OD-1

ORDER SHEET

WPO/2372/2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

TANTIA CONSTRUCTIONS LIMITED
VERSUS
THE ASSISTANT COMMISSIONER OF INCOME TAX (TDS) AND ORS.

BEFORE:
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : September 21 2022

Appearance:
Mr. Swatarup Banerjee, Adv.
Mr. Avishek Guha, Adv.
Sk. Sariful Haque, Adv.
Ms. Akansha Chopra, Adv.
Ms. Debarati Das, Adv.
... for the petitioner

Ms. Smita Das De, Adv.
... for the respondent no.1

Mr. Soumya Roy, Adv.
Mr. Santosh Mahato, Adv.
Mr. Benazir Kazi, Adv.
... for the respondent no.2

The Court: The petitioner Tantia Construction was put under CIRP by order dated 13.03.2019 of the NCLT, Kolkata Bench. The Resolution Plan was approved by an order dated 24.02.2020. The petitioner prays for de-freezing of the petitioner's account which was so done on the instructions of the respondent no.1, the Assistant Commissioner of Income Tax (TDS), by a notice dated 27.02.2019. The respondent no.1 by a letter dated 20.03.2019 demanded a sum of Rs.3,87,56,433/- from the petitioner under Section 156 of the Income Tax Act, 1961.

Learned counsel appearing for the petitioner relies on Section 32A of the Insolvency and Bankruptcy Code, 2016 to submit that all liabilities of a corporate debtor for an offence committed prior to commencement of the corporate insolvency resolution process shall cease from the date the Resolution Plan has been approved by the Adjudicating Authority. In the present case, the Resolution Plan was approved on 24.02.2020. Counsel also relies on two decisions of the Supreme Court which developed the "clean slate" principle of *Essar Steel India;* (2020) 8 SCC 531 by which claims against a corporate debtor stand extinguished from the date of approval of the Resolution Plan.

The facts before the Court show that the Income Tax authorities filed its claim before the Resolution Professional on 31.01.2020 which was declined by the RP on the ground that the public announcement has already been made on May 31, 2019 calling on the creditors of the corporate debtors to submit their claims. The date for submission of claim was extended until 11.06.2019. The Income Tax authorities, admittedly, filed its claim 270 days after approval of the Resolution Plan by the Committee of Creditors. An order passed by the NCLT (Kolkata Bench) on 23.02.2021 on an application filed by the Income Tax Department for condonation of delay in filing its claims with the RP was also rejected on the ground that the Resolution Plan for the corporate debtor (the petitioner before this Court) had already been approved on 24.02.2020.

The objection taken on behalf of State Bank of India is also liable to be rejected on this very ground even though learned counsel submits that the approval of the Resolution Plan is under challenge.

The admitted facts are that the respondent no.1 being Income Tax Authority issued a notice dated 27.02.2019 to the respondent no.2, SBI, to freeze the account of the petitioner and also passed an order against the petitioner for payment of Rs.3,87,56,433/- under the provisions of the 1961 Act. The petitioner in the meantime came within the moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 from 13.03.2019. It is also undisputed that the respondent no.1 failed to submit its claim before the RP within the time frame stipulated in public announcement which was extended until 11th June, 2019. It may also not be out of place to mention that the respondent no.1 did not challenge the order passed by the NCLT dated 23rd February, 2021 before the Appellate Tribunal.

Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited (2021) 9 SCC 657 and Ruchi Soya Industries Limited and Others vs. Union of India and Others (2022) 6 SCC 343 make it clear that once a resolution is duly approved by the Adjudicating Authority under Section 31(1) of IBC, 2016 the claims as provided in the Resolution Plan shall stand frozen and may be binding on the corporate debtor. The Supreme Court further held that all such claims which are not part of the Resolution Plan shall stand extinguished.

Both the objections of the respondent nos. 1 and 2 are rejected on this basis.

This Court hence does not find any impediment in allowing the prayer sought for.

The respondent Bank shall defreeze the account of the petitioner within a period of one week from today.

WPO 2372 of 2022 is allowed and disposed of in terms of the above.

(MOUSHUMI BHATTACHARYA, J.)

kc