

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'K' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.1992/Mum/2017  
(Assessment Year :2012-13)**

**&**

**ITA No.54/Mum/2018  
(Assessment Year :2013-14)**

M/s. Constructions Limited (Formerly known as Esar Projects Limited Essar House 11, KK Marg Mahalaxmi Mumbai – 400 034	EPC India (India)	Vs.	The Commissioner Income Tax-6(2)(2) Aayakar Bhawan Mumbai- 400 020	Assistant of	
<b>PAN/GIR No.AAACE2358J</b>					
<b>(Appellant)</b>		..	<b>(Respondent)</b>		

Assessee by	None
Revenue by	Shri Vachashpati Tripathi
<b>Date of Hearing</b>	<b>21/09/2023</b>
<b>Date of Pronouncement</b>	<b>22/09/2023</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeals have been filed by the assessee against separate impugned final assessment order dated

29/12/2016 for A.Y.2013-14 and dated 31/01/2017 for A.Y.2012-13 passed u/s.143(3) r.w.s. 144C(13) In pursuance of direction given by the DRP.

2. At the outset, from the records it is seen that there is a letter written by M/s. EPC Construction India Ltd., which reads as under:-

*"1. Pursuant to an application filed by IDBI Bank, the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (**CIRP**) vide order dated April 20, 2018 ("**NCLT Order**") passed by Hon'ble National Company Law Tribunal, Mumbai Bench (**NCLT**). On May 25, 2018, Mr. Abhijit Guhathakurta was appointed as the Resolution Professional by the Committee of Creditors ("**CoC**") of the Company A copy of the NCLT order is annexed herewith as **Annexure 1**.*

*2. During the course of CIRP, the successful resolution applicant, whose resolution plan was approved by the CoC and the Hon'ble NCLT, failed to implement the approved resolution plan. In view of the failure of the successful resolution applicant to implement the approved resolution plan, the Hon'ble NCLT was constrained to pass an order of liquidation on May 7, 2021 ("**Liquidation Order**"). A copy of the Order is attached for your reference as **Annexure 2**.*

*3. Pursuant to the Liquidation Order which was made operational from one week after the date of its upload i.e May 18, 2021, the Hon'ble NCLT initiated the liquidation proceedings against EPCC under Chapter III of the Insolvency and Bankruptcy Code, 2016 ("**IBC**" or "**the Code**) and the Insolvency and Bankruptcy Board of India (**Liquidation Process**) Regulations, 2016 (Liquidation Regulations") and appointed Mr. Abhijit Guhathakurta as the liquidator ("**Liquidator**"),*

4. By virtue of the provisions of the Code, read with the Order, from the date of appointment of the Liquidator i.e., with effect from May 18, 2021 ("**Liquidation Commencement Date**");

(a) the management of the affairs of the Company vests in the Liquidator.

(b) the powers of the board of directors and key managerial personnel have ceased to have effect and vest in the Liquidator;

(c) all assets, property, effects and actionable claims of Corporate Debtor are under the control and custody of the Liquidator.

5. It submitted that as per the provisions of Section 33(5) of the Code, a moratorium period has been declared vide the NCLT Order prohibiting the institution of suits or other legal proceedings against the Corporate Debtor. In light of the same, it is submitted that institution or continuation of any proceedings till the completion of the Liquidation proceedings will be against the provisions of the Code. The provisions of section 33(5) of the IBC Code are reproduced hereinbelow:

"33. Initiation of liquidation

(1) Where the Adjudicating Authority-

.....

.....

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor"

6. It is submitted that the provisions of the Code have been given an overriding effect over anything inconsistent contained in any other law by virtue of section 238 of the Code, Therefore, continuation of the proceedings under the Income Tax Act till the completion of the liquidation proceedings will be in contravention to section 238 of the Code. Section 238 of the Code provides as under:

"Section 238. Provisions of this Code to override other laws  
The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

7. Attention in this regard is brought to the judgement of this Hon'ble Tribunal in the case of **Pratibha Industries Ltd. vs. DCIT 142 taxmann.com 295 (Mum)**, wherein cross appeals were filed by the Revenue and the assessee Company challenging various grounds as against the order of CIT(A) pertaining to various assessments. It was observed that the assessee company was in liquidation pursuant to the order of the NCLT. The Hon'ble Tribunal dismissed the cross appeals filed by the Revenue and the Assessee with the liberty to the appellants/Official Liquidator to recall the order when the occasion warrants. The Hon'ble Tribunal made the observation that in case of parallel proceedings under Income Tax Act, 1961 and the IBC, the Code will have an overriding effect and that no suit or other legal proceedings shall be initiated by or against the corporate debtor which is also applicable for pending proceedings. The relevant paras of the judgement are extracted herewith for your kind reference:

