



W.P.(MD)Nos.6579, 6580 and 6581 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.07.2022

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

W.P.(MD)Nos.6579, 6580 and 6581 of 2017

and

W.M.P.(MD)Nos.5166 to 5170 of 2017

1.M/s.N.S.R.Steel (P) Ltd.,
Pazhavor,
Radhapuram Taluk,
Tirunelveli.

... Petitioner in W.P.6579/2017

2.N.V.Baabu

... Petitioner in W.P.6580/2017

3.D.S.Bharathi

... Petitioner in W.P.6581/2017

Vs.

The Commissioner of Central Excise,
Central Revenue Building,
Tractor Road, NGO-'A' Colony,
Tirunelveli – 627 007

.. Respondents in all W.Ps.

Prayer in WP.6579/2017 :- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records comprised in the impugned order No.50/CE/COMMR/2016, dated 12.07.2016 issued on 12.07.2016, on the file of the respondent and quash the same with directions to the respondent herein to pass order on merit after granting cross examination / examination in chief as sought or by the petitioner herein in compliance to the principles of natural justice.



W.P.(MD)Nos.6579, 6580 and 6581 of 2017

WEB COPY

Prayer in WP.6580/2017 :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records comprised in the impugned order No.50/CE/COMMR/2016, dated 12.07.2016 issued on 12.07.2016, on the file of the respondent and quash the same with directions to the respondent herein to pass order on merit, in compliance to the principles of natural justice.

Prayer in WP.6581/2017 :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records comprised in the impugned order No.50/CE/COMMR/2016, dated 12.07.2016 issued on 12.07.2016, on the file of the respondent and quash the same so far as it relates to imposition of penalty of Rs.50,00,000/- on the petitioner herein with directions to the respondent herein to pass order on merit, in compliance to the principles of natural justice.

For Petitioners : Mr.M.Subash Babu
in all Wps

For Respondents : Mrs.Ragaventhre
in all Wps Jr.Standing Counsel

COMMON ORDER

The Writ Petitions in W.P.(MD)Nos.6579, 6580 and 6581 of 2017 respectively are filed by the Company viz., N.S.R.Steels (P) Ltd.,

Pazhayoor, Radhapuram, Tirunelveli, N.V.Baabu, Chief Executive



W.P.(MD)Nos.6579, 6580 and 6581 of 2017

Officer and D.S.Bharathi, Managing Director of the Company, challenging the order of original passed in No.50/CE/COMMR/2016, dated 12.07.2016.

2. Based on a tip-off, the officers attached to the Headquarters Preventive Unit, Tirunelveli, visited the office of NSR Company, at Door No.20/A/ East Vellalar Colony, Ramavarmapuram, Nagercoil. At that time, the officers were informed that hard disk and parts of computers of NSR's office was burgled. Thus, the officers conducted search in the presence of the Chief Executive Officer and Accounts Manager on 09.01.2010, incriminating documents revealing unaccounted clearance of MS Ingots by NSR were found. Twenty two records were identified, seized under Mahazar. Subsequently, the team of officers also visited NSR's Factory premises at Pazhavor Village, Radhapuram Taluk, Tirunelveli District, seized five records under Mahazar, dated 09.11.2010. Statement of N.V.Baabu, Chief Executive Officer; D.S.Bharathi, Managing Director; V.K.Mony, Production Manager; V.Thangaswamy, Stores Manager; V.Senthil Kumar, Quality Control and Production Supervisor; K.Shankar, Accounts Assistant; G.Kandasamy, Accountant of M/s.Bharath Steel Rolling Mills, Salem, E.Suresh Kumar, General Manager, M/s.Bharath Steel Rolling Mills, Salem; G.Rangarajan, Manager, M/s.Adithya Ferro Alloys P.Ltd, Karaikal; C.Sukumaran, Managing Director, M/s.Adithya Ferro Alloys P.Ltd, Karaikal; N.Palani, Accounts Officer, M/s.Shri Amman Steel and Allied



