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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 1598/2014**

SVOGL OIL GAS AND ENERGY LIMITED. ..... Petitioner
Through: Mr Balbir Singh, Senior Advocate with Mr Ruchir Bhatia and Ms Rubal Maini, Advocates.

versus

DIRECTOR GENERAL OF CENTRAL EXCISE INTELLIGENCE & ORS. ..... Respondents
Through: Mr Satish Kumar, Senior Standing counsel for Respondent No.1/DGCEI.
Ms Rukhmini Bobde and Ms Aakaksha Nehra, Advocates for ICICI Bank Ltd.
Mr Rahul Kaushik, Senior Standing counsel with Ms Bhavishya Sharma, Advocates for Respondent No.3.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **06.04.2016**

CM No.13027/2016 (for change of the name of the Petitioner company as appearing in the cause title)

1. It is stated that pursuant to a certificate issued by the Registrar of Companies on 17th August 2015 the name of the Petitioner company has been changed to SVOGL Oil Gas and Energy Limited.

2. In that view of the matter, the application is allowed. The name of the Petitioner will now be shown as "SVOGL Oil Gas and Energy Limited".

CM No.13026/2016 & W.P.(C) 1598/2014

3. CM No. 13026/2016 has been filed by the Petitioner seeking clarification/modification of the order dated 22nd January, 2016.

4. It is necessary to set out the background under which the abovementioned order was passed by the Court. The Petitioner, initially, sought a direction to the Service Tax Department (STD) to lift the attachment of its bank account effected by two orders dated 6th February 2013 and 22nd August 2013 issued by the Directorate General of Central Excise Intelligence (DGCEI) in relation to non-payment of the service tax dues by the Petitioner. By the order dated 22nd August, 2013 issued under Section 87 (b) of the Finance Act, 1994 it was ordered that the payments owed to the Petitioner by the ONGC should be directly credited to the Government exchequer.

5. On 21st March 2014, this Court was informed that a consortium of the Petitioner's secured creditors comprising banks have approved a Corporate Debt Restructuring (CDR) scheme in terms of which a moratorium on repayment of its interest liability was imposed for 18 months. The lead banker ICICI sought impleadment in these proceedings. The Court was informed by the Petitioner that with a view to liquidating its liabilities it had proposed to sell off its assets which at that stage were valued at Rs. 480 crores.

6. As far as the service tax liability was concerned, the Petitioner informed the Court that the total dues were Rs. 270 crores out of which Rs. 132 crores have already been paid. However, the STD informed the Court that the dues

were to the extent of Rs. 446 crores. Faced with this situation, where the attachment of the Petitioner's accounts and the garnishee order, if maintained, would in all likelihood lead to the collapse of the Petitioner's business, the Court by the order dated 21st March 2104 put into place an arrangement whereby a certain portion of the receipts into the Petitioner's account with ICICI would go towards settling the dues of the STD. This was under the express understanding that "the Petitioner shall proceed with its proposal to sell off its assets which according to the submissions made are valued approximately at Rs.480 crores."

7. On 28th May 2014, the Court was informed that from a sum of Rs. 30 crores that had been received into the Petitioner's account, Rs. 8 crores had been deposited in the account of the STD. The Court noted that the outstanding amount of service tax was Rs. 388 crores out of which, admittedly, Rs. 132 crores had been paid by the Petitioner, leaving a balance of Rs. 256 crores. This when further reduced by Rs. 8 crores paid to the STD worked out to Rs. 248 crores. Of this, the Petitioner admitted to a liability of Rs. 130 crores and disputed the balance Rs.118 crores.

8. The Court was on 28th May 2014 informed by learned counsel for the Petitioner that its bankers had offered further credit facility and had agreed upon a moratorium from recovery of the outstanding dues and that the existing arrangement should be allowed to continue to enable the Petitioner to finance its business. It is in the above circumstances, the Court directed that whatever amounts are payable by the Petitioner's clients should be directly reemitted to its bank accounts. ICICI bank was to directly intimate

the STD of such remittances and “at the same time ensure that 1/3rd of each remittance received in to the said account is made over directly to the Service Tax Department within one week of its receipt.” The Court then noted that as regard the disputed sum of service tax liability i.e. Rs. 118 crores, the Department shall proceed as quickly as possible to compile relevant materials and initiate proceedings by issuance of a Show Cause Notice (SCN) to the Petitioner.

9. It requires to be noticed that since then, pursuant to the SCN issued to the Petitioner, an adjudication order has been passed on 19th February, 2016 against the Petitioner creating a demand of Rs. 445.86 crores for the services rendered by the Petitioner during the period from 1st April 2010 to 31st March, 2013. This is apart from the interest and penalty amounts. Consequently, a major change has taken place since the passing of the previous order of the Court. Apart from the 'admitted' service tax liability of Rs. 130 crores (of which around Rs.72 crores is said to have been paid till date) the 'disputed' service tax liability has got crystallized by means of the above adjudication order dated 19th February 2016.

10. The Petitioner approached this Court with an application being CM No.14272/2015 in which it is stated that it had taken over the service tax liability of M/s Max Tech Oil & Gas Services P. Ltd. ('Max Tech') by a Board Resolution dated 6th June, 2015. The said service tax liability of Max Tech was to the tune of Rs. 10,93,45,803. Accordingly, a prayer was made before this Court that remittances in the Petitioner’s accounts should be directed to be paid to the STD to the above extent by depositing it first under

the Service Tax Registration Code of Max Tech. In the said application, this Court passed an order dated 22nd January, 2016 directing the ICICI bank to remit the aforementioned sum from the escrow account to the STD under the service tax registration code of Max Tech.

11. The Present application has been filed by the Petitioner seeking a modification of the above order by pointing out that the ICICI bank is construing the above order to mean that it will not allow any withdrawal from the account till such time the entire sum of Rs. 10,93,45,803/- is not paid from the said account to the STD. The Petitioner wants this Court to clarify that the arrangement put in place by the order dated 28th May, 2014 of this Court will continue. In other words, it is prayed that of the remittances received in the Petitioner's account with ICICI Bank, 1/3rd should continue to be credited to the account of the STD and 2/3rd retained in the Petitioner's account.

12. It has been pointed out by learned counsel for the Respondents that with the adjudication order dated 19th February, 2016 having been passed creating a demand of over Rs. 445 crores, there is no justification for continuing the interim protection to the Petitioner as far as payment of its service tax dues are concerned. It is further pointed out that the Petitioner should work out its remedies against the adjudication order by going before the Appellate Authority.

13. Mr Balbir Singh, learned Senior counsel for the Petitioner, on the other hand urges that the interim protection granted to the Petitioner should continue as without it the entire business of the Petitioner would come to a

standstill. He states that the Petitioner will come up with an arrangement whereby the admitted dues of the STD can be met even while, the Petitioner works out its remedies in relation to the crystallised service tax liability by filing an appeal against the adjudication order dated 19th February, 2016. Mr Balbir Singh, does not dispute that a petition under Section 433 of the Companies Act 1956 has been filed against the Petitioner seeking its winding up. The said petition is stated to be pending before the learned Company Judge of this Court.

14. The Court takes note of the changed development that in terms of the adjudication order dated 19th February, 2016 the disputed service tax dues have been crystallised at over Rs. 445 crores. Today, therefore, there is a situation where more than half of the admitted service tax dues (which included the service tax liability of Max Tech taken over by the Petitioner) is yet to be paid and the disputed service tax is yet to be recovered. The Court sees no justification in continuing the interim arrangement put in place by the Court since it will be for the learned Company Judge seized of the winding up petition to examine how, given the financial position of the Petitioner, its remittances should be disbursed to meet the statutory and other priority dues, as well as the dues of its lenders and creditors. These proceedings should not come in the way of the learned Company Judge passing an effective order as regards all of the outstanding liabilities of the Petitioner.

15. At the same time, the Court is of the view that the STD should not be restrained from proceeding in accordance with law to recover whatever dues

are owned to it, including the 'admitted' dues of the Petitioner.

16. One issue raised by Mr Balbir Singh concerns the validity of the attachment of the Petitioner's account ordered by the STD by the impugned order dated 6th February, 2013 and the garnishee order dated 22nd August 2013. As already recorded by the Court in its orders dated 21st March and 28th May 2014, the admitted service tax liability of the Petitioner, as reflected in the service tax returns filed by it, was to the extent of Rs. 130 crores. Added to this is the admitted service tax liability of Rs. 11 crores of Max Tech which has to be discharged by the Petitioner. In the past two years, the Petitioner has managed to pay only around Rs. 72 crores towards this admitted sum. Consequently, the Court does not see any reason to vacate the attachment ordered by the STD by its order dated 6th February, 2013 or the garnishee order dated 22nd August 2013.

17. Consequently, the Court vacates the interim arrangement put in place by the orders dated 21st March, 2014, 28th May, 2014 and 22nd January, 2016. It is open to the parties to work out their respective remedies in accordance with law. The writ petition and all the pending applications are disposed of. The next date of hearing stands cancelled.

S.MURALIDHAR, J

VIBHU BAKHRU, J

APRIL 06, 2016/MK