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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **SERTA 13/2017 & CM APPL. 42316/2017 (Stay)**

COMMISSIONER OF CENTRAL TAX,
SOUTH DELHI

..... Appellant

Through : Mr. Amit Bansal, Advocate.

versus

MONNET ISPAT ENERGY LTD.

..... Respondent

Through : Ms. Anne Mathew, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

ORDER

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22.11.2017

Learned counsel for respondent, who appears on advance notice has drawn our attention to the order dated 4th September, 2017 passed by a Coordinate Division Bench of this Court, in which one of us (Prathiba M. Singh, J.) was a member, in **ITA No.533/2017** titled **PR. Commissioner of Income Tax-6, New Delhi v. Monnet Ispat & Energy Limited** & other connected matters. The said order reads as under:

“1. The Court has heard the learned counsel for both parties. The provisions of the Insolvency and Bankruptcy Code, 2016 (‘Code’) and, in particular, Section 14 thereof has been perused.

2. It appears to the Court that Section 238 of the Code is categorical that the Code will apply, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Section 14(1)(a) of the Code states, *inter alia*, that on the ‘insolvency commencement date’ the Adjudicating Authority (AA) shall by order declare moratorium for prohibiting “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.” That the Code will prevail over all other statutes inconsistent therewith has been explained in the recent decision dated 31st August, 2017 of the Supreme Court in Civil Appeal No.8337-8338/2017 (**M/s. Innoventive Industries Ltd. v. ICICI Bank**).

3. In the instant case, the National Company Law Tribunal (NCLT) [which by virtue of Section 5 (1) of the Code is the AA] has by its order dated 18th July 2017 admitted the petition under Section 7 of the Code filed by the State Bank of India against the Respondent Assessee and prohibited, *inter alia*, “the institution of suits or continuation of pending suits or proceedings” against the Respondent. This would include the present appeal by the Income Tax Department (‘Department’) against the order of the Income Tax Appellate Tribunal (‘ITAT’) in respect of the tax liability of the Respondent-Assessee.

4. Mr. Asheesh Jain, learned Senior Standing counsel for the Revenue, points out that unlike some of the earlier insolvency statutes the Code does not envisage permission being sought from the NCLT for continuation of the continuation of pending proceedings against the Respondent in other fora. In the order dated 18th July 2017 is clear that the moratorium continues “till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-Section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, as the case may

be.”

5. Consequently, these appeals are disposed of with liberty to the Appellant-Department to revive them subject to the further orders of the NCLT.

6. Copy of the order be given dasti under the signature of the Court Master”.

3. The aforesaid order in the case of the respondent –assessee is squarely applicable to the case in question.

4. In view of the aforesaid position, the present appeal is disposed of with liberty to the appellant-department to revive the appeal subject to further orders of National Company Law Tribunal or in terms of Section 14 of the Insolvency and Bankruptcy Code, 2016.

SANJIV KHANNA, J.

PRATHIBA M. SINGH, J.

NOVEMBER 22, 2017

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