S/L No.130

04.08.2021
Ct-8
(AD)

(Through Video Conference)

WPA 5949 of 2020
with
IA No.:CAN 1 of 2020 (Old No.:CAN 4097 of 2020)

SPS Steels Rolling Mills Ltd. & Ors.
vs.
The Asansol Durgapur Development Authority & Anr.

Mr. Anup Kumar
Ms. Sinthia Bala
…for the Petitioners.
Mr. Raja Basu Choudhury
Mr. Sayantan Bose
Mr. Anyapurba Banerjee
… for the respondent no.1.

A demand raised by the Asansol Durgapur Development Authority is under challenge in the present writ petition.

Learned Advocate appearing for the petitioners submits that SPS Steels Rolling Mills Ltd. underwent insolvency resolution under the provisions of the Insolvency and Bankruptcy Code, 2016. He draws the attention of the Court to the Insolvency Resolution Plan sanctioned by the National Company Law Tribunal, Kolkata. He submits that the appeal preferred therefrom was dismissed as withdrawn. Subsequent thereto, another legal entity stepped in as the successful resolution applicant. Thereafter, the Asansol Durgapur Development Authority raised a demand notice. He refers to the letter dated July 30, 2019 by which, the petitioner paid the demand upon protest.

Learned Advocate appearing for the Asansol Durgapur Development Authority submits that the petitioner accepted the demand and, therefore, paid. The question of refund of the transfer fee does not arise.

A proceeding under Section 7 of the Code of 2016 was filed before the National Company Law Tribunal, Kolkata Bench, being C.P.(IB) No.595/KB/2017 by the Allahabad Bank against the petitioner. In such insolvency proceedings, a resolution plan dated May 9, 2018 was approved by the National Company Law Tribunal, Kolkata. The relevant condition of the resolution plan is as follows:

> *"(xv) The Company and the Resolution Applicant shall be granted an exemption from all taxes, levies, fees, transfer charges, transfer premiums, and surcharges that arise from or relate to implementation of the Resolution Plan."*

Thereafter, an appeal was preferred against the sanction of the Resolution Plan and such appeal was dismissed as withdrawn. The Resolution Plan as sanctioned, therefore, became final and binding upon all parties.

Asansol Durgapur Development Authority raised the demand upon the petitioner for transfer fee. The transfer fee is exempted under Clause (xv) of the Resolution Plan sanctioned by the National Company Law Tribunal. It is not the contention of the Asansol Durgapur Development Authority that transfer fee is not exempted under the Resolution Plan as sanctioned. It is the contention of the Asansol Durgapur Development Authority that the demand was paid unconditionally by the petitioner.

By a letter dated July 30, 2019, the petitioner wrote to the Asansol Durgapur Development Authority stating about the insolvency resolution. It went on to pay the sum demanded as transfer fee on protest.

The Resolution Plan as sanctioned by a National Company Law Tribunal exempt payment of transfer fees. The demand of the Asansol Durgapur Development Authority, therefore, cannot be sustained. Receipt of payment on such unsustainable demand also stands vitiated. The payment made by the petitioner was under protest. Therefore, the Asansol Durgapur Development Authority will refund the sum received as transfer fee from the petitioner within a period of six weeks from date.

WPA 5949 of 2020 is disposed of accordingly without any order as to costs.

In view of the disposal of the writ petition, IA No.:CAN 1 of 2020 (Old No.:CAN 4097 of 2020) is also disposed of.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(Debangsu Basak, J.)