

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI PRAMOD KUMAR, VP &
SHRI AMIT SHUKLA, JM**

आयकरअपीलसं./ I.T.A. No. 646 to 651/Mum/2019
(निर्धारणवर्ष / Assessment Year: 2008-09 to 2013-14)

Mahavir Roads & Infrastructure Pvt. Ltd. Destination Building, 6 th floor, Above McDonal's Restaurant, Near Ghatkopar Chembur Flyover, Mumbai-400 071	बनाम/ Vs.	DCIT Cen. Cir-3(4), R. No. 1915, 19 th floor, Air India Building, Nariman Point, Mumbai- 400 021
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAECM8166G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थीकीओरसे/ Appellant by	:	Shri Rohan Deshpande, Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Ajay Chandra, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	08.06.2022
घोषणाकीतारीख / Date of Pronouncement	:	08.06.2022

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeals have been filed by the assessee against the separate impugned order of even date 22.11.2018, passed by Ld. CIT (Appeals)-51, Mumbai for the quantum appeal of

assessment passed u/s 143(3) r.w.s. 153A for the AY 2008-09 to 2013-14.

2. Before us, Ld. Counsel for the assessee stated that a petition under the Insolvency & Bankruptcy Code, 2016 (IBC) has been filed against the assessee company which has been admitted by the National Company Law Tribunal, Mumbai (NCLT) vide order dated 21.02.2019 in Appeal CP (IB) 2300/NCLT/MB/2018. He also informed that process of Corporate Insolvency Resolution Process (CIRP) is still pending. A resolution professional has been appointed by NCLT, Mumbai and has granted his consent vide letter of authority dated 7th October 2021.

3. Ld. Counsel further submitted that now in view of section 14(1)(a) of IBC, there is a moratorium for institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, Tribunal, Arbitration Penal or other authority. Thus, during the moratorium period, no proceedings can be continued including the income tax proceedings before this Tribunal.

4. We find that the present appeals have been filed by the assessee against the order of Ld. CIT (A) whereby demands have been created in respect of the additions sustained /enhanced by the Ld. CIT (A). Once NCLT has passed the order in pursuance of petition filed u/s 7 of IBC for initiating insolvency process against the corporate debtor, i.e., the assessee company and there is moratorium imposed u/s 14 of IBC, then all the proceedings stands in abeyance. The relevant portion of the order reads as under:-

a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

It is further directed that:

I. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

II. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector Regulator.

III. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process, or until this Bench approves the resolution plan under sub-section (1) of Section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.

IV. That the public announcement of the corporate insolvency resolution process, as specified under section 13 of I&B Code, should be made immediately.

V. That this Bench at this moment appoints Mr Ankur Kumar, registration number IBBI/IPA-002/IP-N00113/2017-18/10283, email id: ankur.srivastava@ezylaws.com, phone no. 9967011249 as Interim Resolution Professional to carry the functions as mentioned under IBC.

5. Thus, in view of the above, no proceedings can be initiated against the corporate debtor, that is, assessee company including

the present proceedings before this tribunal, or the income tax proceedings and recovery of demand or giving effect of any order. It is well settled now that, IBC has overriding affect on all the acts including Income Tax Act which has been specifically provided u/s 178(6) of the I.T. Act as amended w.e.f. 01.11.2016.

6. Accordingly, the appeal filed by the assessee in the present circumstances, cannot be proceeded with, as revenue has also not sought any permission by the committee of creditors. Till the completion of moratorium period or upon the revival of corporate debtor as per the resolution plan approved by the adjudicating authority, the appeals filed by the assessee are treated as dismissed *in limini*. However, liberty is given to the parties to revive /restitute all the aforesaid appeals after the moratorium period expires or as approved by the adjudicating authority.

7. In the result, all the appeals filed by the assessee are **dismissed** in *limini*.

Orders pronounced in the open court on 8th June, 2022.

Sd/-
(Pramod Kumar)
Vice President
मुंबई Mumbai;दिनांक Dated : 08/06/2022

Sd/-
(Amit Shukla)
Judicial Member

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

.उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai