

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "H" BENCH: NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER &
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA Nos.1112 to 1115/Del/2021

[Assessment Years : 2014-15 to 2017-18]

Sadhna Media Pvt.Ltd., 38, Rani Jhansi Road, Jhandewalan, New Delhi- 110055. PAN-AAHCS4532K	vs	Pr. CIT (Central), Delhi-3, New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Shubham Jain, CA	
Respondent by	Shri M. Baranwal, CIT DR	
Date of Hearing	23.11.2022	
Date of Pronouncement	23.11.2022	

ORDER

PER KUL BHARAT, JM :

This bunch of four appeals filed by the assessee for the assessment years ("AYs") 2014-15 to 2017-18 are directed against the orders of Ld. Pr.CIT(Central), Delhi-3 dated 24.03.2021. Since identical grounds have been raised, all 04 (four) appeals filed by the assessee were taken up together for hearing and are being disposed off by way of consolidated order for the sake of brevity. We take ITA No.1112/Del/2021 (AY 2014-15) as a lead case.

ITA No.1112/Del/2021 (AY 2014-15)

2. Now, we take assessee's appeal in ITA No.1112/Del/2021 (AY 2014-15) wherein assessee has raised following grounds of appeal:-

1. *"That on the facts and circumstances of the case and in law the learned Principal Commissioner of Income Tax has erred in invoking*

the provisions of section 263 of the Act. Therefore, the impugned order u/s 263 of the Income Tax Act, (Hereinafter called as Act) may kindly be quashed.

2. *That on facts & circumstances of the case and in law the learned Principal CIT has erred in holding that the assessment order dt 30/12/2018 framed u/s 153C r.w.s 153A/143(3) of I.T. Act (order dt. 30/12/2018 was actually passed u/s 153A/143(3) of I.T. Act) by the AO is erroneous and prejudicial to the interest of the revenue, therefore the impugned order u/s 263 of the Act, is bad in the eye of law and liable to be quashed.*
3. *The learned Principal CIT has erred in law as well as on the fact of the case in assuming jurisdiction u/s 263 of the Act by wrongly and incorrectly holding that the subjected assessment order passed by the AO on date 30/12/2018 is without making proper enquiries. Such findings and the assumption of jurisdiction, both are contrary to the provisions of law and facts on record. Hence, the proceeding initiated u/s 263 of the Act and the impugned order dt 24/03/2021 may kindly be quashed.*
4. *The learned Principal CIT has erred in law as well as on the fact of the case in assuming jurisdiction u/s 263 of the Act by wrongly and incorrectly directing that the subjected assessment order passed on date 30/12/2018 would be liable to fresh adjudication by the Assessing Officer with the directions to carry out thorough and detailed enquiries to ascertain the genuineness and business nexus of various cash expenses of Rs. 1,73,23,497/- (Including cash expense of Rs. 41,51,497/-, below the limit of Rs. 20,000/-) and also verifying the allowability of cash expenses exceeding Rs. 20,000/-made in a day totaling to Rs. 1,28,16,500/- in the case of 'DS' and Rs. 3,55,500/- in the case of T-series' in accordance with the provisions of section 37 read with section 40(A)(3) of the I.T. Act, 1961. Such directions and the assumption of jurisdiction, both are contrary to the provisions of law and facts on record. Hence, the*

proceeding-initiated u/s 263 of the Act and the impugned order dt 24/03/2021 may kindly be quashed.

5. *That on the facts and in circumstances of the case and in law, the learned Principal CIT has erred in assuming the jurisdiction u/s 263 of the Act, since the order passed by the learned Income Tax officer is neither erroneous nor prejudicial to the interest of the revenue, since Income tax officer took one of the views after conducting an enquiry in respect of various expenses allowed by him.*
 6. *The learned Principal CIT has erred in law as well as on the fact of the case in assuming jurisdiction u/s 263 of the Act by wrongly and incorrectly directing that the subjected assessment order passed on date 30/12/2018 would be liable to carry out thorough and detailed enquiries to ascertain the genuineness and business nexus of unaccounted cash expenses of Rs. 1,73,23,497/- as reduced by the AO from the alleged unaccounted cash income of Rs. 6,95,09,233/- found recorded in the seized material despite of the fact that the said alleged cash expenses of Rs. 1,73,23,497/- alleged to be found recorded in the same seized material wherein total alleged cash income of Rs. 6,95,09,233/- found recorded and as such assessed in the assessment order dt. 30/12/2018 framed u/s 153A/143(3) of I.T. Act.*
 7. *The learned PCIT has erred in law as well as on the fact of the case in directing the AO to apply the provision of section 40A(3) of I.T. Act, on unaccounted cash expenses of Rs. 1,31,72,000/-, alleged to have been incurred by the assessee.*
 8. *The appellant craves the right to add, amend, alter, withdraw or forgo any ground or grounds of appeal before or at the time of hearing.”*
3. At the outset, Ld. Counsel for the assessee/assessee company has gone into insolvency in the matter of *M/s. Naman Infradevelopers Pvt. Ltd. vs M/s. Sadhna Media Pvt. Ltd. vide order No.IB-769/(ND)/2021 dated 30.03.2022.* The

relevant contents of the order of National Company Law Tribunal (“NCLT”) is reproduced as under:-

3. *We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The applicant has claimed the default on part of the Respondent for the Loan amount of Rs. 1,00,86,967 (One Crore Eighty Six Thousand Nine Hundred and Sixty Seven Rupees only) as on 10.06.2021.*
4. *From the daily order dated 11.03.2022, it is clear that the Counsel for the Corporate Debtor has submitted that the present state of affairs of the Corporate Debtor is not favourable and they require time to pay the amount to the Financial Creditor. The counsel for the Corporate Debtor has admitted the debt.*
5. *Mere plain reading of the provision under section 7 of IBC and decision (supra) shows that in order to initiate CIRP under Section 7 the applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt.*
6. *In the light of the aforesaid facts, we find that the documents submitted by the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor’s claim that the Corporate Debtor has indebted and defaulted the repayment of loan amount.*
7. *In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal admits this petition and initiates CIRP on the Corporate Debtor with immediate effect.*
8. *Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Pradeep Kumar Ray for appointment as Interim Resolution*

Professional having registration number IBBI/IPA-002/IP-N-01100/2021-2022/13648. Mr. Pradeep Kumar Ray has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 07.12.2021. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

- 9. It is thus seen that the requirement of subsection 5 (a) of Section 7 of the code stands satisfied as default has occurred, the present application filed under Section 7 is complete, and as no disciplinary proceeding against the proposed IRP is pending.*
- 10. Section 16(1) and Section 16 (2) of the Code mandate that the Resolution Professional proposed by the Financial Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Declaration in Form 2 (under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016) made by the proposed Interim Resolution Professional dated 07.12.2021 clearly states that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. The proposed Interim Resolution Professional Mr. Pradeep Kumar Ray has also submitted an “Authorisation for Assignment” dated 22/06/2021 issued by Institute of Insolvency Professionals.*
- 11. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the credit facilities and has committed default in repayment of the outstanding loan amount.*
- 12. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its*

outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

13. *As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.*
14. *Mr. Pradeep Kumar Ray having registration number IBBI/IPA-002/IP-N-01100/2021-2022/13648 is appointed as an Interim Resolution Professional.*
15. *In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.*
16. *We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:*
 - "(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.*

17. *It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.*
18. *The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.*

19. *The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large."*

4. A request is made by the Ld. Counsel for the assessee/assessee company for adjournment of the case *sine die* vide letter dated 23.11.2022.

4. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. Looking to the facts of the case that the assessee/assessee company has gone into insolvency proceedings before the NCLT. We therefore, dismiss the appeal of the assessee with a liberty to approach this Tribunal for restoration of appeal after final order passed by NCLT. Thus, Grounds raised by the assessee are dismissed.

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

ITA Nos.1113 to 1115/Del/2021
[Assessment Years : 2015-16 to 2017-18]

6. Now, we take remaining appeals of the assessee in ITA Nos.1113 to 1115/Del/2021 [Assessment Years : 2015-16 to 2017-18].

7. We have heard Ld. Authorized representatives of the parties and perused the material available on record. We find that the facts and issues are similar and identical as in **ITA No.1112/Del/2021 [AY 2014-15]**. Our direction in **ITA No.1112/Del/2021 [AY 2014-15]** would apply *Mutatis Mutandi* in these appeals filed by the assessee as well. Thus, grounds raised in these appeals filed by the assessee are dismissed.

8. In the final result, all appeals filed by the assessee are dismissed.

Order pronounced in the open Court on 23rd November, 2022.

Sd/-

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI