

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
(ORIGINAL SIDE)**

Present:  
**The Hon'ble Justice Rai Chattopadhyay**

**WPO 2435 of 2022**

**Mamta Binani & Anr.  
Vs.  
Kolkata Municipal Corporation & Ors.**

**For the Petitioners** : Mr. Arindam Banerjee  
: Md. Danish Taslim

**For the KMC** : Mr. Biswajit Mukherjee  
: Mr. Gopal Chandra Das  
: Ms. Manisha Nath

**Judgment on** : **16.02.2026**

**Rai Chattopadhyay, J. :-**

1. Subject matter of the instant writ petition is the proposed revaluation of the property and the amount of commensurate outstanding tax claimed by the respondent/KMC for a period prior to the purchase of the property by the writ petitioners, with respect to the office space measuring 3430 Sq. Ft. on the 2nd floor of the building being premises No. 1B and 2, Hare Street, Kolkata-700001, together with the two car parking spaces therein, which the petitioners have purchased by executing a deed of conveyance on September 26, 2019, for a consideration of Rs. 2,54,63,500/-. The present matter requires determination of issues that whether the respondent/Kolkata Municipal Corporation can retrospectively revalue property and levy tax for periods prior to purchase; whether municipal dues survive liquidation under the Insolvency and Bankruptcy Code, 2016 (IBC); and whether an auction purchaser can be saddled with past statutory dues.
2. According to the notice dated July 28, 2022, under sections 184 read with section 185 of the Kolkata Municipal Corporation Act, 1980, for the purpose of determination of annual valuation related to assessment of property tax, the respondent Corporation has intended to make the revaluation of the property effective for the following periods:
  - i. 1st Quarter 2005-2006

- ii. 1st Quarter 2008-2009
- iii. 3rd Quarter 2009-2010
- iv. 4th Quarter 2010-2011
- v. 2nd Quarter 2012-2013
- vi. 1st Quarter 2013-2014
- vii. 2nd Quarter 2015-2016
- viii. 4th Quarter 2016-2017
- ix. 1st Quarter 2017-2018

The percentage of the petitioners' pro rata liability to the extent of 2.65 % was also mentioned in the said letter.

- 4. The petitioners say that considering the background facts of the instant case, the respondent KMC authority is the operational creditor of the private respondent company, which is in liquidation. That, the amount payable if any, to the operational creditors, in case of liquidation of the company, shall be paid in accordance with section 53 of the Insolvency and Bankruptcy Code, 2016, and Regulations made amongst all the operational creditors, whose claims have been filed and duly admitted by the liquidator. They say, also similarly if any valuation/revaluation are proposed for the period prior to the date of purchase by the petitioners, that is September 26, 2019, the same would lie only before the private respondent company and not before the present petitioners.
- 5. Therefore, by challenging the impugned notices as mentioned above, the instant writ petition has been filed by the petitioners with the prayers inter alia that, the notice dated July 28, 2022 (being Annexure P4 in the writ petition) may be set aside and the said respondent should act in accordance with law so far as re-valuation of the property purchased by the petitioners on September 26, 2019 and imposition of tax thereon, is concerned. Subsequently assessment of property tax has also been made by the respondent and challenged by the petitioner by filing supplementary affidavit here. Assessment for the latest period in terms of the revised valuation has been challenged too in this writ petition. Let the factual background be narrated in a nutshell for benefit of discussion, which is as follows:-
- 6. The National Company Law Tribunal, Kolkata Bench (in short "NCLT, Kolkata Bench") vide order dated October 17, 2018, in Company Petition No. 03/KB/2017 (Re- Nicco Corporation Limited) directed liquidation of the said company in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (in short "IBC 2016"). Learned Liquidator was appointed and liquidation proceeding commenced. Part of the premises No.

1B and 2, Hare Street, Kolkata- 700001 to the extent owned by Nicco Corporation Limited became a part of the liquidation estate of the company in liquidation. Accordingly, the liquidator issued invitation for Expressions of Interest (EOI dated January 10, 2019), for sale of premises namely, "Nicco House", on the basis of the reserved price determined in accordance with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 through wide publication. In response to the EOI, a bid was submitted by the consortium consisted of 10 members including the present petitioners in the E-auction conducted on the basis of the EOI as above. The consortium stood as the highest bidder for purchase of total 50,686 sq. ft. carpet area of the concerned premises, out of which the petitioners had jointly purchased an area measuring 3430 sq. ft. on the 2<sup>nd</sup> floor of the building together with two car parking spaces and undivided proportionate share in the land. The petitioners paid a consideration money to the tune of Rs. 2,54,63,500/- and the Liquidator executed a registered deed of conveyance in their favour on September 26, 2019, transferring thereby the right, title and interest of the said portion of the premises in favour of the petitioners.

7. Vide letter dated June 28, 2022, addressed to the respondent No. 2, the writ petitioners desired to mutate their names in the records as regards the property purchased by them and also to pay total amount of tax required to be paid, for the property they purchased and owned since September 26, 2019. Such letter of the petitioners was however, never replied to by the respondent Authority.
8. Instead, the petitioners were sent the impugned notice dated June 28, 2022, under Sections 184 and 185 of the Kolkata Municipal Corporation Act, 1980. Allegedly, the petitioner's reply to the said notice vide letter dated August 01, 2022, as well as August 08, 2022, remained unattended. According to the petitioners, the impugned notice as above, is not maintainable as against them and the same should be set aside. Hence, they have filed the instant writ petition for relief.
9. Mr. Arindam Banerjee, learned advocate for the writ petitioners has submitted that the petitioner's preliminary objection is as regards the jurisdiction of the respondent authority to conduct an exercise of revaluation of the concerned property in the hands of the petitioners, on a date when the petitioners undisputedly were not the owners of the same. In the writ petition the Court has earlier passed an order granting liberty to the respondent authority to assess the property tax due for the concerned property after the date of liquidation, that is after October 13, 2017. which would be payable by the petitioners after apportionment. The Court directed that the petitioners shall be liable to pay without prejudice to their rights and contentions, which the KMC shall accept similarly.

10. Therefore, an order of assessment dated August 19, 2023, was received by the writ petitioners in which the annual valuation of the property was considered to be Rs. 12,45,860/- with effect from 4<sup>th</sup> Quarter of 2017-2018 and the quarterly property tax was assessed to the tune of Rs. 63,850/- for the 4<sup>th</sup> Quarter of 2017-2018, for the writ petitioners. The petitioners however, in terms of the Court's order dated September 8, 2022, paid advance sum of Rs. 5,00,000/- to the respondent No.1, without prejudice to their rights and contentions in the writ petition.
11. Mr. Banerjee, learned Advocate has submitted that the purported assessment was made by the respondent based on spot inspection, though in absence of the petitioners. Also, that the order of assessment was passed by the respondent without affording any opportunity of hearing to them. He says that the property tax payable by the petitioners as admissible in law would be that calculated since after the date of purchase of the property by the petitioners, that is September 26, 2019. In their letter dated September 1, 2023, the petitioners have addressed the purported assessment order as a flawed one and that the basis of the annual valuation of the property to be contrary to the law. It is submitted that in the 1<sup>st</sup> supplementary affidavit affirmed by the petitioners, prayer has been made for setting aside the order of assessment dated August 23, 2023. In the 2<sup>nd</sup> supplementary affidavit the petitioners have prayed for setting aside of the property tax bill raised against them for the year 2024 – 2025.
12. Mr. Banerjee, learned advocate for the writ petitioners has submitted that the special statute namely the Insolvency and Bankruptcy Code, 2016, has provided for definite measures for the operational creditor like the respondent authority, to lodge its claim with respect to the property in liquidation, on the Liquidation Commencement Date, in statutory format and with the required documents being submitted with the same. He submits that the provisions of the said self-contained special statute shall prevail over all general laws of the contrary. It has been contended that the respondent authority has never complied with the provisions of the statute as above, though it has not been disputed ever that the property in question has gone into liquidation. That, the respondent has never filed any claim to the Liquidator of the company in liquidation namely, "Nicco Corporation Limited" and has wrongly issued the impugned notice. Therefore, Mr. Banerjee has submitted that the proposed assessment is wholly without jurisdiction and bad in law.
13. Mr. Banerjee has further submitted that the auction purchaser under the IBC 2016 cannot be fastened with the liability of the Company/Corporate Debtor prior to the date of purchase by the auction purchaser. This is irrespective of whether the Notice Inviting Tender says that the intended sale on "as is where is" or "whatever there is" or "no recourse" basis. The auction

purchaser under IBC, 2016 is made immune from past dues by the statutory provisions of the said Code. In the instant case, purchase of the subject property took place on 26th September 2019 and therefore the impugned notice is not sustainable in the eye of law.

**14.** Mr. Banerjee learned advocate has further stated that 'The Waterfall Mechanism', as envisaged under section 53 of I & B Code, 2016, a trite law, proceeds on the basis that once a Company goes into liquidation under the aegis of the IBC, the amount payable to the operational creditors (like the respondent Kolkata Municipal Corporation) in the present case, would be paid in accordance with Section 53 of the IBC amongst all the operational creditors who had duly filed their claims with the Liquidator and whose claims were duly admitted by the Liquidator. Those operational creditors who have failed to lodge their claim with the liquidator have no right to claim from the auction purchaser.

**15.** Lastly, it has been submitted that in the on-going liquidation process, the respondent may lodge its claim before the Liquidator, in accordance with the law. However, the respondent in any event cannot lodge any past claim against the writ petitioners, owing to the statutory fiction contemplated under the Code of 2016.

**16.** In his argument Mr. Banerjee learned advocate has emphasized the "clean slate principle" and the "waterfall mechanism", that a new purchaser of property of company in liquidation is not liable for the past debts thereof if any; claims not lodged before the resolution professional do not survive in law and are frozen upon approval of the resolution plan. Government dues, in case of a company in liquidation fall under the "waterfall mechanism" as per section 53 of the IBC; the obligation to inquire into the liabilities of the company in liquidation does not fall on the purchaser of the property in liquidation. In this regard Mr. Banerjee has relied on the judgments

- (i) **Tata Power Western Odisha Distribution Limited & Another versus Jagannath Sponge Private Limited [2023 SCC OnLine SC 2442]**
- (ii) **Shiv Shakti Inter Global Exports Private Limited versus KTC Foods Private Limited [2022 SCC Online NCLAT 85],**
- (iii) **Sri Vasavi Industries Limited & Another vs West Bengal State Electricity Distribution Company Limited [WPA No. 1936 of 2022, judgment dated March 23, 2022],**
- (iv) **Ruchi Soya Industries vs Union of India [(2022) 6 SCC 343] and**
- (v) **Bhatpara Municipality vs Nicco Eastern Private Limited & Anr [2021 SCC Online NCLAT 612].**

In support of his contention that dues prior to resolution plan approval are treated as extinguished in the eye of law, Mr. Banerjee has referred to the 3 Judges Bench decision of the Supreme Court in **Ghanashyam Mishra &**

***Sons Private Limited versus Edelweiss Asset Reconstruction Company Limited [(2021) 9 SCC 653].***

Decision of the Supreme Court in ***AI Champdany Industries Limited versus Official Liquidator & Another [(2009) 4 SCC 486]*** has been referred to on the proposition of law relied on by the petitioners that purchasers of property in liquidation are not obliged to investigate the liabilities of the company in liquidation, even if the sale is on “as is where is” and “whatever there is” basis. Claims against the company in liquidation must be filed before the Liquidator until the property is sold as per section 457 of the Companies Act. Once the property is sold the company’s assets are distributed to the creditors, secured and unsecured, in order of preference. That property tax past dues of the company in liquidation are not recoverable from the auction purchaser.

Lastly, the petitioners have contended that the IBC has an overriding effect; the government dues are subject to the “waterfall mechanism” under section 53 of the IBC. In this regard a judgment of the Supreme Court in ***Paschimanchal Vidyut Vitran Nigam Limited vs Raman Ispat Private Limited [(2023) 10 SCC 60]***, has been relied on by the petitioners.

17. Furthermore, with reference to Section 55 (1) (g) of the Transfer of Property Act, 1872 and Section 193 of the Kolkata Municipal Corporation Act, 1980, Mr. Banerjee has argued that, for all periods prior to the purchase, the writ petitioners, being strangers to the property, no assessment could have been made in their hands or tax imposed on them for the period prior to the date of purchase. Lastly, with reference to the judgment of this Court in ***Sahujain Charitable Society and Another Vs. The Kolkata Municipal Corporation and Others [2018 SCC OnLine Cal 4793]***, it has been submitted that scope for retrospective assessment of annual valuation for any period prior to three years from the date of order of assessment is barred. So also, the purported revision of valuation in case of the present petitioners which pertains to the year starting from 2005-2006, are also time-barred in view of the ratio decided in ***Sahujain's Case (Supra)***.
18. For all these reasons, it has been submitted on behalf of the writ petitioners that, the impugned notice dated July 28, 2022, as well as assessment on the basis of the purported retrospective revaluation of the property concerned may be set aside.
19. The respondent/Kolkata Municipal Corporation, being represented by Mr. Mukherjee, learned Advocate. has raised stern opposition to the contentions and prayer of the writ petitioners in the instant case. The respondent’s first ground of objections is that the petitioners have knowingly, wilfully and voluntarily responded to the notice inviting Expression of Interest (EOI) dated September 12, 2018 and January 10, 2019. Mr. Mukherjee says that, thereby the petitioners have accepted the terms and conditions as prescribed

therein. With reference to the relevant Clauses in the EOI, Mr. Mukherjee has submitted that, after accepting the Clauses of the EOI, there would not be any occasion for the petitioners to deny direct and/or constructive notice regarding the factum of arrear property tax related to the concerned property, which were yet to be paid even on the date of purchase of property by the present petitioners. The following terms and conditions in EOI have been referred to -

