$~7

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 24.06.2024

\+ W.P.(C) 8679/2024

THE NATIONAL SEWING THREAD COMPANY LIMITED ..... Petitioner

Through: Mr. Palash S. Singhai, Advocate.

versus

DEPUTY COMMISSIONER OF INCOME TAX & ORS. ..... Respondents

Through: None

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA
HON'BLE MR. JUSTICE DHARMESH SHARMA

MINI PUSHKARNA, J *(ORAL)*

CM APPL. 35477/2024 (For Exemption)

1. Allowed, subject to just exceptions.

2. Application is disposed of.

W.P.(C) 8679/2024 & CM APPL. 35476/2024 (Stay)

3. By way of the instant petition, the petitioner is seeking quashing of the Assessment Order dated 22nd May, 2024 issued by the respondent no. 1/Deputy Commissioner of Income Tax under Section 143(3) of Income Tax Act, 1961 for the Assessment Year 2022-23 and Financial Year 2021-22. The present petition also assails the Demand Notice under Section 156 of the Income Tax Act, 1961 and Notices dated 23rd May, 2024 under Section 274 of the Income Tax Act, 1961 issued by the respondent no. 1.

4. Learned counsel appearing for the petitioner company submits that

Signature Not Verified
Digitally Signed By:AMAN UNIYAL
Signing Date:25.06.2024 16:17:54

the aforesaid Notices have been issued after the approval of the Resolution Plan for the revival and restructuring of the petitioner-company by learned National Company Law Tribunal ("NCLT"), Chennai, *vide* order dated 06th December, 2021. Learned counsel appearing for the petitioner submits that the impugned order and notice dated 23rd May, 2024 is legally untenable and in teeth of the provisions of Insolvency and Bankruptcy Code ("IBC"), 2016, which envisages revival/ resolution of the Company on a 'Clean Slate Basis'.

5. At this stage, learned counsel appearing for the petitioner submits that by way of the impugned notice, penalty is being sought to be imposed upon the petitioner. He further submits that the respondent has fixed the matter for today, i.e., 24th June, 2024 for assessing the penalty to be imposed upon the petitioner. Thus, it is submitted that there is urgency in the matter.

6. None appears for the respondents despite advance notice. Attention of this Court has been drawn to the proof of service, wherein, service has been made on the respondents on their official email.

7. Attention of this Court is also drawn to *Annexure P-10*, i.e., order dated 05th March, 2024 passed by the learned Division Bench in the case titled, ***IREO FIVERIVER PVT LTD Versus INCOME TAX DEPARTMENT & ANR.*** in *W.P.(C) 12461/2022*. With reference to the aforesaid order, it is submitted that the case of the petitioner is clearly covered by the said order.

8. Having heard learned counsel appearing for the petitioner and considering the fact that there is no appearance on behalf of respondents, despite due service, in view of the urgency expressed by the petitioner, this Court has taken up the matter for final disposal.

9. This Court notes that the learned NCLT, Chennai, *vide* its order

Signature Not Verified
Digitally Signed
By:AMAN UNIYAL
Signing Date:25.06.2024
16:17:54

dated 29th August, 2019 has allowed the application seeking initiation of the Corporate Insolvency Resolution Process ("CIRP") of the petitioner-company and moratorium under Section 14 of the IBC, 2016 into force. Subsequently, the CIRP of the petitioner culminated in successful manner, wherein, Resolution Plan for the revival and rehabilitation of the petitioner-company was submitted and the same was accordingly approved by the Committee of Creditors ("COC") with requisite majority of votes on 13th September, 2021. Subsequently, on 06th December, 2021, final approval to Resolution Plan along with the necessary reliefs and concessions, including the extinguishment of all the past dues and claims not forming part of the Resolution Plan on the date of approval, was accorded.

10. This Court further notes that upon approval of the Resolution Plan, a new management took over the petitioner-company, in order to implement the Resolution Plan as per the scheme of IBC, on a 'Clean Slate Basis'.

11. It is settled proposition of law that once a Resolution Plan is duly approved by the adjudicating authority under Section 31 (1) of IBC, 2016, the claims as provided in the Resolution Plan shall stand frozen and it 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 stake holders. On the date of approval of Resolution Plan by the adjudicating authority, all such claims, which are not part of the Resolution Plan, shall stand extinguished, and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the Resolution Plan.

12. It is to be noted that the principle of clean slate has been time and again reiterated and reaffirmed by the Supreme Court as well as by this Court. Thus, upon approval of a Resolution Plan or sale as going concern, is duly approved by the adjudicating authority, all the previous liabilities

Signature Not Verified
Digitally Signed
By:AMAN UNIYAL
Signing Date:25.06.2024
16:17:54

and claims of any person qua the corporate debtor, cease to exist and extinguish.

13. Thus, *vide* order dated 05th March, 2024 in *W.P.(C) 12461/2022*, ***IREO FIVERIVER PVT LTD Versus INCOME TAX DEPARTMENT & ANR.***, a Coordinate Bench of this Court, has held as follows:

> *"xxx xxx xxx*
>
> *2.* ***The petitioner is the corporate debtor and the Resolution Plan in respect of which came to be approved by the National Company Law Tribunal ["NCLT"] on 06 August 2021. Ex facie, it is manifest that the notice for reassessment pertains to a period prior to the acceptance and approval of the Resolution Plan****.*
>
> *3. In is in the aforesaid backdrop that we take note of the judgment rendered by the Supreme Court in* ***Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*** *[(2021) 9 SCC 657] wherein the following principles came to be laid down:-*
>
> > *"93. As discussed hereinabove, one of the principal objects of the I&B Code is providing for revival of the corporate debtor and to make it a going concern. The I&B Code is a complete Code in itself. Upon admission of petition under Section 7 there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the corporate debtor is revived and is made an on-going concern. After CoC approves the plan, the adjudicating authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the adjudicating authority can grant its approval to the plan.* ***It is at this stage that the plan becomes binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans would go haywire and the plan would be unworkable****.*

Signature Not Verified
Digitally Signed
By:AMAN UNIYAL
Signing Date:25.06.2024
16:17:54

*94. **We have no hesitation to say that the words "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities**. The legislature noticing that on account of obvious omission certain tax authorities were not abiding by the mandate of the I&B Code and continuing with the proceedings, has brought out the 2019 Amendment so as to cure the said mischief. We therefore hold that the 2019 Amendment is declaratory and clarificatory in nature and therefore retrospective in operation."*

*4. We also take note of the identical position which was expressed by the Supreme Court in **Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta**, [(2020) 8 SCC 531] where the following pertinent observations came to be made :-*

*"105. **Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall e binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were**. In SBI v. V. Ramakrishnan, (2018) 17 SCC 394, this Court relying upon Section 31 of the Code has held:*

"25. Section 31 of the Act was also strongly relied upon by the respondents. This section only states that once a resolution plan, as approved by the Committee of Creditors, takes effect, it shall be binding on the corporate debtor as well as the guarantor. This is for the reason that otherwise, under Section 133 of the Contract Act, 1872, any change made to the debt owed by the corporate debtor, without the surety's consent, would relieve the guarantor from payment. Section 31(1), in fact, makes it clear that the guarantor cannot escape payment as the resolution plan, which has been approved, may well include provisions as to payments to be made by such guarantor. This is perhaps the reason that Annexure VI(e) to Form 6 contained in the Rules and Regulation 36(2) referred to above, require information as to personal guarantees that have been given in relation to the debts of the corporate debtor. Far from supporting the stand of the respondents, it is clear that in point of fact, Section 31 is one more factor in favour of a personal guarantor having to pay for debts due without any moratorium applying to save him.

106. Following this judgment in SBI v. V. Ramakrishnan, (2018) 17 SCC 394, it is difficult to accept Shri Rohatgi's argument that that part of the resolution plan which states that the claims of the guarantor on account of subrogation shall be extinguished, cannot be applied to the guarantees furnished by the erstwhile Directors of the corporate debtor. So far as the present case is concerned, we hasten to add that we are saying nothing which may affect the pending litigation on account of invocation of these guarantees. However, NCLAT judgment being contrary to Section 31(1) of the Code and this Court's judgment in SBI v. V. Ramakrishnan, (2018) 17 SCC 394, is set aside. 107. For the same reason, the impugned

Signature Not Verified
Digitally Signed
By:AMAN UNIYAL
Signing Date:25.06.2024
16:17:54

NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. ***A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove****. For these reasons, NCLAT judgment must also be set aside on this count.*

5. ***In view of the aforesaid principles, the successful resolution applicant cannot be foisted with any liabilities other than those which are specified and factored in the Resolution Plan and which may pertain to a period prior to the resolution plan itself having been approved.***

6. Consequently, we allow the instant writ petition and set aside the impugned order dated 30 July 2022 under Section 148A(d) of the Act."

(Emphasis Supplied)

14. Reading of the aforesaid order, clearly shows that the law is well settled that once a Resolution Plan is approved by the COC, it shall be binding on all the stakeholders. Thus, the successful Resolution Applicant starts running the business of the Corporate Debtor on a fresh slate. Considering the aforesaid, the impugned Assessment Order dated 22nd May, 2024 as well as the Notice dated 23rd May, 2024, cannot stand in the eyes of the law.

15. Considering the aforesaid, the impugned order dated 22nd May, 2024 passed under Section 143(3) of the Income Tax Act, 1961; Notice of Demand dated 22nd May, 2024 under Section 156 of the said Act, and Notice dated 23rd May, 2024 passed under Section 274 of the said Act, are set aside.

Signature Not Verified
Digitally Signed
By:AMAN UNIYAL
Signing Date:25.06.2024
16:17:54

16. The present petition is allowed, in the aforesaid terms.

MINI PUSHKARNA, J
(VACATION JUDGE)

DHARMESH SHARMA, J
(VACATION JUDGE)

JUNE 24, 2024/ab

Signature Not Verified
Digitally Signed
By:AMAN UNIYAL
Signing Date:25.06.2024
16:17:54