W.P.(MD)Nos.6579, 6580 and 6581 of 2017

Industries P.Ltd., Trichy; M.Somasundaram, Managing Director; M/s.Shri Amman Steel and Allied Industries P.Ltd., Trichy; S.P.Muthuramalingam, Chairman, M/s.Shri Amman Steel and Allied Industries P.Ltd., Trichy, R.Sankar, General Manager, M/s.Sri Vela Smelters Pvt Ltd., Namakkal, T.M.Murugesan; Managing Director, M/s.Sri Vela Smelters Pvt Ltd., Namakkal, S.Selvam, M/s.Nellai Sri Venkateswara Minerals, Hosur, were recorded and found there has been suppression of production, Clandestine Clearances, Illicit procurement of Raw Materials; Realization of Sale Proceeds of Clandestine Clearance in Cash, Realization of Sale Proceeds of proceeds through Banking Channel, Triangular Flow of Sale Proceeds, Improper maintenance of statutory business records were all scrutinized. Personal hearing fixed, the officials of the Company were examined, given opportunities to give their explanation, thereafter, the Commissioner, Central Excise, Tirunelveli, has passed the impugned order, imposing the demand of Excise Duty, interest wrong availment and utilization of CENVAT credit, inadmissible CENVAT credit and also imposed penalty on D.S.Bharathi, Managing Director, N.V.Baabu, Chief Executive Officer and others of the Company.

3. The petitioners challenging the order of the Commissioner filed the present Writ Petitions. The respondent also filed their counter and the case has been kept pending. At this stage, the learned counsel for the petitioners, sought permission to withdraw the Writ Petitions for the



reason that the National Company Law Tribunal (NCLT), Chennai, in MS/337/IB/2018 filed in CP/623/IB/2017, passed an order for a resolution plan. Further, now the company has gone into insolvency. The relevant portion of the order made by the NCLT, Chennai, reads as follows:-

“1. Under consideration is Miscellaneous Application No.337/IB/2018 filed in CP/623/IB/2017 which has been submitted under Section 30(6) of Insolvency and Bankruptcy Code, 2016 (I&B Code, for short) read with Regulation 39(4) of IBBI (CIRP) Regulations, 2016. The Resolution Professional has inter alia prayed to approve the Resolution Plan under Section 31(1) of the I&B Code, 2016.

2. Initially, an Application under Section 7 of I&B Code, 2016 read with Rule 4 of the Insolvency Bankruptcy (Application to Adjudicating Authority) Rules, 2016, was filed by the Indian Bank (in short, 'Financial Creditor') against M/s. NSR Steels Private Limited (in short, 'Corporate Debtor'). The CP/623/(IB)CB/2017 was admitted on 24.11.2017, moratorium was declared, the IRP was also appointed.

3. The IRP took over the management and affairs of the Corporate Debtor and caused public announcement under Regulation 6 of the Insolvency and Bankruptcy Board of India



WEB COPY



W.P.(MD)Nos.6579, 6580 and 6581 of 2017

(Insolvency Resolution Process for Corporate Persons), Regulations, 2016, for inviting the claims of the creditors in two leading newspapers and after verification of the claims received, the IRP constituted Committee of Creditors (CoCs), the copy of public announcement and constitution of CoCs, are placed on record at pages 24 to 26 of the typed set filed with the Application.

4. In the 1st meeting of CoCs held on 08.01.2018, the IRP viz., Mr. V. Nagarajan, was recommended for appointment of RP. Thereafter, the CoCs were reconstituted from time to time subsequent to further claims received from Financial Creditors of the Corporate Debtor.

5. As per Section 25(2)(h) of I&B Code, 2016, the Resolution Professional has invited 'Expression of Interest'(EoI) calling for the 'Resolution Plan' for the Corporate Debtor from the prospective Resolution Applicants and published in 'The New Indian Express' on 21.04.2018. The copy of advertisement is placed at page 27 of the typed set filed with the Application.

6. Pursuant to the publication of 'EoI', the Resolution Professional received one proposal from M/s. Ferrosco Industries Private Limited. Subsequently, CIRP was extended for a further period of 90 days on 07.06.2018 by this Adjudicating Authority from 24.05.2018.



WEB COPY



W.P.(MD)Nos.6579, 6580 and 6581 of 2017

7. The Resolution Plans submitted by the Resolution Applicants were deliberated upon in the 6th meeting of CoCs held on 04.08.2018 in order to approve and accept the Resolution Plan. After the discussions and deliberations, the CoCs vide its 6th meeting dated 04.08.2018, has unanimously approved the Resolution Plan presented by M/s. Ferrosco Industries Private Limited. The copy of the minutes of 6th meeting of CoCs is placed at pages 30 to 38 of the typed set filed with the Application.

8. The CoCs while granting the approval to the 'Resolution Plan' has passed the Resolution as follows:-

'RESOLVED THAT pursuant to the provisions of Section 30 of The Insolvency and Bankruptcy Code, 2016 read with Regulations 37,38,39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 including amendments as notified from time to time and subject to such other applicable provisions/regulations in this connection, and subject to the approval to the Hon'ble National Company Law Tribunal, Chennai Bench, Chennai, the Draft Resolution Plan as submitted by M/s. Ferrosco Industries P. Ltd., Coimbatore, which was duly circulated to the members of the committee of creditors and suspended board of directors of the Corporate Debtor who are also present at this meeting and the



WEB COPY



W.P.(MD)Nos.6579, 6580 and 6581 of 2017

copy of the same is placed before the meeting, be and is hereby approved with 100% voting.'

9. The CoCs also resolved to authorise Mr.V.Nagarajan, the Resolution to file an Application along with approved 'Resolution Plan' to this Authority to seek an order for approval of the same.

10. The 'Resolution Plan' provides that the crystalized amount of Rs.10 Crores as per the schedule of repayment along with interest mentioned therein shall be repaid to the Secured Financial Creditors by a fresh infusion of funds by way of capital restructuring by the Resolution Applicant. The 'Resolution Plan' provides revised share holding pattern and also provides to make payment to unsecured financial creditors at 12% of the admitted amount as it is expected to continue to deal with them for further business requirements. The 'Resolution Plan' further provides that as per the Information Memorandum (IM), there are no claims/dues from the Operational Creditors under workmen and employees category, as all such dues have been paid. The 'Resolution Plan' also provides the sources of funds for meeting payments under the Resolution Plan.



WEB COPY



W.P.(MD)Nos.6579, 6580 and 6581 of 2017

11. Thus, 'Resolution Plan' annexed with the Application meets the requirements of Section 30(2) of the I&B Code, 2016 and Regulations 37,38,38(1A) and 39 of IBBI (CIRP) Regulations, 2016. The 'Resolution Plan' is also not in contravention of any of the provisions of Section 29A. The Resolution Professional has also certified that the 'Resolution Plan' approved by the CoCs is in conformity with the relevant provisions of the I&B Code, 2016, and the Regulations framed. The said Certificate is placed at page 74 of the typed set filed with the Application. The 'Resolution Plan' stands approved by the CoCs with 100% voting share. Therefore, the 'Resolution Plan' annexed with MA/337/IB/2018 filed in CP/623/IB/2017 is hereby approved, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan including Resolution Applicant. The permission has also been granted for amending MoA and AoA, and to file the same with the Roc for record as prescribed.

12. The order of moratorium dated 24.11.2017 passed by this Adjudicating Authority under Section 14 of the I&B Code, 2016 shall cease to have effect from the date of passing this Order.



W.P.(MD)Nos.6579, 6580 and 6581 of 2017

4. Mrs.Ragaventhre, the learned Junior Standing Counsel for the respondent submitted that the petitioners, without challenging the order in original before the CESTAT directly approached this Court and not approached the appropriate appellate authority provided under the Act. Hence, petitions not maintainable, sought the Writ Petitions to be dismissed both on merits and maintainability.

5. This Court finds petitioners instead of approaching CESTAT, directly approached this Court, without any valid reason, which is not proper. Anyhow, the petitioners, now sought permission to withdraw the Writ Petitions. In view of the same, the the Writ Petitions are dismissed as withdrawn. No costs. Consequently, connected Miscellaneous Petitions are closed.

06.07.2022

Index : Yes / No
Internet : Yes / No
smn2



W.P.(MD)Nos.6579, 6580 and 6581 of 2017

To

The Commissioner of Central Excise,
Central Revenue Building,
Tractor Road, NGO-'A' Colony,
Tirunelveli – 627 007



WEB COPY



W.P.(MD)Nos.6579, 6580 and 6581 of 2017

M.NIRMAL KUMAR, J.

smn2

**Common order made in
W.P.(MD)Nos.6579, 6580 and 6581 of 2017**

06.07.2022