- "i. The proposed sale will be conducted on "AS IS WHERE IS AND WHATEVER THERE IS BASIS" and "NO RE COURSE BASIS".*
- ii. The submission of the Bid means and implies that the Applicant has read carefully and unconditionally and irrevocably agreed to and accepted all the terms and conditions laid herein.*
- iii. The Purchaser shall take the Sale Asset subject to any statutory liabilities like arrear of property tax, outstanding electricity charges, license, approval charges, etc."*

**20.** He submits that, it is a fact in this case that, there has been a willful and conscious suppression of material fact by the writ petitioners which actually disentitle them to seek and get any relief from this Court of equity. According to Mr. Mukherjee, the petitioners have intentionally suppressed two things, firstly that the EOI contains contingent clauses and that the petitioners were granted actual possession of the property from an earlier date than the date of execution of the sale deed. Therefore allegedly the petitioners have misled the Court as regards their actual and/or constructive knowledge regarding pending property tax. In this regard, Mr. Mukherjee has referred to the judgment of the Supreme Court in **Commissioner of Customs (Preventive) Vs. Aafloat Textiles India Private Limited and Others** reported in **(2009) 11 SCC 18** to submit that deliberate suppression of material fact is fatal for the writ petitioners.

**21.** Mr. Mukherjee has submitted that, the EOI has specified that the purchasers shall be liable for payment of statutory liability like arrear of property tax, which imply that, there is an unfinished statutory duty still remaining overdue with respect to the said property and it is the obligation of the petitioners to discharge the statutory duty of payment of arrear property tax with respect to the said property. Mr. Mukherjee has referred to a Supreme Court judgment in **State of Madhya Pradesh and Others Vs. Shyama Charan Shukla (1972 4 SCC 371)** in which the Supreme Court has held that, the word 'arrear' in respect of tax has been used in the sense of dues or what has become due by way of tax and that does not depend on assessment proceedings or quantification of the amount.

**22.** Mr. Mukherjee further refers to the judgment of this Court in **Rashmay Das Vs. the Kolkata Municipal Corporation & Others** reported in **2012 Vol 2 CHN Cal 765** and the provision under Section 183 (5) of the Kolkata

Municipal Corporation Act, 1980 to submit that it is an imperative obligation of the petitioners to make payment of the due property tax of the concerned premises before mutation of the portion purchased by them in their name in the Municipal records. He says that the Court in ***Rashmay Das's Case (Supra)*** has decided that, the Corporation is not legally bound to mutate the name of the petitioners in respect of their purchased portions in a property until and unless the petitioners pay the arrears of property tax to the Corporation.

23. Much emphasis has been given to the terms of EOI that the proposed sale will be conducted on 'as is where is and whatever there is' and 'no recourse' basis. In this regard, the judgment of Supreme Court in ***Telengana State Southern Power Distribution Company Limited Vs. Srigdhaa Beverages*** reported in **2020 (6) SCC 404** and relied on in the subsequent judgment in ***K.C. Ninan Vs. Kerala State Electricity Board and Others*** reported in **(2023) SCC OnLine SC 663** have been mentioned where the Hon'ble Supreme Court while considering a case of auction sale, analysed Clauses 24 and 26 of the auction notice, which stipulated an "as is where is" sale with respect to all statutory dues and absolved the authorized officer of all liabilities for any charge, encumbrances and dues, including electricity dues. It concluded that the auction purchaser was "clearly put to notice" since there was a specific mention of the quantification of dues of various accounts including electricity dues. On the liability of the past owners to bear electricity dues is specifically mentioned this Court categorically held that the auction purchasers were bound to inspect the premises and provide for the dues in all respects.
24. He submits that, it is the settled law pursuant to the ratio decided by the Supreme Court in the judgments as mentioned above, that a sale on 'as is, where is' basis postulates that the purchaser would be acquiring the asset with all its existing rights, obligations and liabilities and when a property is sold on 'as is where is' basis, encumbrances on the property stand transferred to the purchaser upon sale.
25. To counter the petitioner's submission on the basis of the ratio decided in ***Sahujain's Case (Supra)***, Mr. Mukherjee submits that, in the same, the Court has not considered an earlier judgment in the ***Calcutta Municipal Corporation Vs. Abdul Halim Gaznavi Molla & Ors.*** reported in **1998 SCC OnLine Cal 117**, wherein it was held that, the limitation provided under Section 573 of the Calcutta Municipal Corporation Act, 1980 cannot have any application in relation to taxes and if any limitation for recovery of any taxes was to be provided for the legislature by its own wisdom, should have incorporated the same in clear and unequivocal language in Chapter – XVI itself. Mr. Mukherjee says that a provision for limitation can only be brought about by a statute.

