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ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/1208/2023

SREI EQUIPMENT FINANCE LIMITED
VS
ASSISTANT COMMISSIONER OF
INCOME TAX, CIRCLE-11 (1), KOLKATA AND ORS.

WPO/1209/2023

SREI EQUIPMENT FINANCE
LIMITED
VS
ASSISTANT COMMISSIONER OF
INCOME TAX, CIRCLE-11(1), KOLKATA AND ORS.

BEFORE:
The Hon'ble JUSTICE SHEKHAR B. SARAF
Date: 20th July, 2023.

Appearance:
Mr. Somak Basu, Adv.
...for the petitioner

Mr. Soumen Bhattacharya, Adv.
...for the respondents

The Court: The above two writ petitions deal with the same issue and are taken up conjointly, and accordingly, order is passed in both the writ petitions herein.

Counsel appearing on behalf of the petitioner submits that the petitioner is under moratorium for the assessment years 2016-2017 and 2019-2020 as per the Insolvency and Bankruptcy Code, 2016, by an order dated 8th October, 2021, passed by the National Company Law Tribunal, Kolkata Bench, Kolkata in C.P. (IB) No.294/2021. He, accordingly, submits that the petitioner is under a moratorium and no proceedings can be initiated or continued against the petitioner. He relies on several judgments of the Supreme Court and the High Court in this respect. It may be noted that the Division Bench of the Calcutta High Court comprising of the Hon'ble Chief Justice T.S. Sivagnanam and the Hon'ble Justice Hiranmay Bhattacharyya dealt with the similar issue with regard to the petitioner. The ratio of the same is provided below:

> *"7. At this juncture, it would be important to note the decision the Hon'ble Supreme Court in the case of Alchemist Asset Reconstruction Company (supra), wherein the Hon'ble Supreme Court had pointed out that the mandate of the new insolvency Code is that the moment an insolvency petition is admitted, the moratorium that comes into effect under Section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against corporate debtors. This legal principle should have been borne in mind by the assessing officer before he proceeded to pass the assessment order. Therefore, we are of the clear view that the assessment order dated 30th March, 2022 has to be set aside and the matter has to be restored to the file of the assessing officer and the matter shall be kept in abeyance till the completion of the insolvency resolution proceedings."*

In light of the same, the respondent authorities are directed to stay their hands and not proceed with the notices issued for the period of moratorium of the petitioner.

With the above observations, the writ petitions are disposed of.

(SHEKHAR B. SARAF, J.)

B.Pal