IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.08.2019

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THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.23936, 23939, 23941 & 23945 of 2019
and
W.M.P.Nos.23783, 23785, 23786, 23787, 23789,
23790, 23797 & 23799 of 2019

M/s.Diamond Engineering (Chennai) Pvt Ltd
rep.by its Senior Vice President (Taxation)
Mrs.M.Geetha
No.501, Vandalur - Kelambakkam Main Road
Mambakkam, Chennai - 600 103. ..Petitioner in all W.Ps

vs

1.The Appellate Deputy Commissioner(CT)
(East)
3rd Floor, PAPJM Annexe Building
No.1, Greams Road, Chennai - 600 006

2.The Assistant Commissioner(ST)
Kelambakkam Assessment Circle
141, Burma Colony 1st Street
Perungudi, Chennai - 600 096
Chennai - 600 096. ..Respondents in all W.Ps

Prayer in W.P.No.23936 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the order dated 16.05.2019 in TIN:33900923473/2011-2012 passed by the 2nd respondent and the order dated 02.07.2019 in SP/32/2019 APV/60/2019 passed by the 1st respondent quash the same and pass such further or other orders as this Hon'ble Court may deem fit and proper and thus render justice.

Prayer in W.P.No.23939 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the order dated 26.03.2019 in TIN:33900923478/2012-2013 passed by the 2nd respondent and the order dated 02.07.2019 in SP/29/2019 APV/54/2019 passed by the 1st respondent quash the same and pass such further or other orders as this Hon'ble Court may deem fit and proper and thus render justice.

Prayer in W.P.No.23941 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the order dated 26.03.2019 in TIN:33900923478/2013-2014 passed by the 2nd respondent and the order dated 02.07.2019 in SP/30/2019 APV/55/2019 passed by the 1st respondent quash the same and pass such further or other orders as this Hon'ble Court may deem fit and proper and thus render justice.

Prayer in W.P.No.23945 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the order dated 16.05.2019 in TIN:33900923473/2014-2015 passed by the 2nd respondent and the order dated 02.07.2019 in SP/31/2019 APV/59/2019 passed by the 1st respondent quash the same and pass such further or other orders as this Hon'ble Court may deem fit and proper and thus render justice.

For Petitioner : Mr.N.Elumalai
(in all W.Ps)

For Respondents : Mr.V.Haribabu
Additional Government Pleader
(in all W.Ps)

C O M M O N O R D E R

Mr.N.Elumalai, learned counsel on record for writ petitioner in all four writ petitions and Mr.V.Haribabu, learned Additional Government Pleader, who has accepted notice on behalf of both the respondents in all four writ petitions are before this Court.

2. With consent of learned counsel on both sides, main writ petitions are taken up, heard out and are being disposed of.

3. This Court is informed that these four writ petitions arise out of a common factual matrix, that the central theme / core issue in all these four writ petitions is the same and that only the Assessment Years are different. The Assessment Years being different, obviously the numerical values are also different. Therefore, this common order will dispose of these four writ petitions.

4. Be that as it may, it is submitted that the subject matter of these four writ petitions arise under 'Tamil Nadu Value Added Tax Act 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act'.

5. Revised assessment orders made for four different Assessment years being Assessment Years 2011-2012, 2012-2013, 2013-2014 and 2014-2015 were carried in appeal by way of four statutory appeals by writ petitioner dealer to the 1st respondent, who is the Statutory Appellate Authority under Section 51 of TNVAT Act by way of Statutory Appeals being APV/60/2019, APV/54/2019, APV/55/2019 and APV/59/2019. In the Statutory appeals, four Stay Petitions in SP/32/2019, SP/29/2019, SP/30/2019 and SP/31/2019 were taken out and orders were passed. These writ petitions have been filed, assailing the revised assessment orders made by the 2nd respondent Original Authority as well as orders made by the 1st respondent Appellate Authority in the stay petitions.

6. Learned Revenue counsel raises an objection that the orders made by Original Authority having been carried in appeal before Statutory Appellate Authority cannot now be called in question in these writ petitions alongside challenge to orders made by Appellate Authority in the stay petitions. Be that as it may, it may not be necessary to go into these aspects of the matter as there is a more fundamental preliminary / threshold difficulty for the writ petitioner.

7. Even according to the affidavits filed in support of the instant writ petitions and the typed set of papers filed by the writ petitioner, proceedings against writ petitioner company / dealer i.e., Diamond Engineering (Chennai) Private Limited was initiated by a Creditor before the 'National Company Law Tribunal', Chennai ['NCLT' for brevity] interalia under Section 9 of 'Insolvency And Bankruptcy Code, 2016' ['IBC' for brevity] read with Rule 6 of 'Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016' ['IBC Adjudication Rules' for brevity] and NCLT has passed an order dated 06.06.2017 interalia appointing an interim Insolvency Resolution Professional. This is vide proceedings in CP/507(IB)/CB/2017 (IND/1523/(IB)/CB/2017) before NCLT.

8. The most relevant part of the order of NCLT including the operative portion is contained in Paragraphs 5, 6 and 7, which read as follows:

> '5. We appoint Mr.V.Mahesh, as interim insolvency professional who has been proposed by the operational creditor. He is directed to take charge of the corporate debtor immediately. He is also directed to cause public announcement as prescribed under Sections 13 and 15 of I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim under section 15 of I&B Code, 2016 in the manner as prescribed. It is stated here that no disciplinary proceeding is pending against the Interim

Insolvency Professional and his name is reflected on the website of the Insolvency and Bankruptcy Board of India. We declare the moratorium which shall have effect from the date of this order till the completion of corporate insolvency resolution process, for the purposes referred to in Section 14 of the I&B Code, 2016, We order to prohibit 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 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 Securitisation and Reconstruction of financial Assests and Enforcement of Security Interest Act, 2002(54 of 2002);

(d) The recovery of any property by an owner or less or where such property is occupied by or in the possession of the corporate debtor.

6. The Registry is directed to inform the Insolvency Resolution Professional to take charge of the entity and make compliance with this order as per the provisions of I&B Code, 2016.

7. Accordingly, the application is admitted. The Registry is directed to communicate this order to the operational creditor and the corporate debtor. Pronounced in the open court.'

9. The Insolvency Resolution Professional ['IRP' for brevity] has also taken charge of the writ petitioner company and has filed a status report before NCLT. This is evident from the proceedings of NCLT dated 16.07.2019.

10. That IRP appointed by NCLT has taken charge is not disputed and this is articulated in Paragraph 4 of the affidavit filed in support of the the writ petition and relevant portion reads as follows:

'[4] The petitioner herein states that even before the initiation of the proceeding, the petitioner company is under Corporate Insolvency Resolution Process and the petitioner company is facing insolvency process before the National Company Law Tribunal, Chennai and the

Hon'ble Tribunal by order dated 06.06.2017, has appointed a Resolution Professional and the said Resolution Professional is still managing the affairs of the company.'

11. In the light of aforesaid scenario, learned Revenue counsel draws the attention of this Court to Section 17(1)(b) and 17(2) of IBC, which read as follows:

'17. Management of affairs of corporate debtor by interim resolution professional.-(1)...........

(a).................

(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;

(c)................

(d).............

(2) The interim resolution professional vested with the management of the corporate debtor shall-

(a) act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;

(b) take such actions, in the manner and subject to such restrictions, as may be specified by the Board;

(c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

(d) have the authority to access the books of account, records and other relevant documents of corporate debtor available with Government authorities, statutory auditors, accountants and such other persons as [may be specified; and]

[(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.]'

12. Adverting to the aforesaid provisions, learned Revenue counsel points out that the writ petitioner company namely Diamond Engineering (Chennai) Private Limited represented by its Senior Vice President (Taxation), cannot maintain these writ petitions and any action on behalf of the writ petitioner company / dealer, which is a juristic person can be taken only by the IRP.

13. This Court has no difficulty in accepting the aforesaid submission of the learned Revenue counsel.

14. Therefore, all these four writ petitions are dismissed

as not maintainable, leaving all questions open for the IRP to come forward with any legal proceedings, if the IRP chooses to do so. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1.The Appellate Deputy Commissioner(CT)
(East)
3rd Floor, PAPJM Annexe Building
No.1, Greams Road, Chennai - 600 006

2.The Assistant Commissioner(ST)
Kelambakkam Assessment Circle
141, Burma Colony 1st Street
Perungudi, Chennai - 600 096
Chennai - 600 096.

+1 CC to Spl. Govt. Pleader (T) sr 72209.
+1 CC to Mr.N.Elumalai, Advocate sr 71615.

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PA(CO)
SP(03/10/2019)