**26.** Lastly, it has been submitted by Mr. Mukherjee that the petitioners have prematurely come before this Court in the present writ petition whereas the statutory remedy of an appeal as against the decision of the concerned authority in case of any grievance or dissatisfaction is always available to the writ petitioners. According to Mr. Mukherjee, the impugned notice being only in the form of proposal and subject to final decision of the authority upon hearing the party, has been untimely challenged by the petitioners in the present writ petition. He refers to the decision of the Supreme Court in this regard in ***Indo Asahi Glass Company Limited and Another Vs. Income Tax Officers and Others*** reported in **(2002) 10 SCC 444**.

**27.** Mr. Banerjee, learned advocate for the writ petitioners has stated in reply that, the proposed revaluation of the property and taxes for a period prior to the date of purchase of property by the petitioners is not an assessment or calculation which was pending for realization. Instead, upon receipt of prayer made by the petitioners for mutation of the property newly purchased, fresh assessments have been proposed and intended to be levied from a retrospective date. Mr. Banerjee submits that the proposed revaluation and tax based upon the same as assessed, were never any unpaid due particularly that, at the time of auction and purchase of property by the petitioners. He says that assessment of property tax on the basis of revaluation of the property of the previous period cannot mature into a property tax payable until and unless the same is quantified. Mr. Banerjee has argued that, on the date of purchase of the concerned property by the petitioners, there was no quantified or proposed property tax, due and pending as against the concerned property which has been eventually purchased by the writ petitioners. Therefore, in spite of a clause having been mentioned in the EOI that the property is saleable on 'as is where is and whatever there is' basis, the petitioners were not in a position to gather any actual or constructive notice as regards any Municipal due on the date of their purchase. In reply, Mr. Banerjee has referred to the judgments-

- i) ***Paschimanchal Vidyut Vitran Nigham Ltd Vs. Raman Ispat Pvt Ltd. (2023) 10 SCC 60***
- ii) ***Tata Power Western Odisha Distribution Ltd. Vs. Jagannath Sponge Pvt. Ltd. [2023 SCC OnLine SC 2442]***
- iii) ***SPA Steels Rolling Mills Ltd. Vs. Asansol Durgapur Development Authority 2023 SCC Online Cal 668***

**28.** Admittedly, the property has since been owned by the company in liquidation and the writ petitioners are the purchasers thereof for valuable consideration, through auction. the deed of conveyance having been executed on September 26, 2019. It is also undisputed that the respondent/Corporation has not lodged any claim as regards the property tax due, with respect to the said property, for the period as mentioned in the notice dated July 28, 2022 before the Learned Liquidator.

**29.** After promulgation of the Insolvency and Bankruptcy Code, 2016, the process of liquidation of companies in India is intended to be governed primarily and comprehensively by the provisions of the said Code. The enactment of Insolvency and Bankruptcy Code, 2016 marked a significant shift from the earlier fragmented and time-consuming insolvency framework to a consolidated, creditor-driven and time-bound mechanism. Section 33 of the Insolvency and Bankruptcy Code, 2016 clearly provides that where no resolution plan is approved within the prescribed time, or where the resolution plan fails, the corporate debtor shall be liquidated in the manner laid down in the Code. This reflects the legislative intent that liquidation is an integral part of the insolvency process under the Insolvency and Bankruptcy Code, 2016 and not an independent procedure under any other statute. The Insolvency and Bankruptcy Code, 2016 consolidates laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner. Section 238 of the Insolvency and Bankruptcy Code, 2016 gives it an overriding effect by expressly providing that the provisions of the Code shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force.

**30.** Indian Courts and Tribunals have consistently recognized the supremacy of the Insolvency and Bankruptcy Code, 2016 in matters of insolvency and liquidation. It has been held that Insolvency and Bankruptcy Code, 2016 is a special law with a non-obstante clause and, therefore, prevails over general laws in case of inconsistency. It is now well-settled that once liquidation is ordered under the Insolvency and Bankruptcy Code, 2016, the process must strictly follow the Code and the Regulations framed thereunder, reinforcing that Insolvency and Bankruptcy Code, 2016 is a complete and exhaustive Code on the subject.

**31.** The overriding effect of the Code is all pervasive, throughout all the existing statutes, including municipal laws under which property tax or other local dues are claimed. Once liquidation proceedings are initiated under the Insolvency and Bankruptcy Code, 2016 claims of municipal authority must be dealt with strictly in accordance with the Code, particularly the priority mechanism prescribed under Section 53 of the Code.

**32.** Under Section 5(21) of the Insolvency and Bankruptcy Code, 2016, “operational debt” includes claims in respect of the provision of goods or services including statutory dues payable to the Central Government, State Government or any local authority. Property tax levied under municipal laws squarely falls within the definition. Once classified as “operational debt” municipal dues cannot claim priority outside the statutory “waterfall mechanism”, provided under Section 53 of Insolvency and Bankruptcy Code, 2016, during liquidation.

33. The overreaching principle across all the judgments as relied on by the writ petitioners, is the supremacy of Insolvency and Bankruptcy Code, 2016 and the 'clean slate theory'. Once a resolution plan is approved by the NCLT, all prior claims, debts and liabilities of the corporate debtor are extinguished and creditors must adhere to the 'waterfall mechanism' under Section 53 of the Insolvency and Bankruptcy Code, 2016 for asset distribution. Auction purchasers and Successful Resolution Applicants (SRAs) are not liable for past dues or liabilities incurring before the sale or resolution plan approval.
34. In a landmark judgment in ***Principal Commissioner of Income Tax Vs. Monnet Ispat and Energy Limited*** reported in **(2018) 18 SCC 786**, the Supreme Court has held that "Sections 238 of the Insolvency and Bankruptcy Code, 2016 will override anything inconsistent contained in any other enactment, including the Income Tax Act." Similarly held by the said Court, in 2023 in ***Raman Ispat (P) Limited Case (Supra)***, with respect to the electricity laws. The principle laid down in these cases, equally applies to municipal laws and taxes as all are statutory dues owed to the Government or local authorities. The verdicts of Supreme Court as above settle the proposition of law that statutory claim does not enjoy any special status once insolvency or liquidation proceedings are initiated under the Insolvency and Bankruptcy Code, 2016.
35. The Supreme Court in ***Ghanashyam Mishra's Case (Supra)*** has further held to conclusively settle the issue of statutory dues that, "All claims, including statutory dues owed to Central Government, State Government or local authorities, which are not part of the resolution plan or liquidation process, stand extinguished." The Court emphasized that allowing such authorities to recover dues under their own statutes after insolvency or liquidation would defeat the very objective of the Insolvency and Bankruptcy Code, 2016. This decision of the Supreme Court directly impacts municipal bodies seeking to enforce property tax dues under municipal laws, independent of process prescribed under the Insolvency and Bankruptcy Code, 2016, in case of a property in liquidation.
36. In the case of ***Sundaresh Bhatt, liquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs*** reported in **(2022) 7 SCC 540**, the Supreme Court reinforced that once liquidation proceedings commence, all creditors – including Government and statutory authorities – must submit their claims to the liquidator and cannot enforce recovery proceedings under their respective statute. The Court observed that the Insolvency and Bankruptcy Code, 2016 creates a single, unified mechanism for dealing with claims during liquidation and no authority can bypass it by relying on its own enabling legislation.

**37.** Therefore, in the liquidation of company, the Insolvency and Bankruptcy Code, 2016 has an overriding effect over municipal laws, under which property tax is claimed. Municipal dues are treated as operational debts and must be submitted to the liquidator and satisfied strictly, in accordance with Section 53 of the Insolvency and Bankruptcy Code, 2016, as it is held by the NCLAT – New Delhi in ***Bhatpara Municipality case (Supra)***. Any priority, charge or recovery mechanism provided under the municipal legislation stands overridden by virtue of Section 238 of the Insolvency and Bankruptcy Code, 2016.

**38.** A clear order of priority, being termed as the “waterfall mechanism”, for distribution of liquidation proceeds, of a company under liquidation prevails. Government dues including municipal property tax ranks below the following:-

- i) insolvency resolution and liquidation case
- ii) secured creditors
- iii) workman's due
- iv) wages and unpaid dues of employees and
- v) unsecured financial creditors.

Municipal Authority cannot elevate their claims above this hierarchy by invoking municipal statutes.

**39.** As per discussions made above, which clearly depicts the settled position of law, as on date, completely demolishes arguments of the respondents authority that it was duly entitled to independently exercise rights as enshrined under Section 183 (5) of the Kolkata Municipal Corporation Act, 1980. The judgment relied on by the respondent in this regard in ***Rashmay Das's case (supra)***, is of no help for the respondent, in so far as, there the Court had no scope to consider consequences of the Insolvency and Bankruptcy Code, 2016, vis-à-vis, that of the Kolkata Municipal Corporation Act, 1980.

**40.** Enough emphasis has been bestowed as to the terms of EOI, by the respondent. According to the said respondent, the Clauses incorporated in the EOI of which the petitioners were well-versed at the time of responding to the same, that the concerned property is to be sold on “as is where is” basis should bind the petitioners/purchasers to acquire the asset with all its existing rights, obligations and liabilities. With reference to ***K.C. Ninan's case (supra)***, it has been contended that, when a property is sold on “as is where is” basis, encumbrances thereon stand transferred to the purchasers, upon the sale.

**41.** The issue is that can the contractual clause override protection under the IBC 2016. IBC having a non-obstante clause, municipal dues even if there is any, stands extinguished under the IBC, the contractual clause cannot revive the same. In the present factual matrix, no quantified

arrear demand existed at sale, the respondent did not lodge any claim before the liquidator, but retrospective revaluation was initiated at a later stage post completion of liquidation sale. Thus, there were no crystalized encumbrances to pass on to the new purchasers/writ petitioners under the contractual clauses “as is where is” and “whatever there is”. Any municipal due under the statute does not survive as an independently enforceable right outside the IBC mechanism, when the concerned property has been dealt with under the insolvency law. Contractual clauses like “as is where is” and “whatever there is” cannot elevate or preserve a municipal charge which stands subordinated or extinguished under sections 53 and 238 IBC.

**42.** It is important to note that, here the respondent authority has made an endeavor to put forth the proposed revision of property valuation and consequent enhance tax, as mentioned in the impugned notice dated July 28, 2022, as the existing and prevailing obligation and liability attached to the said property, as on the date of transfer by way of sale in favour of the writ petitioners. That, however, is not the actual state of affair here and would be guided and governed by one of the most important and well-settled doctrines that have evolved under the Insolvency and Bankruptcy Code, 2016, that is, the ‘clean state principle’. Under the ‘clean state principle’, a successful resolution applicant (or the corporate debtor, post resolution) should not be burdened with undecided, undisclosed or residual claims relating to the period prior to commencement of insolvency. In other words, once a resolution plan is approved under the Insolvency and Bankruptcy Code, 2016, all claims that are not part of the plan stand extinguished. Provision under Section 31 (1) of the Insolvency and Bankruptcy Code, 2016, may be mentioned in this regard, which provides that once a resolution plan is approved by the adjudicating authority, it has binding effect including that on the Central or State Government and local authorities.

**43.** In liquidation, there is no resolution plan. Therefore section 31 IBC does not operate. Instead, section 53 IBC governs the distribution. The clean slate doctrine in liquidation does not flow from section 31 IBC, it must be derived differently. The key statutory provisions are under section 33 IBC which provides for liquidation order, section 35 IBC which provides for powers of liquidator, section 52 IBC which enumerates secured creditors’ rights, the waterfall principle as provided under section 53 IBC and the overriding clause as per section 238 IBC. If a municipal law creates a “first charge” on property, liquidation does not automatically wipe it out, but it depends on characterization and participation. Under IBC a “secured creditor” is one in whose favour a “security interest” is created. A statutory “first charge” may qualify as a “security interest” due to operation of law and render the authority as the “secured creditor”. In

that case consequences will follow in terms of section 52 IBC, that the authority may relinquish security and stand in waterfall or it may realise security outside liquidation, subject to IBC supervision. All these are subject to furnishing claim by the statutory authority before the liquidator without which its claim may not participate in distribution. Not furnishing a claim before the Liquidator risks the authority losing its rights of enforcement and the authority cannot continue independent recovery proceeding. The settled principle of law is to apply clean slate approach in liquidation in the context of provisions under sections 238 and 53 IBC and not as per section 31 (in case of resolution plan).

- 44. In a foundational judgment on clean slate doctrine, the Supreme Court in ***Committee of Creditors of Essar Steel Vs. Satish Kumar Gupta*** reported in **(2020) 8 SCC 531**, has held that, “A successful resolution applicant cannot suddenly be faced with undecided claims after the resolution plan has been accepted”. In the judgment of ***Ghanashyam Mishra's case (supra)***, the Supreme Court has expressly reaffirmed the principle and conclusively settled the issue of statutory and governmental dues that all claims including statutory dues owed to Central or State Governments or local authorities stand extinguished if they are not part of the approved resolution plan. In ***AI Champdany Industries Limited case (supra)***, the Supreme Court has held that recovery of property tax (municipal tax) past dues of the company in liquidation are not recoverable from the auction purchaser. The NCLAT – New Delhi in ***Bhatpara Municipality's case (Supra)*** by relying on ***AI Champdany Industries Limited case (supra)*** has held that the auction purchaser cannot be held liable to pay any dues relating to the period prior to confirmation of sale. In ***Shiv Shakti (supra)*** the NCLAT has further held that it is essential to see that new purchaser of property of company in liquidation is not burdened with past or remaining unpaid liability after the sale is contemplated.
- 45. The respondent's allegation as regards suppression of material fact by the petitioners appear unsustainable in view of the averments in the writ petition, particularly that in paragraphs (4. v) and (4. vi) thereof, where the petitioners have mentioned about the EOI, in the writ petition.
- 46. Even if it is understood to be true that the petitioners have obtained physical possession of the property, prior to the date of execution of the deed of conveyance, as alleged, that is on March 18, 2019, at best the respondent could have been considered as empowered to impose tax against the present petitioners, from that date but not beyond. However, as discussed earlier, the respondent authority could not have espoused the provisions of the municipal laws independently, but in case of the property in question, the same is bound to recover unpaid tax amount

due, if any, only in compliance with the prescribed procedure as per the Insolvency and Bankruptcy Code, 2016. The petitioners shall be liable for any independent assessment of the property in the hands of the respondent authority as on the date of execution of deed or from the date of their actual possession over the said property, as the case may be and not beyond. It is evident in this case that on either of these dates there were no proposed/declared and/or claimed tax which has remained unpaid and due, so far as the said asset is concerned. Hence, also there is no question of any direct or constructive knowledge of the petitioners regarding any due tax, to be existing on the said relevant date/s. It is necessary to mention here that the respondent authority has never filed any claim of it with respect to the concerned property, before the learned liquidator, in the resolution process, for the period as mentioned in the notice dated July 28, 2022.

- 47.** The Court finds that the petitioners cannot be held responsible for payment of any tax with respect to the property, for a period when they have been only strangers to the same. That too, since the original owner Company being in liquidation and the petitioners being purchasers of the property, the tax amount due for the previous period if any, could only be recovered through the process as prescribed under the Insolvency and Bankruptcy Code, 2016 and not otherwise.
- 48.** In view of the discussions as above, it has been found that the impugned notice dated July 28, 2022 of the respondent and its order of assessment dated August 23, 2022 and the property tax bill for 2024-25 issued to the writ petitioners are not legally sustainable. The respondent authority has unauthorisedly and illegally issued the same and those are liable to be set aside. In view thereof the Court finds it unnecessary to discuss in detail the other points argued by the petitioners, challenging these as mentioned above. The writ petition should succeed.
- 49.** Hence, this Writ Petition no. WPO 2435 of 2022 is allowed with the following directions:
  - i.** The notice dated July 28, 2022, issued under Sections 184 and 185 of the Kolkata Municipal Corporation Act, 1980, the consequential assessment order dated August 23, 2022, and the property tax bill for 2024-2025 issued to the petitioners are hereby set aside insofar as they seek to impose liability upon the petitioners for any period prior to September 26, 2019.
  - ii.** It is declared that upon commencement of liquidation proceedings under the Insolvency and Bankruptcy Code, 2016, any claim for municipal dues pertaining to the period prior to the liquidation commencement date could be

enforced only in accordance with the provisions of the said Code, particularly Sections 52 and 53 thereof.

- iii.** If the respondent Corporation had any statutory charge or claim in respect of property tax dues for the period prior to liquidation, the same was required to be asserted before the Liquidator in accordance with the procedure prescribed under the Insolvency and Bankruptcy Code, 2016 and the Regulations framed thereunder.
- iv.** In the absence of the respondent Corporation having lodged or pursued such claim within the liquidation process, it shall not be entitled to enforce or recover any such pre-liquidation dues from the auction purchasers by invoking independent powers under the Kolkata Municipal Corporation Act, 1980.
- v.** The respondent Corporation shall, however, be at liberty to assess and recover property tax from the petitioners strictly from the date of transfer of title in their favour, i.e., 26 September 2019, in accordance with law.
- vi.** The amount of Rs. 5,00,000/- already deposited by the petitioners shall be adjusted towards their lawful tax liability arising from the said date.

- 50.** It is clarified that this order shall not be construed as extinguishing any statutory charge as a matter of abstract legal doctrine, but only holds that enforcement thereof, if any, must conform to the scheme and priority framework of the Insolvency and Bankruptcy Code, 2016.
- 51.** The writ petition is accordingly allowed in the above terms.
- 52.** Writ petition No. WPO 2435 of 2022 is allowed and disposed of along with pending application/s if any.
- 53.** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Rai Chattopadhyay, J.)**