IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1119 OF 2022

Adhunik Metaliks Ltd. …Petitioner
vs.
State of Maharashtra and Ors. …Respondents

Mr. Waseem Pangarkar with Mr. Abhishek Gupta, Ms. Nadiya S and Ms. Akanksha Luhach i/b MZM LEgal LLP for Petitioner.
Mrs. S. D. Vyas, 'B' Panel Counsel for Respondents.

CORAM : NITIN JAMDAR AND ABHAY AHUJA, JJ.
DATE : 24 APRIL 2023

P.C. :

. Heard learned Counsel for the parties.

2. In view of the position of law on which the learned Counsel are ad-idem, it is not necessary to write an elaborate order. Suffice it to state that the corporate insolvency resolution process was initiated against the Petitioner on 3 August 2017 by the National Company Law Tribunal, Kolkata Bench, Kolkata. Public announcement was made under the Regulation 6 of the Insolvency and Bankrupcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("Regulations of 2016") by the Regulation Professional. The Respondent No.2- Office of the Deputy Commissioner submitted proof of claim as an operational creditor under Regulation 7 of the Regulations of 2016. Respondent

No.2 claimed an amount of Rs. 75,06,415/- as per the list attached. The Resolution Professional prepared final list of creditors which was published on the website on 2 July 2018. Thereafter, certain proceedings took place and the final order was passed by the National Company Law Appellate Tribunal, New Delhi on 3 March 2020 that the Resolution plan submitted was approved.

3. Thereafter, Respondent No.2 issued notices for recovery under Central Sales Tax Act, 1956 and the Maharashtra Value Added Tax Act, 2002 to the Petitioner on 1 February 2021. The period of the dues claimed was 1 April 2016 to 31 March 2017 and 1 March 2017 to 30 June 2017. Pursuant to the notices issued, two assessment orders were issued on 26 March 2021 and 30 September 2021 respectively under the Central Sales Tax Act and Maharashtra Value Added Tax Act. By way of amendment these notices and assessments orders have been challenged.

4. It is an accepted position that Respondent No. 2 had submitted proof of claim under Regulation 7 of the Regulations of 2016. Thereafter, Resolution Professional has communicated the amount due and payable to Respondent No.2 under the resolution plan, which is less then the amount claimed by Respondent No.2. However, we are not informed that Respondent No. 2 has taken any steps thereafter.

5. As regards the effect of the resolution plan sanctioned under the Insolvency and Bankruptcy Code, 2016 on the claim made by the Respondent No.2 is concerned, it is not in dispute before us that as regards the claim of Respondent No.2- Sales Tax Department for the period considered under the resolution plan, the same cannot be enforced against the Petitioner Company.

6. Learned Counsel for Respondents submitted that even though that is the position, it does not take away the power of the Respondent-Sales Tax Authority to proceed against the directors of the company which is in liquidation, as per Section 44 of the Maharashtra Value Added Tax Act and therefore, the Petitioner cannot succeed in toto.

7. Since it is an accepted position that in view of the sanctioned of resolution plan the impugned assessment order issued by Respondent No.2 cannot be enforced against the Petitioner, it is not necessary for us to adjudicate the issue whether the Respondent - Department can proceed against the Directors of the Petitioner in law in this Writ Petition. As no such contingency has arisen, this issue is academic.

8. In light of the above, declaring that the communications and orders referred to in amended prayer clause (a) of the petition will not be enforced against the Petitioner in light of the sanction of the Resolution Plan accepted on 3 March 2021 and in light of Section 31 of the Insolvency and Bankruptcy Code, we dispose of the Writ Petition.

(ABHAY AHUJA, J.) **(NITIN JAMDAR, J.)**