

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.230/Kol/2020
Assessment Year: 2006-07**

Deputy Commissioner of Income Tax, Circle-11(1), Kolkata.	Vs	Kilburn Chemicals Limited 16 th Floor, Shantiniketan, 8, Camac Street, Kolkata- 700017. (PAN:AAACK1427A)
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Vijay Kumar, Addl. CIT
Respondent by : N o n e

Date of Hearing : 26.12.2022
Date of Pronouncement : 28.02.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the revenue is against the order of Ld. CIT(A)-4, Kolkata vide Appeal No. 23/CIT(A)-4/08-09 dated 26.11.2019 passed against the assessment order by CIT(A)-4, Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 31.12.2008.

2. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. There is no application seeking adjournment either. Considering the nature of dispute, we proceed to dispose-off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. 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 in short “Code”) and moratorium period has been declared as per section 14 of the Code.

4. We notice that a petition was filed jointly by Bank of Baroda and State Bank of India, Financial Creditors u/s. 7 of the IBC for initiation of Corporate Insolvency Resolution Process (in short “CIRP”) against the assessee corporate debtor before the adjudicating authority i.e. National Company Law Tribunal, Kolkata Bench, Kolkata (in short “NCLT”) in CP(IB) No. 764/KB/2020.

5. Pursuant to the petition, NCLT, *inter alia*, appointed Mr. Partha Pratim Ghosh (Registration No. IBBI/IPA-001/IP-P00554/2017-18/10984) as the Interim Resolution Professional for conducting the CIRP and exercise all powers and subject to all duties as contemplated under the provisions of IBC. Subsequently, vide IA(IB) No.1112/KB/2020 in the said petition before NCLT, Kolkata, the Interim Resolution Professional was replaced by Mr. Sanjai Kr. Gupta having registration No. IBBI/IBA-001/IT-P00592/2017-18/11045. Relevant correspondence in this respect are placed on record for which an order sheet entry dated 19.09.2022 was also recorded. The said order sheet entry noted that “*A letter of Shri Sanjai Kumar Gupta has been placed on file, as per which Shri Gupta has been appointed as Interim/Resolution Professional u/s. 16 of the Insolvency and Bankruptcy Code 2016 by the NCLT Kolkata vide their order dated 10.08.2020 in the petition relating to corporate Insolvency Resolution process in the case of the assessee. A moratorium has also been declared u/s. 14 of the Code 2016.....*”

6. 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.

7. 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.

8. In view of the above, we dismiss the 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.

9. Further, the appeal filed by the assessee also cannot be sustained as the assessee did not furnish any permission obtained from Hon'ble NCLT as held by the Hon'ble Madras High Court in Mrs. Jai Rajkumar v. Stanbic Bank Ghana Ltd. [2019] 101 taxmann.com 329. Further, no letter of authority issued by the Interim Resolution Professional in favour of the Authorised Signatory of the assessee, in respect of present appeal before us, has been filed.

10. Accordingly, the appeal filed by the assessee is dismissed with the liberty to file the appeal afresh by the Interim Resolution Professional / Resolution Professional, as may be substituted by the Hon'ble NCLT, on behalf of the Corporate Debtor with prior permission of the Hon'ble NCLT; or 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.

11. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 28th February, 2023.

Sd/-

(Rajpal Yadav)
Vice President

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 28th February, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. CIT(A)-4, Kolkata
 4. The Pr. CIT, Kolkata.
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata