

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 5245/DEL/2017 [A.Y. 2009-10]

ITA No. 5246/DEL/2017 [A.Y. 2010-11]

The A.C.I.T.
Circle - 78(1)
New Delhi

Vs.

M/s Unitech Machines Ltd
806, Devika Tower, 6
Nehru Place, New Delhi

PAN: AAACU 0313 P

(Applicant)

(Respondent)

Assessee By : None

Department By : Shri H.K. Choudhary, CIT- DR

Date of Hearing : 11.04.2023

Date of Pronouncement : 11.04.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above two separate appeals by the Revenue are preferred against two separate orders of the Id. CIT(A) - 41, New Delhi dated 18.05.2017 pertaining to Assessment Years 2009-10 and 2010-11.

2. Since common issues are involved in both these appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. None appeared on behalf of the assessee though written submissions have been filed by the Chartered Accountant Shri Vivek Raheja, explaining the underlying facts in the issues.

4. We have carefully perused the orders of the authorities below. At the very outset, we have to state that Corporate Insolvency Resolution Process [CIRP] has been initiated against M/s Unitech Machines Limited under the provisions of the Insolvency and Bankruptcy Code, 2016 (I & B Code] w.e.f 01.03.2019 vide National Company Law Tribunal [NCLT] order in the case of Corporation Bank Vs. Unitech Machines Limited as CP No. (IB) - 937(PB)/2018 dated 01.03.2019.

5. We are of the considered view that upon the commencement of CIRP, provisions of Moratorium as given u/s 14 of the I & B Code, 2016, came into force and the same read as under:

14. Moratorium -

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following. namely:

(a) the 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:

(b) transferring, encumbering, alienating or disposing off 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period. if the Adjudicating Authority approves the resolution plan under sub-section (1) of

section 31 or passes an order for liquidation of corporate debtor under section 33. the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

6. In line with the aforementioned provision, NCLT, in its order dated 01.03.2019, has inter alia, held as under:

“53. 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,”

7. Considering the facts of the case in light of the judgment of NCLT [supra], we dismiss both the appeals of the Revenue.

8. However, liberty is given to the Revenue to approach this Tribunal as per the provisions of the law pursuant to the final outcome of the proceedings under the I & B Code.

9. In the result both the appeals of the Revenue in ITA Nos. 5245 & 5246/DEL/2017 are dismissed

The order is pronounced in the open court on 11.04.2023.

Sd/-
[ASTHA CHANDRA]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 11th April, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	17.04.2023
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	