

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE SHRI PRAMOD M. JAGTAP, VICE PRESIDENT
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No.2960/Ahd/2017
Assessment Year : 2009-10

M/s.Sterling Lam Limited Block No.123-124 Ujedia Road Mahiyal Talod, Sabarkantha PAN:AAICS 5496 D	Vs	The Dy.CIT S.K. Circle Himatnagar
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Ms. Arti N. Shah, AR
Revenue by :		Shri James Kurian, CIT-DR

सुनवाई की तारीख/Date of Hearing : 28/07/2022
घोषणा की तारीख /Date of Pronouncement: 28/07/2022

आदेश/ORDER

PER PRAMOD M. JAGTAP, VICE-PRESIDENT

This appeal filed by the Assessee is directed against the order of Ld. Commissioner of Income-tax (Appeals)-2, Ahmedabad [CIT(A)] dated 10th November-2017.

2. At the time of hearing fixed in this case today, the Ld.counsel for the assessee has stated that a petition under the Insolvency and Bankruptcy Code, 2016 has been filed against the assessee-company and the same has been admitted by the National Company Law Tribunal(NCLT),Ahmedabad

Bench vide order dated 10th November, 2020 passed in CP (IB) No.72/9/NCL/AHM/2018. A copy of the said order is also placed on record before us, the relevant of which reads as under:-

“

1. *The Corporate Debtor, M/s. Sterling Lam Limited is admitted in Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016.*
2. *The moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.*
 - 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 the possession of the corporate debtor.*
3. *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 Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.*
4. *We hereby appoint Mr. Rajendra Jain, having registration no. IBBI/IPA-002/IP-N00732/2018-2019/12353, email: iprajendragjain@gmail.com, to act as an IRP under Section 13(1)(c) of the Code. He shall conduct the Corporation Insolvency Resolution Process as per the provision of Insolvency and Bankruptcy Code, 2016 r.w Regulation made thereunder:*

5. *The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the Code, It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or cooperate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.*
 6. *This Adjudicating Authority directs the IRP to make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.*
 7. *It is further directed that the supply of goods/service to the Corporate Debtor Company, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.*
 8. *The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of Rs.50,000/- (Rupees Fifty Thousand Only) to the IRP within two weeks from the date of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process ("CIRP") and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.*
 9. *The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order."*
- 2.1. As further submitted by the Ld.counsel for the assessee, a resolution professional has been appointed by NCLT and the process of Corporate Insolvency Resolution Process (CIRP) is still pending. She has submitted

that there is a moratorium for 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 in view of Section 14(1) (a) of the Insolvency and Bankruptcy Code, 2016 and, therefore, no proceedings can be continued including the Income-tax proceedings before this Tribunal in the case of the assessee during a moratorium period.

3. The Ld.counsel for the assessee has invited our attention to the decision of Bombay Bench of this Tribunal in the case of Mahavir Roads & Infrastructure Pvt.Ltd. vs. DCIT (ITA Nos. 646 to 651/Mum/2019 order dated 08/06/2022), wherein the appeal of the assessee in the similar facts and circumstances was dismissed by the Tribunal by observing as under:-

“ 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 effect 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 limine. 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 limine.**"

4. Having regard to all the facts of the case and keeping in view the decision of Co-ordinate Bench of this Tribunal at Mumbai in the case of Mahavir Roads & Infrastructure Pvt.Ltd. vs. DCIT (supra), this appeal filed by the assessee is treated as dismissed *in limine*. Liberty, however, is given to the parties to revive/restitute this appeal after the moratorium period expires or as approved by the adjudicating authority.

5. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the Court on 28th July, 2022 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(PRAMOD M. JAGTAP)
VICE-PRESIDENT

Ahmedabad, Dated 28/07/2022

टी.सी.नायर, व.नि.स.।T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-2, Ahmedabad
5. विभागीय प्रतिनिधि,अपीलीय अधिकरण आयकर ,राजोक्त/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad