

IN THE INCOME TAX APPELLATE TRIBUNAL
"J" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.2537/Mum./2022
(Assessment Year : 2018-19)

Mercator Ltd.
3rd Floor, Mittal Tower, B Wing,
Free Press Journal Marg,
Nariman Point,
Mumbai-400 021
PAN – AAACM5007A

..... Appellant

v/s

DCIT-5(2)(1),
Aayakar Bhavan, M.K. Road,
New Marine Lines,
Mumbai-400020

..... Respondent

Assessee by : None
Revenue by : Shri Sunil Kisan Agawane, CIT-DR

Date of Hearing – 25/07/2023

Date of Order – 27/07/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee through its Resolution Professional appointed vide order dated 08/02/2021 passed by the Hon'ble National Company Law Tribunal, Mumbai Bench, Mumbai ("*Hon'ble NCLT*") in Corporate Insolvency Resolution Process ("*CIRP*") initiated against the assessee under the provisions of the Insolvency and Bankruptcy Code, 2016 ("*the Code*"). In this appeal, the assessee has challenged the impugned final

assessment order dated 30/07/2022 passed under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (*"the Act"*), pursuant to the directions issued by the Ld. Dispute Resolution Panel under section 144C(5) of the Act, for the assessment year 2018-19.

2. When this appeal was called for hearing neither anyone appeared on behalf of the assessee nor was any application seeking adjournment filed. From the perusal of the record, we find that on previous hearings also no one appeared on behalf of the assessee. Therefore, in view of the above, we proceed to dispose off the present appeal ex-parte, qua the assessee after hearing the learned Departmental Representative (*"learned DR"*) and based on the material available on record.

3. We find that vide order dated 21/02/2023, the Hon'ble NCLT initiated the process of liquidation of the assessee as a going concern since no Resolution Plan was approved by the Committee of Creditors with the requisite majority of voting share as envisaged under the Code and also substantial time for the CIRP was exhausted including all the extension period granted by the Hon'ble NCLT at various stages of the CIRP.

4. From the perusal of the aforesaid order, we find that the Hon'ble NCLT has appointed the Resolution Professional in the present case as a Liquidator as provided under section 34(1) of the Code. We find that the Hon'ble NCLT, vide aforesaid order, further directed as under:

"h. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to

institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.”

5. However, in the present case, we find that the approval of the Adjudicating Authority, as noted above, for the present appeal is not placed on record. Further, we find that Form No.36, in the present appeal, is verified and signed by the Resolution Professional, and after the initiation of the liquidation process, the revised Form No.36 verified and signed by the Liquidator is not filed. Therefore, in view of the above, we are of the considered opinion that the present appeal is not maintainable. Accordingly, we dismiss the present appeal filed by the assessee with the liberty to the assessee that it may prefer the appeal afresh or seek recall of this order, impleading the Liquidator after receipt of approval of the Adjudicating Authority.

6. In the result, the appeal by the assessee is dismissed.

Order pronounced in the open court on 27/07/2023

SD/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

SD/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 27/07/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT, Mumbai City concerned;
- (4) The DR, ITAT, Mumbai;
- (5) Guard file.

Sharwan Kumar
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai