ble Supreme Court is that the proceedings before Hon'ble High Court were proceeded to conduct auction of assets of Corporate Debtor post initiation of CIRP and Hon'ble Supreme Court held that:

“9. Section 238 gives an overriding effect to the IBC over all other laws. The provisions of the IBC vest exclusive jurisdiction on the NCLT and the NCLAT to deal with all issues pertaining to the insolvency process of a corporate debtor, and the mode and manner of disposal of its assets. Section 238 reads as follows :

“238. Provisions of this Code to override other laws. – The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

10. Section 231 of the IBC bars the jurisdiction of civil courts in respect of any matter in which the Adjudicating Authority i.e. the NCLT or the NCLAT is empowered by the Code to pass any Order. Section 231 is set out hereinbelow for ready reference :

“231. Bar of jurisdiction. – No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority or the Board is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority or the Board under this Code.”

11. In view of the provisions of the IBC, the High Court ought not to have proceeded with the auction of the property of the Corporate Debtor – Respondent No. 4 herein, once the proceedings under the IBC had commenced, and an Order declaring moratorium was passed by the NCLT. The High Court passed the impugned Interim Orders dated 14.08.2019 and 05.09.2019 after the CIRP had commenced in this case.

12. The moratorium having been declared by the NCLT on 04.06.2019, the High Court was not justified in passing the Orders dated 14.08.2019 and 05.09.2019 for carrying out auction of the assets of the Respondent No. 4– Company i.e. the Corporate Debtor before the NCLT. The subject matter of the auction proceedings before the High Court is a vast chunk of land admeasuring about 330 acres, including Railway lines and buildings.

13. If the assets of the Respondent No. 4 – Company are alienated during the pendency of the proceedings under the IBC, it will seriously jeopardise the interest of all the stakeholders. As a consequence, we set aside the impugned Interim Orders dated 14.08.2019 and 05.09.2019 passed by the Odisha High Court, as parallel proceedings with respect to the main issue cannot take place in the High Court. The sale or liquidation of the assets of Respondent No. 4 will now be governed by the provisions of the IBC.”

50. Clearly, the facts of the present case are not similar to the referred case, therefore, the referred case law ought not to be relied. Moreover, the facts in the instant case are that the process of the sale as per the provisions of the Andhra Pradesh Revenue Recovery Act, 1864, have been completed on the date of sale by auction i.e., 09th February 2022 as per Section 36(1) of the Andhra Pradesh Revenue Recovery Act, 1864, which is prior to the Insolvency Commencement Date.

On *Gupta Metallics & Power Limited v. Government of Andhra Pradesh & Anr.*, (2022) 1 ALT 625, learned Sr. Counsel contends that:

The facts, circumstances and the question of law in the referred case are not similar to the present case, as the issue before the Hon'ble High Court of Telangana is that the auction sale was conducted on 10.01.2003 in which Gupta Metallics emerged as the

highest bidder in respect of land admeasuring Ac.13-50 located at Sy. Nos. 58 and 59 of Ganganpahad village of Rajendranagar Mandal in Ranga Reddy District for a total sale consideration of Rs. 4,11,75,000-00. Gupta Metallics deposited 15% of the aforesaid amount i.e. Rs. 61,80,000-00 on 10.01.2003. 99. BIFR in Case No. 70 / 1989 passed an order on 16.01.2003. It was noted that Vinedale Distilleries was declared as sick industrial company under Section 3(1)(0) of the 1985 Act on 10.12.1989. Thereafter a scheme for rehabilitation of Vinedale Distilleries was sanctioned by BIFR on 24.09.1991. While the scheme was declared failed on 23.02.2001, BIFR had appointed Industrial Development Bank of India (IDBI) as the Operating Agency under Section 17(3) of the 1985 Act. When steps for change in the management of Vinedale Distilleries were under consideration, the auction sale was held on 10.01.2003,

which was in violation of Section 22(1) of the 1985 Act, having overriding effect over other laws. It was held that provisions of the 1985 Act would take precedence over the Revenue Recovery Act; recovery proceedings could not have been initiated without the approval of the BIFR. It is in such circumstances that BIFR directed stay of execution of the sale of the land. This order was challenged by the State before this Court by filing W.P. No.2139 of 2003. This Court passed an order on 06.02.2003 directing the State that any confirmation of sale would be subject to further orders of the Court. Thus, it is evident that this Court did not stay the auction sale proceedings. It had only made it clear that any confirmation of sale would be subject to further orders of the Court. Therefore, there was no impediment for Gupta Metallics to deposit the balance

85% of the sale amount. It appears that Dena Bank had taken over possession of the assets of Vinedale Distilleries under Section 13(4) of the SARFAESI Act. In the circumstances BIFR passed an order on 10.04.2006 holding that BIFR could not proceed further in the matter and therefore the reference pending before it stood abated in terms of the third proviso to Section 15(1) of the 1985 Act, as amended. In view of the aforesaid development, W.P. No. 2139 of 2003 was withdrawn by the State on 08.09.2011. Therefore, the High Court held that,

“Commissioner of Commercial Taxes Department, Telangana, shall take a decision as to whether 15% of the sale price deposited by Gupta Metallics on 10.01.2003 is liable to be forfeited or not?”

Clearly, the facts of the present case are not similar to the referred case, therefore, the referred case law ought not to be relied. Moreover, the facts in the instant case are that the process of the sale as per the provisions of the Andhra Pradesh Revenue Recovery Act, 1864,

have been completed on the date of sale by auction i.e., 09th February 2022 as per Section 36(1) of the Andhra Pradesh Revenue Recovery Act, 1864, which is prior to the Insolvency Commencement Date.

Our findings

51. We have carefully considered the rival contentions in light of the case law referred above and in the backdrop of the facts of this case and found complete answer to the subject issue, in the ruling of the Hon'ble Supreme Court, in *Innoventive Industries Limited Vs. ICICI Bank & another (supra)*, wherein their Lordships of the Hon'ble Supreme Court of India, after having exhaustively considered the case law on the present issue, in paras 58, 59 and 60 held as below:

“58. There can be no doubt, therefore, that the Code is a Parliamentary law that is an exhaustive code on the subject matter of insolvency in relation to corporate entities, and is made under Entry 9, List III in the Seventh Schedule which reads as under:

“9. Bankruptcy and insolvency”

“59. On reading its provisions, the moment initiation of the corporate insolvency resolution process takes place, a moratorium is announced by the adjudicating authority vide Sections 13 and 14 of the Code, by which institution of suits and pending proceedings etc. cannot be proceeded with. This continues until the approval of a resolution plan under Section 31 of the said Code. In the interim, an interim resolution professional is appointed under Section 16 to manage the affairs of corporate debtors under Section 17.”

“60. It is clear, therefore, that the earlier State law is repugnant to the later Parliamentary enactment as under the said State law, the State Government may take over the management of the relief undertaking, after which a temporary moratorium in much the same manner as that contained in Sections 13 and 14 of the Code takes place under Section 4 of the Maharashtra Act. There is no doubt that by giving effect to the State law, the aforesaid plan or scheme which may be adopted under the Parliamentary statute will directly be hindered and/or obstructed to that extent in that the management of the relief undertaking, which, if taken over by the State Government, would directly impede or come in the way of the taking over of the management of the corporate body by the interim resolution professional. Also, the moratorium imposed under Section 4 of the Maharashtra Act would directly clash with the moratorium to be issued under Sections 13 and 14 of the Code. It will be noticed that whereas the moratorium imposed under the Maharashtra Act is discretionary and may relate to one or more of the matters contained in Section 4(1), the moratorium imposed under the Code relates to all matters listed in Section 14 and follows as a matter of course. In the present case it is clear, therefore, that unless the Maharashtra Act is out of the way, the Parliamentary enactment will be hindered and obstructed in such a manner that it will not be possible to go ahead with the insolvency resolution process outlined in the Code. Further, the non-obstante clause contained in Section 4 of the Maharashtra Act cannot possibly be held to apply to the Central enactment, inasmuch as a matter of constitutional law, the later Central enactment being repugnant to the earlier State enactment by virtue of Article 254 (1), would operate to render the Maharashtra Act void vis-à-vis action taken under the later Central enactment. Also, Section 238 of the Code reads as under:

“Sec. 238. Provisions of this Code to override other laws.-

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

It is clear that the later non-obstante clause of the Parliamentary enactment will also prevail over the limited non-obstante clause contained in Section 4 of the Maharashtra Act. For these reasons, we are of the view that the Maharashtra Act cannot stand in the way of the corporate insolvency resolution process under the Code.”

Therefore, there can be no ambiguity or controversy in saying that the provisions of the IBC override the provisions of the State enacted law, such as, Andhra Pradesh Revenue Recovery Act, 1864.

Point is answered accordingly.

52. Before, we conclude, we wish to state that, merely because, the impugned sale is for *realisation* of the arrears of the amount due and payable by the corporate debtor to the suppliers of sugarcane, who are farmers and were reportedly agitating, by resorting to Dharanas and Rasta Roko's, which allegedly resulted in Law & Order problem, the same ***cannot be the justification***, for bypassing/ violating the order of moratorium under Section 14 of the I&B Code. Needless to reiterate that, moratorium under section 14 of I&B Code operates as a legal 'embargo' on sale or alienation of the assets of the corporate debtor in terms of section 14 of the I&B Code during the CIRP

of the corporate debtor not only on the financial creditor but also on any person.

Hon'ble NCLAT, in Indian Overseas Bank V/s. Dinakar T. Venkatsubramaniam Resolution Professional for Ambtek Auto Ltd.' Company Appeal (AT) No. 267 of 2017 held that,

*“... 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”. (Emphasis is Ours) .*

The 1st respondent, despite being repeatedly informed and even persuaded by the applicant not to proceed further with the impugned sale process, as the moratorium ordered by this Tribunal is in force, went ahead, completed the sale and even distributed a sizeable part of the sale proceeds not only to the farmers but also to various 'others' even though none of them are even entitled to be paid in the manner in which the 1st respondent has done, and thus, not only made the statutory process under IB Code a 'mockery; but also *jeopardized* the entire 'due distribution of the assets of the corporate debtor' among the stake holder as envisaged under I&B Code.

53. Therefore, in the light of our discussion and the case law referred above, we are of the firm view that, the impugned sale of the property of the corporate debtor, which is undergoing CIRP, pursuant to the public auction held on 09.02.2022 under the provisions of AP Revenue Recovery Act, is ***unsustainable, unenforceable besides null and void***, hence the same is liable to be annulled. Accordingly, **we hereby annul the said sale**, the sale certificate dated 03.12.2022 issued in favour of the 6th respondent, the sale deed dated registered in favor of the 4th& 6th respondents as document number No.8512 of 2022 dated 03.12.2022 and also the proclamation of sale dated December 4, 2022 published by respondents 1 to 3.

We further direct the 4th and 6th respondents to deliver the physical possession of the property covered under the sale certificate dated 03/12/2022 to the applicant resolution professional, within 10 days from the date of receipt of this Order. The respondents 1 to 3 shall ensure smooth delivery of the subject property to the applicant and in default the applicant is

at liberty to approach this Tribunal for necessary directions in this regard.

This application therefore, is allowed as follows:

(1) The sale of the immovable property of the belonging to the Corporate Debtor held on 09.02.2022, pursuant to the public auction under the provisions of AP Revenue Recovery Act, is hereby declared as unsustainable and unenforceable under law, besides as *null and void*, hence the same is hereby annulled.

(2). As a *sequel* to our above finding , we hereby *set aside* the,

(i) Sale certificate dated December 3, 2022 issued by the 1st respondent in favor of the respondents 4 and 6.

(ii) Sale deed bearing Regd. No.8512 of 2022, executed by and between the respondents 1, 4 and 6, in respect of the immovable property of the Corporate Debtor covered under the sale certificate.

(iii) Proclamation of sale dated December 4, 2022 published by respondents, 1 to 3

(3) We further, direct the 4th & 6th respondents to deliver the physical possession of the property covered under the sale certificate dated 03/12/2022 issued by 1st respondent to the applicant resolution professional within 10 days from the date of receipt this Order.

(4) We also direct that the respondents 1 to 3 shall ensure smooth delivery of the subject property to the applicant, and in default the applicant is at liberty to approach this Tribunal for necessary directions in this regard.

(5) There shall be no order as to costs.

In the result this IA is allowed. No costs.

Sd/-

CHARAN SINGH
MEMBER (TECHNICAL)

Sd/-

DR.VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)

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