

To,
The Commissioner
Customs Division-1
Customs Commissionerate
G.S.T Bhavan, Telanghedi Road,
Civil Lines, Nagpur 4400001

Sub: Compliance of Section 46 & 68 of Customs Act 1962 - Regarding

Ref: Your Letter F.NoVIII(39) 56/ Lanco/CDN-1/2020 dated 20.12.2023 & Letter No F.NoVIII(39) 56/ Lanco/CDN-1/2020/7755 dated 28.12.2023

Dear Sir/Madam,

This is in reference to the above letters wherein it was stated that compliance of the Section 46 & Section 68 of the Customs Act 1962 is required for the goods lying in the Custom Bonded Warehouse. We wish to bring to your notice the following:

- 1) With respect to the filing of proper bill of entry according to the **Section 46** of the Customs Act 1962, as per available records the Corporate Debtor has already filed the Bill of Entries in the Nhava Sheva Port for the material imported from China at the time of import which was later shifted to the Bonded Warehouse in Wardha. The details are as follows :

Bill of Entry No	Bill of Entry Date	No of Packages	Tonnage	Material
7338939	09.07.12	272	1702.29	Boiler Material
7243362	28.06.12	193	2029.52	Mill Material

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CIN No. : U40100TG2005PLC045445

The copies of the bill of entries, re-warehousing certificate and the data downloaded from the ICEGATE portal of Customs are attached for your reference (**Annexure I**).

- 2) Also with respect to the compliance of Section 68 of the Customs Act, we wish to bring to your notice that in compliance to the NCLT order (IA IBC/636/2022 In CP (IB) No.529/7/HDB/2018) dated 15.06.2023, we are in receipt of your letter dated 20.12.2023, after multiple correspondences and reminders from our side, wherein your good office in Para 2 of the letter had released the goods in the Custom Bonded warehouse and handed over the material to LVTPL which can be construed upon as an 'Order for Clearance' as per the Clause (c) of Section 68 of Customs Act 1962. The Section is quoted for your reference as follows:

'68. Clearance of warehoused goods for home consumption.

- The importer of any warehoused goods may clear them for home consumption, if-

c) an order for clearance of such goods for home consumption has been made by the proper officer.'

- 3) Further to the above, we would also like to bring out certain paragraphs from the NCLT order quoted above for your reference :

'10. At the outset, we wish to state that, the law as regards the rights of customs authorities under Section 75 of the Customs Act, in respect of the goods of the corporate debtor under their custody is no longer res integra, in as much as Hon'ble Supreme Court of India, in re, ABG Shipyard held as follows:

*47. As laid down earlier, the Customs Act and IBC can be read in a harmonious manner wherein **authorities under the Customs Act have a limited jurisdiction to determine the quantum of operational debt- in this case, the Customs duty-** in order to stake claim in terms of Section 53 of the IBC before the liquidator. However, the **respondent does not have the power to execute its claim beyond the ambit of Section 53 of the IBC.** Such harmonious construction would be in the line with the ruling in Gujarat Urja Vikas Nigam Ltd. Vs Amit Gupta, (2021) 7 SCC 209, where in a balance was struck by this Court between the jurisdiction of NCLT under the IBC and the potential encroachment on the legitimate jurisdiction of other authorities.'*

- 4) Further, we would like to bring to your notice the Section 238 of 'The Insolvency and Bankruptcy Code, 2016' which is self-explanatory and reproduced for your reference:

Section 238: Provisions of this Code to override other laws.

**238. 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.*

- 5) In addition to the above, we would like to bring to your reference certain paragraphs from the Hon'ble Supreme Court order in the case of Mr Sundaresh Bhatt, (Liquidator Of ABG Shipyard) Vs Central Board Of Indirect Taxes And Customs in the Civil Appeal 7667 of 2021 dated 26.09.2022 as follows :

'38. We may note that the IBC, being the more recent statute, clearly overrides the Customs Act. This is clearly made out by a reading of Section 142A of the Customs Act. The aforesaid provision notes that the Custom Authorities would have first charge on the assets of an assessee under the Customs Act, except with respect to cases under Section 529A of Companies Act 1956, Recovery of Debts Due to Banks and Financial Institutions Act 1993, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the IBC, 2016. Accordingly, such an exception created under the Customs Act is duly acknowledged under Section 238 of the IBC as well.

53 For the sake of clarity following questions, may be answered as under:

a) Whether the provisions of the IBC would prevail over the Customs Act, and if so, to what extent?

The IBC would prevail over The Customs Act, to the extent 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.'

In view of the above and as per the various provisions of 'The Insolvency and Bankruptcy Code, 2016', we would like to inform you that not only have the Sections in your letter under reference have been complied with, since the material of the Corporate Debtor in the Custom

Bonded warehouse material has been handed over to us by your good office and we have issued a sale notice for auction of the assets, due procedure as per the IBC Code will be followed.

This is for your information and record, please.

With Regards



VIJAY KUMAR GARG

Liquidator

In the matter of Lanco Vidarbha Thermal Power Limited

Project specific Address for correspondence:

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