

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI LALIET KUMAR, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 2250/Hyd/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s. Lanco Solar Private
Limited,
Hyderabad
[PAN No. AABCL4930G]

अपीलार्थी / Appellant

Vs. Assistant Commissioner of
Income Tax,
Circle-16(1),
Hyderabad

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri P.Murali Mohan Rao, AR
राजस्व द्वारा/Revenue by: Shri Rajendra Kumar, CIT-DR

सुनवाई की तारीख/Date of hearing: 15/09/2022
घोषणा की तारीख/Pronouncement on: 19/09/2022

आदेश / ORDER

PER RAMA KANTA PANDA, AM :

Aggrieved by the order passed by the Learned Asst. Commissioner of Income Tax, Circle-16(1), Hyderabad ("Ld. AO") in the case of M/s. Lanco Solar Private Limited ("the assessee") for the AY.2013-14, under section 143(3) r.w.s.92CA(3) & r.w.s. 144C(13) of the Income Tax Act, 1961 (for short "the Act"), consequent to the directions of Hon'ble Dispute Resolution Panel, Bengaluru ("DRP"), assessee filed this appeal.

2. At the outset it is represented by the Learned AR that the Corporate Insolvency Resolution Proceedings (CIRP) are initiated by admitting the application under section 7 of the Insolvency and Bankruptcy Code, 2016 ("the Code") and moratorium under section 14 of the Code was declared by the National Company Law Appellate Tribunal (NCLAT) by order dated 17/05/2019. In terms of the moratorium, the institution and continuance of the proceedings against the assessee are prohibited. Learned DR submitted that the state of affairs obtaining as on today are not available and it is not known at what stage the CIRP are pending. Learned AR also submits that such facts are yet to be ascertained.

3. Be that as it may, we have considered the issue in the light of the provisions of and the decision of the Hon'ble Apex Court in the case of *Ghanashyam Mishra And Sons vs Edelweiss Asset Reconstruction* (2021) 126 taxmann.com 132 (SC). Under section 13 of the Code, the adjudicating authority after admission of the application under section 7 or 9 or 10 of the Code shall declare a moratorium which shall include the prohibition of the institution of suits or continuation of pending suits or proceedings against the corporate debtor in any court of law or tribunal. In *Ghanashyam Mishra And Sons* (supra), it was held that, (i) That once a resolution plan is duly approved by the Adjudicating Authority under sub section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and 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 stakeholders. On the date of approval of resolution plan by the

Adjudicating Authority, all such claims, which are not a part of 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; (ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect; and (iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.

4. A reading of the provisions under section 13 and 14 of the Code along with the decision in Ghanashyam Mishra And Sons (supra), clearly shows that once the proceedings have commenced by institution of application under section 7 or 9 or 10 of the Code, the continuance of the pending proceedings is prohibited and when once they reach the logical conclusion with due approval of the resolution plan by the Adjudicating Authority under sub section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and 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 stakeholders. At any rate, for the time being, this appeal cannot be proceeded with during the continuance of the proceedings under the Code. However, depending upon the result of such proceedings before the adjudicating authority in respect of the

corporate debtor, appropriate steps if any, may be taken by the appellant/respondent. We, therefore, granting leave to the appellant/respondent in this appeal to seek the restoration of the appeal, if necessitated by the order in the Corporate Insolvency Resolution Proceedings, dismiss the appeal in limine. We derive support for the above proposition from the decision of the Mumbai Bench of the Tribunal in the case of Mahavir Roads & Infrastructure Pvt. Ltd., Vs. DCIT in ITA Nos. 646 to 651/Mum/2019 (AYs.2008-09 to 2013-14), dt.08/06/2022.

5. In the result, the appeal of assessee is dismissed in limine.

Order pronounced in the open court on this the 19th day of September, 2022

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 19/09/2022

TNMM

Copy forwarded to:

1. M/s. Lanco Solar Pvt. Limited, , C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad.
2. Assistant Commissioner Income Tax, Circle-16(1), Hyderabad.
3. The Dispute Resolution Panel (DRP), Bengaluru.
4. The Director of Income Tax (IT & TP), Hyderabad.
5. The Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.
6. DR, ITAT, Hyderabad.
7. GUARD FILE

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ASSISTANT REGISTRAR
ITAT, HYDERABAD