5. Therefore, we are of the considered opinion that **no suit or other legal proceedings shall be initiated by or against the corporate debtor which is also applicable for pending proceedings** and the Proviso to section 33(5) also provides prior approval of the Adjudicating Authority to be obtained by the Official Liquidator. Pertinently, it is also to be observed that **in case of parallel proceedings under Income- tax Act, 1961 and IBC, 2016, the IBC has an overriding effect over the provisions of the Income-tax Act which has been decided by Hon'ble Apex Court in Pr. CIT v. Monnet Ispat & Energy Ltd. [2019] 107 taxmann.com 481** wherein the Hon'ble Apex Court had observed that as per section 238 of IBC, the IBC Code will override anything inconsistent contained in any other enactment, including the Income-tax Act. (Emphasis supplied)

A copy of the order of this Hon'ble Tribunal in the case of Pratibha Industries Ltd. vs. DCIT (supra) is attached herewith as **Annexure 3**.

8. It is submitted that the assessment periods involved in the appeals of the Corporate Debtor are pertaining to Assessment Year 2012-13 and 2013-14, which is prior to commencement of the liquidation proceedings against EPCC i.e., May 18, 2021 and consequently the liabilities if any arising under the same also pertains to the period prior to commencement of liquidation proceedings against EPCC.

9. Additionally, please note that any claims persisting against the Corporate Debtor as on the Liquidation Commencement Date, were required to be submitted in accordance with the contents of the public announcement dated May 19, 2021 (**Public Announcement**), published in Times of India & Navshakti, which is also displayed on the website of the Corporate Debtor (<https://epcc.co.in/en-us/home>), for verification by the Liquidator in accordance with the provisions and timelines of the Code. A copy of the Public Announcement is annexed herewith as **Annexure 4**.

10. It is brought to your Honors notice that the payment of such claims in case of admission by the Liquidator shall be dealt in accordance with Section 53 of the Code and the Liquidator is not entitled to make any payment that is not as per the Code. Considering that the assessment pertains to a period prior to commencement of liquidation proceedings, please note that the amounts in relation to the same cannot be paid out at this stage, as any such payment can take place as per the waterfall mechanism under Section 53 of the Code. The Liquidator is not entitled to make any payment that would not be in accordance with the Code.

11. In light of the above, it is prayed that the captioned appeals be kept in abeyance till the completion of the liquidation proceedings and that no coercive actions be taken against the Corporate Debtor as the same would stand contrary to the provisions of the Code and Liquidation Regulations.

12. We request that all future correspondence in relation to the Corporate Debtor during the liquidation process should be addressed to the undersigned, in his capacity as the Liquidator in addition to any copies being issued to the office of the Corporate Debtor directly. The details are as under:

a. Correspondence Address: Deloitte India Insolvency Professionals LLP, Tower 3, 27th-32nd Floor, One International Centre, Senapati Bapat Marg, Elphinstone Road (W), Mumbai-400013,

b. Email: [infaepcliq@deloitte.com](mailto:infaepcliq@deloitte.com)

3. Since, already liquidation initiation has been undertaken by the NCLT under IBC, the management of the affairs of the company vests in the liquidator and the powers of the board of directors and key managerial personnel have been vested with the Liquidator and all assets, property, effects and actionable claims of Corporate Debtor are under the control and custody of the Liquidator. Further, the moratorium period has been declared vide the NCLT Order prohibiting the institution of suits or other legal proceedings against the Corporate Debtor. Further, any income tax demand or claim by the department has to be dealt in accordance with Section 53 of the Code and the liquidators are not entitled to make any payment that is not as per the Code. Therefore, till that moratorium period or till the Resolution Board decides to pursue the appeal, the appeal of the assessee is dismissed in limine. However, liberty is given to the assessee company through liquidator to reinstate the appeal once Resolution Board approves or IRP decides to pursue the appeal.

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

Order pronounced on 22<sup>nd</sup> September, 2023.

**Sd/-**  
**(PADMAVATHY S)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated 22/09/2023  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**