

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
Court - 2**

IA/332(AHM)2021 in CP(IB) 53 of 2017

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL  
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON 05.05.2021**

Name of the Company:

Sundaresh Bhat  
Liquidator of ABG Shipyard Ltd.

V/s  
Shashi Shekhar Singh

Section 60(5) r.w 33(5),233 & 238 IBC.

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

**ORDER**  
**(through video conferencing)**

Mr. Monaal Davawala, Advocate appeared on behalf of Applicant.

1. The instant application is filed by the Applicant/Liquidator of C.P.(I.B) 53/2017 with a prayer;  
For setting aside the assessment order dated 31.03.2021 passed by the Respondent under Section 201(1)/201(1A) of Income Tax Act, 1961 and, appropriate direction may be given to the Respondent from taking any coercive action against the Corporate Debtor or the Applicant toward the recovery of outstanding tax demand aggregating to Rs. 5,54,63,162/- as per the assessment order, apart from other prayers.
2. The Applicant is at present pressing for certain ad interim relief i.e. pending admission and final hearing of this Applicant some restrain order may be passed upon the Respondent from taking any coercive action in view of the order dated 31.03.2021.

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3. On filing of instant application, the Applicant has issued a notice to the Respondent i.e. Income Tax Department, Ward 1(1)(2), Mumbai, Maharashtra, however, none appeared.
4. It is a matter of record that, since no resolution plan was approved by the COC, the COC decided to initiate the process of liquidation of the Corporate Debtor in terms of Section 33 of the IB Code and accordingly vide order dated 25.04.2019, this Adjudicating Authority passed an order for liquidation of the Corporate Debtor Company. During the period of liquidation, the Applicant received a claim of Rs. 828,86,00,000/- from the Deputy Commissioner of Income Tax, Central Circle 1(2), Mumbai which has been verified and admitted by the Applicant.
5. The Applicant further submitted that after 20 months of the commencement of liquidation, the Respondent initiated the proceeding under Section 201 r.w. Section 133(6) of the Income Tax Act 1961 vide notice dated 06.01.2021 along with the reminder dated 18.01.2021 and 01.02.2021 seeking information with regard to the failure to deduct tax at source amounting to Rs. 2,73,21,755/- under Section 195 of the Income Tax Act, 1961 for a transaction entered into in F.Y. 2012-13 (AY 2013-14). On receipt of notice, the Applicant replied to the Respondent vide its letter dated 12.02.2021 informing inter alia the legal provision of the Code, inter alia Section 33(5) and Section 238 of the Code and further requested the Respondent not to continue the proceeding against the Corporate Debtor. However, disregarding the letter of the Applicant dated 12.02.2021, the Respondent issued show cause notice on 26.03.2021 in terms of Section 201 of the Income Tax Act, 1961, wherein it is mentioned that on perusal of Form No. 3CD (Tax Audit report) for F.Y. 2012-13 relevant to A.Y. 2013-14, it is seen that tax deducted at source amounting to Rs. 2,73,21,755/- under Section 195 of the IT Act has not been deposited with the Government Treasury along with instructions to the Applicant to personally respond to the same in capacity as the Liquidator of the Corporate Debtor.
6. It is further submitted that the Applicant has already informed the Respondent explaining the fact that claim of Rs. 828,86,00,000/- has already been received from Income Tax Department through DCIT, Central Circle 1(2) which stood admitted. Even after giving such detailed information, the Respondent proceeded with the assessment and considered the Corporate Debtor as assessee in default and has passed an order dated 31.03.2021 under Section 201 and 201(1A) of the Income Tax Act, thereby claiming an amount of Rs. 5,54,63,162/- which

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comprises of a tax demand of Rs. 2,73,21,705/- for not depositing TDS under Section 195 of the Income Tax Act, 1961 along with interest of Rs. 2,81,41,407/- under Section 201(1A) of Income Tax Act, 1961 (collectively "Assessment Amount") and has also initiated penalty proceeding under Section 271(1)(c) of the Income Tax Act, 1961, which is in violation of the Code.

7. It is further submitted that there is every likelihood that the Respondent can take coercive step against the Liquidator or the Corporate Debtor. In that event, it will cause prejudice to the Liquidator in completing the process of liquidation.
8. Heard the arguments of the Applicant and gone through the records and documents.
9. None appeared on behalf of Respondent, however, on perusal of the record it is found that there is/are prima-facie case and there is every likelihood that Respondent may take some coercive action in view of the letter issued on 31.03.2021 by the Respondent, which will cause prejudice to the Liquidator in completing the Liquidation process that apart in view of prevailing situation of COVID 19, the matters are also not heard extensively, save and except the urgent matters. In view of that, at present the only relief is pressed by the Applicant is restraining the Respondent from taking any coercive action, as such, looking to the situation and facts and circumstances, this bench passes an order restraining the Respondent from taking any coercive action in view of the order passed on 31.03.2021 by the Respondent.
10. Meanwhile, the Registry as well as the Applicant is directed to issue notice to the Respondent. The Respondent is at liberty to file their reply within 2 weeks by serving advance copy to the other side.

List the matter on 14.06.2021

  
**CHOCKALINGAM THIRUNAVUKKARASU**  
**MEMBER TECHNICAL**

Dated this the 05th day of May, 2021

  
**MANORAMA KUMARI**  
**MEMBER JUDICIAL**