

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"G" BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No. 1358/Mum./2021**  
**(Assessment Year : 2015-16)**

Asstt. Commissioner of Income Tax  
Central Circle-2(1), Mumbai ..... Appellant

v/s

M/s. Wizcraft International Entertainment  
5<sup>th</sup> Floor, Satyadev Plaza  
Off New Link Road ..... Respondent  
Andheri (East), Mumbai 400 053  
PAN – AAACW1931D

Assessee by : Shri Snehal Shah  
Revenue by : Shri Shekhar L. Gajbhiye (CIT-DR)

Date of Hearing – 09.03.2022

Date of Order – 16/03/2022

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

1. The present appeal has been preferred by the Revenue challenging the order dated 31.05.2021, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the Commissioner of Income Tax (Appeals)-48, Mumbai [*"the CIT(A)"*] for the assessment year 2015-16.

2. During the course of hearing, at the outset, we noticed that in the case of the assessee, the matter is pending before the Insolvency

Professional in terms of the Insolvency and Bankruptcy Code, 2016 ("*the Code*") and moratorium period has been declared as per section 14 of the Code.

3. We further noticed that petition was filed by IDBI Bank Limited in its capacity as the Financial Creditor of Wizcraft International Entertainment Pvt. Ltd. ("*Corporate Debtor*"), under section 7 of the Code read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 before the Hon'ble Adjudicating Authority i.e. National Company Law Tribunal, Mumbai Bench, Mumbai ("*Hon'ble NCLT*") for initiation of Corporate Insolvency Resolution Process ("*CIRP*") of the Corporate Debtor.

4. Pursuant to the petition, Hon'ble NCLT appointed an interim resolution professional and declared moratorium period under section 14 of the Code. Further, we noticed that an application was filed for replacement of the Interim Resolution Professional and appointment of Shri Sanjay Garg (having Registration No. IBBI/IPA-001/IP-P-01865/2019-2020/12919) as a Resolution Professional of the Corporate Debtor. Hon'ble NCLT vide order dated 22.10.2021 appointed Shri Sanjay Garg as the Resolution Professional of the Corporate Debtor as he was also authorised by the Committee of Creditors. Vide aforesaid order Shri Sanjay Garg was authorised to complete the resolution process expeditiously. The Resolution Professional has also issued letter of authority in favour of the Authorised Representative of the assessee in respect of present appeal before us.

5. It is pertinent to note that as per the provisions of section 14 of the Code 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 shall be prohibited during the moratorium period. The period of moratorium shall have the effect from the date of such order till the completion of the corporate insolvency resolution process. In the present case, the appeal filed by the Revenue is an institution of suit against the corporate debtor, which is prohibited under section 14 of the Code. Hon'ble Supreme Court in case of Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan (P.) Ltd. [2017] 88taxmann.com 202 held that even arbitration proceedings cannot be initiated after imposition of the moratorium u/s 14 (1) (a) has come into effect and it is *non est* in law and could not have been allowed to continue. Further Hon'ble Supreme Court in the case of Pr. CIT v. Monnet Ispat & Energy Ltd. [SLP (C) No.6487 of 2018, dated 10-8-2018] has upheld overriding nature and supremacy of the provisions of the Code over any other enactment in case of conflicting provisions, by virtue of a non-obstante clause contained in section 238 of the Code. It is further pertinent to note that under section 178(6) of the Act, as amended w.e.f. 01.11.2016, the Code shall have overriding effect.

6. Further, as per section 31 of the Code, resolution plan as approved by the Adjudicating Authority shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders

involved in the resolution plan. Thus, this will prevent State authorities, Regulatory bodies including Direct & Indirect Tax Departments from questioning the resolution plan. Therefore, there is no reason to keep this appeal pending.

7. In view of the above, we dismiss the present appeal filed by the Revenue with the liberty to the Assessing Officer to file the appeal afresh after completion of moratorium period upon the revival of the Corporate Debtor as per Resolution Plan as approved by the Adjudicating Authority or upon appointment of the Liquidator, as the case may be.

8. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open court on 16/03/2022

**Sd/-**  
**PRASHANT MAHARISHI**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 16/03/2022**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai