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W.P. No.11097 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.09.2023

Pronounced on : 11.12.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.11097 of 2021 and
W.M.P. Nos.11745 and 11746 of 2021

Aginiti Industrial Parks Pvt. Ltd.

Represented by its

Authorised Signatory, Mr.Suresh Kumar,

Meridian House, III Floor,

No.121/3, TTK Road,

Alwarpet, Chennai - 600 018.

... Petitioner

Vs.

1. The Superintendent of CGST & Central Excise,

Thiruvallur-I Range,

No.46, Vallalar Street, Periakuppam,

Thiruvallur - 602 001.

2. Mr.Radhakrishnan Dharmarajan,

(IBBI Reg.No.IBBI/IPA-001/IP-P00508/2017-18/10909)

C/o RDH & Company D-3, Triumph Apartments, 114,

Jawaharlal Nehru Salai, Arumbakkam, Chennai - 600016.

Liquidator, Winwind Power Energy Private Ltd.,

Having registered office at 322/10, Vallal RCK Nagar,

Vengal Village, Thiruvallur Taluk & District,

Chennai.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the 1st respondent pertaining to demand notice bearing O.C.No.41/2021 dated 19.04.2021 and quash the same.

For Petitioner	: Mr.Srinath Sridevan Senior Advocate for M/s. Anita Suresh
For R1	: Mr.Rajendran Ragavan Senior Standing Counsel
For R2	: Mr.T.Ravichandran for M/s.Shree Law Services

ORDER

The question that arises for consideration is whether it is permissible for the revenue to enforce its claims against a successful auction purchaser under the Insolvency and Bankruptcy Act, 2016 (hereinafter referred to as "IBC"), for the Service Tax dues under the Finance Act, 1994, of a Company which is under liquidation.

2. The present writ petition challenges the demand notice dated 19.04.2021 made against the petitioner insofar as it demands payment of the dues arising out of Order in Original made on M/s.Winwind Power Energy Private Limited (hereinafter referred to as "WPEPL"). The impugned demand notice is made on the basis of the Order in Original in



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12/2012, 80/2015-16 dated 27.03.2012 and 08.01.2016 respectively, for a sum of Rs.3,09,46,194/- representing taxes and penalty.

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3. Brief Facts

i. The petitioner herein is the successful auction purchaser of the erstwhile Corporate Debtor (CD) "Winwind Power Energy Pvt. Ltd., (hereinafter referred to as "WPEPL").

ii. CD/ WPEPL was a Company engaged in the manufacture of Wind Turbine Blades.

iii. During 2013-14, it became a "Sick Company" within the meaning of Section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "SICA") and was referred to BIFR. Consequent upon promulgation of the IBC, the proceedings under BIFR came to be referred to the National Company Law Tribunal (hereinafter referred to as "NCLT").

iv. The CIRP failed, whereupon the CD was ordered to be liquidated by the NCLT *vide* order dated 07.08.2019.

v. Pursuant thereto the 2nd Respondent was appointed as liquidator under Section 34 of IBC.



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vi. The 2nd Respondent invited claims from all creditors of the CD/WPEPL under Regulation 12 of the Insolvency and Bankruptcy Board of India Liquidation Process Regulation, 2016 (hereinafter referred to as “LPR”).

vii. In response to the Public Notice, many of the creditors submitted claims in terms of Regulation 16 of LPR.

viii. Service Tax Department (1st Respondent) did not submit any claims.

ix. Thereafter, the assets of the CD/WPEPL were brought for sale vide public auction dated 9.11.2009. The petitioner was the highest bidder, and the auction was knocked down in his favour on 22.01.2020.

x. Deed of Sale dated 15.10.2020 was issued to the petitioner as per Regulation 32A of LPR.

xi. The entire process was placed before the NCLT for approval and the same was approved by Order dated 08.02.2021 made in IA/852/2020 in CP/250/IB/2018.

xii. Thereafter, the auction proceeds of Rs.63,00,00,000/- were distributed amongst the creditors of the CD whose claims were admitted by the Liquidator as per Section 53 of IBC.



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xiii. On 21.12.2020, Final Statement was filed by the 2nd Respondent with the NCLT in Form H as per Regulation 45 of LPR.

3.1. Whiles, the 1st respondent issued the impugned demand notice on the petitioner calling upon the petitioner to pay service tax dues of Rs. 3,09,46,169/-, on the premise that WPEPL suffered Order in Original No.12 of 2012 and 80 of 2012 wherein tax, penalty and interest amounting to Rs.3,09,46,169/- was imposed and the petitioner had acquired WPEPL as a going concern. It was observed in the impugned demand notice that during the pendency of BIFR proceedings the 1st respondent vide letter dated 20.03.2015 requested its inclusion as a party to the proceeding in terms of Section 13(2) of SICA, with regard to the dues owed under the Finance Act, 1994. The impugned demand notice places reliance on Section 88 of the Finance Act, 1994 (hereinafter referred to as “Finance Act”), to submit that the 1st respondent had First charge over the properties of WPEPL in respect of the dues under Finance Act.

4. It is this impugned demand notice which is under challenge in this Writ Petition. Before proceeding further, it may be relevant to refer



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to the relevant portion of the impugned order which reads as under :

“4. It is further learnt that the e-auction of the said unit was conducted on 22.01.2020 and M/s.Agniti Industrial Parks Pvt. Ltd., became the successful bidder with a reserve price of Rs.63Cr. Accordingly the letter of intent dated 24.01.2020 was issued by the liquidator to the successful bidder and the sale deed was effected on 14.10.2020. The deed of sale evidenced that the transaction was a sale of company as a "going concern" with issuance of transfer and allotment of shares. Clause 7 of the agreement specify thus :

"7. With effect from the date of this deed, the purchaser shall HOLD, OWN, POSSESS AND ENJOY the sale Asset(s), absolutely and forever but subject to the payment of all taxes, assessments, dues and duties hereafter to become chargeable or payable in respect of the sale Asset(s) hereby conveyed in view of the foregoing you are requested to pay the Service tax of Rs.3,09,46169/- on account of the following provisions

(i) In the context of applicability of IBC Code, as the resolution plan failed and the sale of the company in "as is where is" conditions was a consequent event to the liquidation process under Section 33 of the IBC Code. Thus the provisions of Section 31 of the IBC Code, which provide that if the resolution plan is approved even the statutory dues owed to the Central Government or State Government should be wiped off, is not applicable in this case as the same does not fall within the realm of Section 30 and 31 of the IBC Code. The bar against recovery of statutory dues is not applicable to the liquidation process and the results thereof contemplated under Section 33 of the IBC Code.”

(ii) Section 87(c) proviso of the Finance Act, 1994 lays down that the arrears of the predecessor company is recoverable from the transferee and successor company which includes enforcement measures like attachment and sale.”



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5. Case of the Petitioner:

a) Liquidation operates as a civil death of the company and thereby it ceases to exist and the estate of the company vests on the liquidator who administrates the same for the benefit of the creditors.

b) Upon liquidation only the liquidation estate vests with the official liquidator which is brought to sale in public auction.

c) Liquidation operates as a clean slate and snaps the link between the antecedent creditors and successful auction purchaser.

d) Service tax claims are not entitled to any preferential treatment under the IBC and must go through the grind contained in IBC and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, (hereinafter referred to as "LPR").

e) Any Statutory claim which is not lodged in accordance with the method and the manner provided under IBC would not be eligible to receive the proceeds from the sale of liquidated assets in terms of Section 53 of the IBC which provides for the waterfall mechanism and the priority / order of distribution of assets.

f) Having failed to lodge a claim within the time stipulated in



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terms of the IBC and LPR, the impugned demands are unsustainable and must thus fail.

6. Case of the Respondents:

a) That the impugned demands are made pursuant to Order in Original dated 27.03.2012 and 08.01.2016, which is passed after providing adequate opportunity to WPEPL. The Principal Commissioner of Service Tax, Service Tax I, Commissionerate in Chennai was impleaded as a party before the BIFR. That a statutory 1st charge was created under Section 88 of the Finance Act, 1994 (hereinafter referred to as “the Act”) in respect of the dues under the Finance Act, 1994, even prior to proceedings under the BIFR stood transferred to NCLT.

b) The sale by the liquidator was of WPEPL as a going concern, M/s.WPEPL would thus continue to survive, resultantly the successor company is liable to discharge the statutory dues of WPEPL.

c) The Tender condition expressly provides that the purchaser shall hold, own, possess and enjoy the assets subject to the payment of taxes, assessments dues and duties hereafter to become chargeable or payable in respect of the assets conveyed.



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7. Heard both sides and perused the materials on record.

8. On considering the arguments advanced on either sides, I am of the considered view that the impugned demand notice cannot be maintained/sustained for the following reasons:

a. Clause 7 of the Tender document and its relevance:

To appreciate the arguments advanced on the basis of Clause 7 of Tender Document, it may be relevant to take a closer scrutiny of the said clause which reads as under:

"7. With effect from the date of this deed, the purchaser shall HOLD, OWN, POSSESS AND ENJOY the sale Asset(s), absolutely and forever but subject to the payment of all taxes, assessments, dues and duties hereafter to become chargeable or payable in respect of the sale Asset(s) hereby conveyed in view of the foregoing you are requested to pay the Service tax of Rs.3,09,46169/- on account of the following provisions:

(i) In the context of applicability of IBC Code, as the resolution plan failed and the sale of the company in "as is where is" conditions was a consequent event to the liquidation process under Section 33 of the IBC Code. Thus the provisions of Section 31 of the IBC Code, which provide that if the resolution plan is approved even the statutory dues owed to the Central Government or State Government should be wiped off, is not applicable in this case as the same does not fall within the realm of Section 30 and 31 of the IBC Code. The bar against recovery of



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statutory dues is not applicable to the liquidation process and the results thereof contemplated under Section 33 of the IBC Code.”

8.1. The above clause is sought to be relied upon by the revenue to suggest that the petitioner had agreed to pay the tax dues and thus cannot contend to the contrary. The above submission is misplaced for two reasons:

i) A close reading of the said clause would show that in terms of the Tender Condition, purchase is not made subject to the payment of taxes that are already due instead it only refers to taxes hereafter to become chargeable or payable in respect of the assets conveyed. A plain reading of Clause 7 does not enable recovery of taxes that are already due.

ii) Section 53 of IBC while providing for the waterfall mechanism provides that any contractual arrangement between recipients under sub section (1) to Section 53 of the Act with equal ranking Creditors if it were to disrupt the order of priority shall be disregarded by the liquidator. In terms of Sub-Section (2) to Section 53 of IBC, any reliance on Clause 7 of Tender Condition to claim priority contrary to Section 53



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of IBC would not be binding rather disregarded by the liquidator which is yet another reason as to why the reliance thereon is misplaced.

b. Relevance and impact of Section 87 C and 88 of the Finance

Act, 1994:

Relevance of 87C of the Finance Act, 1994:

“87(c) the Central Excise Officer may, on an authorisation by the [Principal Commissioner of Central Excise or] Commissioner of Central Excise, in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person:

PROVIDED that where the person (hereinafter referred to as predecessor) from whom the service tax or any other sums of any kind, as specified in this section, is recoverable or due, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all goods, in the custody or possession of the person so succeeding may also be attached and sold by such officer empowered by the Central Board of Excise and Customs, after obtaining the written approval of the Commissioner of Central Excise, for the purposes of recovering such service tax or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change.]”



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8.2. A reading of the above provision would reveal that it enables the recovery of service tax dues from the transferee in the event of transfer or disposal of the business or trade in whole or in part or effects any change in the ownership thereof for the dues of the predecessor. Section 87 of the Finance Act cannot be read in isolation but must be read along with Section 88 of the Finance Act and Section 238 of IBC which reads as under:

Section 88 of Finance Act:

88. Liability under Act to be first charge. — Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of tax, penalty, interest, or any other sum payable by an assessee or any other person under this Chapter, shall, save as otherwise provided in section 529A of the Companies Act, 1956 (1 of 1956) and the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (54 of 2002) and the Insolvency and Bankruptcy Code, 2016, be the first charge on the property of the assessee or the person as the case may be.”

Section 238 of IBC:

“238.Provisions of this Code to override other laws.- The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.



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8.3. A reading of Section 88 of the Finance Act and Section 238 of the IBC would reveal that Section 88 of the Finance Act, creates a statutory first charge in respect of the tax dues under the Finance Act, 1994, on the property of the assessee or the person as the case may be. However, the first charge is made subject to the provisions of IBC as evident from the set of expressions “save as otherwise provided in Insolvency and Bankruptcy Code, 2016” employed in Section 88 of the Finance Act, 1994. Section 238 of IBC contains an non-obstante clause thereby giving it an overriding effect in the event of conflict with any other law for the time being in force. The clause 'notwithstanding anything contained in any law for the time being in force', is normally appended to a section in the beginning, with a view to give the enacting part of the section, in case of conflict, an overriding effect over the other provision or Act.ⁱ It is equivalent to saying that in spite of the provision or Act mentioned in the non-obstante clause, the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause will not be an impediment for the operation of the

i. Union of India v. G.M. Kokil, 1984 (Supp) SCC 196: AIR 1984 SC 1022; Chandavarkar Sita Ratna Rao v. Ashalata S. Gurum, (1986) 4 SCC 447, pp. 477, 478: AIR 1987 SC 117;



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enactmentⁱⁱ.

9. Section 88 of the Finance Act, 1994 while creating a first charge on the properties of the defaulter for recovery for any tax, penalty, interest employs the expressions “save as otherwise provided” and enumerates various enactments including IBC . The expression “save as otherwise provided” employed in Section 88 of the Finance Act, 1994 and Section 238 of IBC which employs the non-obstante when read in tandem reflects consistency in the legislative intent viz., to give overriding effect to the provisions of IBC. It is clear that Section 88 of the Finance Act, would yield to the provisions of IBC thus the statutory first charge under Section 88 of the Finance Act, would yield to Section 53 of the Finance Act. Thus, reliance on Section 88 of the Finance Act and the first charge that is created therein to sustain the impugned demand notice overlooks that Section 88 of the Finance Act itself by employing the expressions “save as otherwise provided in Insolvency and Bankruptcy Code” brings the curtains down on the attempt by the revenue to sustain the impugned demand notice.

ii. South India Corporation (P) Ltd. v. Secy., Board of Revenue, Trivandrum, AIR 1964 SC 207, p. 215; Chandavarkar Sita Ratna Rao v. Ashalata S. Guram, supra, M. Venugopal v. Divisional Manager, Life Insurance Corporation, JT 1994 (1) SC 281, p. 289; AIR 1994 SC 1343, p. 1348,



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10. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of *State Tax Officer vs. Rainbow Paper Limited* reported in (2023) 9 SCC 545 by the learned counsel for the Respondents to submit that if a fiscal statute contains a statutory provision which provides for a first charge, the same would override the provisions of IBC. The above submission overlooks the material difference between the Finance Act, 1994 and Section 48 of the Gujarat Value Added Tax it may be useful rather necessary to contrast the provisions:

<i>Section 48 of Gujarat Value Added Tax Act</i>	<i>Section 88 of the Finance Act, 1994</i>
“48. Tax to be first charge on property.- Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer or any other person on account of tax, interest or penalty for which he is liable to pay to the Government shall be a first charge on the property of such dealer, or as the case maybe, such person.”	“88. Liability under Act to be first charge. — Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of tax, penalty, interest, or any other sum payable by an assessee or any other person under this Chapter, shall, save as otherwise provided in section 529A of the Companies Act, 1956 (1 of 1956) and the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) and the Securitisation and Reconstruction of Financial Assets and the Enforcement of



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<i>Section 48 of Gujarat Value Added Tax Act</i>	<i>Section 88 of the Finance Act, 1994</i>
	Security Interest Act, 2002 (54 of 32 2002), be the first charge on the property of the assessee or the person as the case may be.”

11. The above provisions when contrasted, would reveal that Section 88 of the Finance Act and Section 48 of the Gujarat Value Added Tax are different in its scope and operation inasmuch as Section 88 of the Finance Act employs the expressions “save as otherwise provided in Insolvency and Bankruptcy Code..”. I have already discussed the scope of the above set of expressions, on the other hand the Gujarat Value Added Tax do not contain any such provision. In view thereof, the above judgment may not have relevance while construing Section 88 of the Finance Act.

11.1. It thus appears to me to be beyond the cavil of any doubt that the provisions of IBC would override the provisions of Finance Act in the event of a conflict, thus reliance on Section 87C or 88 of the Finance Act to claim priority over IBC and to sustain the impugned demand notice is misplaced.



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12. The third reason as to why the present demand notice cannot be sustained is in view of the fact that the Central Government had not made any claim before the IRP / RP. There is gross inaction on the part of the revenue in even asserting its right to the statutory dues by lodging a claim. It has been held by the Apex Court that IBC is a time bound process and time lines for lodging claims must be strictly adhered to, though in exceptional cases and for strong reasons and depending on the stage of the proceedings departure may be made. In this regard, it may be relevant to refer to the decision of the Hon'ble Supreme Court in *RPS Infrastructure Ltd., vs Mukul Kumar* reported in 2023 SCC Online 1147 wherein it was held as under:

“20. The second question is whether the delay in the filing of claim by the appellant ought to have been condoned by respondent no. 1. The IBC is a time bound process. There are, of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters. The delay on the part of the appellant is of 287 days. The appellant is a commercial entity. That they were litigating against the Corporate Debtor is an undoubted fact. We believe that the appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the Corporate Debtor was undergoing CIRP. The appellant has been deficient on this aspect. The result, of course, is that the appellant to an extent has been left high and dry.

21. Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through



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newspapers. This would constitute deemed knowledge on the appellant. In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.

22. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel,⁸ the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.

23. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant."

12.1. In the absence of any claim having been lodged as contemplated under IBC and its Rules, a demand notice being raised much after the completion of the sale of assets in the process of liquidation vitiates the action in view of the unreasonable delay resulting in arbitrariness. It is trite law that all State actions must satisfy the test of fairness and must stand the scrutiny of arbitrariness. Any State action which suffers from the vice of arbitrariness would fall foul of Article 14 of the Constitution of India, I would think that inaction of the revenue to participate and lodge its claim within the period prescribed under IBC and its Rules vitiates the impugned demand notice.



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13. Yet another reason as to why the impugned notice cannot be sustained is in view of the fact that, Section 53 of IBC while providing for the waterfall mechanism reads as under:

“53. (e) the following dues shall rank equally between and among the following:-

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;”

13.1. A reading of the above provision, would show that the proceeds from the sale of liquidated assets shall be distributed in the order of priority mentioned in Section 53 of the Act. Importantly, when it comes to the due to the Central / State Government in terms of Section 53(1)(e)(i) of IBC, the distribution from the sale proceeds of the liquidated asset is only in respect of the amount due for two years preceding the liquidation commencement date. A reading of Section 53(1)(e)(i) of the IBC would reveal that it is in three parts, the first part identifies the nature of the due i.e., amount due to the Central / State



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Government including that which is received on account of the consolidated fund of India / State. The third part is the period in respect of which such amounts ought to be due viz., two years preceding the liquidation commencement date. The middle / second part of the said sub-clause connects the first and the third part by employing the expression “in respect of”. The expression “in respect of” has been held by the Hon'ble Supreme Court as an expression of wide import / connotation. It is equivalent to “*in connection with*” or “*in relation to*”.

In this regard, it may be relevant to refer to the following judgments:

i) Tolaram Relumal v. State of Bombay, 1954 SCC OnLine SC 22 :

“9.The High Court took the view that without stretching the language of Section 18(1) beyond its fair and ordinary meaning, the very comprehensive expression “in respect of” used by the legislature could lead to only one conclusion, that the legislature wanted the penal consequences of Section 18(1) to apply to any nexus between the receipt by a landlord of a premium and the grant of the lease. In our judgment, the High Court laid undue emphasis on the words “in respect of” in the context of the section. Giving the words “in respect of” their widest meaning viz. “relating to” or “with reference to” it is plain that this relationship must be predicated of the grant, renewal or continuance of a lease, and unless a lease comes into existence simultaneously or near about the time that the money is received, it cannot be said that the receipt was “in respect of” the grant of a lease.”

ii) Renusagar Power Co. Ltd. v. General Electric Co., (1984) 4 SCC

679 at page 703:

“25. ...



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(2) Expressions such as “arising out of” or “in respect of” or “in connection with” or “in relation to” or “in consequence of” or “concerning” or “relating to” the contract are of the widest amplitude and content and include even questions as to the existence, validity and effect (scope) of the arbitration agreement.”

iii) Giriraj Garg v. Coal India Ltd., (2019) 5 SCC 192

“7.2. In Renusagar Power Co. Ltd. v. General Electric Co. [Renusagar Power Co. Ltd. v. General Electric Co., (1984) 4 SCC 679 : (1985) 1 SCR 432] this Court observed that expressions such as “arising out of”, or “in respect of”, or “in connection with”, or “in relation to”, the contract are of the widest amplitude, and content. In Doypack Systems (P) Ltd. v. Union of India [Doypack Systems (P) Ltd. v. Union of India, (1988) 2 SCC 299 : (1988) 36 ELT 201] this Court observed that expressions such as — “pertaining to”, “in relation to” and “arising out of”, are used in the expansive sense, and must be construed accordingly.”

iv) Union of India v. Vijay Chand Jain, (1977) 2 SCC 405

“3. The words “in respect of” admit of a wide connotation; Lord Geene, M.R. in Cunard Trustees v. Inland Revenue Commissioners [174 LT Rep 133] calls them colourless words. This Court in S.S. Light Railway Co. Ltd. v. Upper Doab Sugar Mills Ltd. [AIR 1960 SC 695 : (1960) 2 SCR 926 : (1961) 1 SCJ 377] construing these words in Section 3(14) of the Indian Railways Act, 1890 has held that they are very wide. It seems to us that in the context of Section 23(1-B) “in respect of” has been used in the sense of being “connected with”, and we have no difficulty in holding that the currency in respect of which there has been contravention covers the sale proceeds of foreign currency, sale of which is prohibited under Section 4(1). The intention of the legislature is clear from the Explanation to sub-section (1-B) of Section 23 which provides that “for the purposes of the sub-section property in respect of which contravention has taken place shall include deposits in a bank, where such property is converted into such deposits”. If for this sub-section any property in respect of which a contravention has taken place includes deposits into which the property may be converted and can be reached even where the deposits are in a bank, it is not reasonable to



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think that the sale proceeds in Indian currency of any foreign exchange would be outside the scope of Section 23(1-B) and therefore not liable to be confiscated. In our opinion the High Court was wrong in quashing the order of confiscation which we consider valid and lawful."

14. On applying the above judgments to Section 53 of IBC, it appears to me that the amounts due to the Central Government must be in connection with, the whole or any part of the period of two years preceding the liquidation commencement date. It would thus be evident that in the present case, liquidation was ordered by the NCLT vide order dated 07.08.2019, thus the entitlement for any sum in respect of the dues to the Central Government must be limited to the preceding two years i.e. upto 07.08.2017. However, in the instant case, the demands are in respect of the period 2012 and 2015-2016 on the basis of the Order in Original in 12 of 2012 and 80 of 2015-16 dated 27.03.2012 and 08.01.2016. It is thus beyond the two years preceding the commencement of liquidation date and the Company having been liquidated and the respondent having failed to lodge any claim under IBC at any stage of the proceeding under IBC and the sale proceeds having been distributed in terms of the waterfall it may not be permissible to sustain the impugned demand



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notice. As a matter of fact it was informed that the sums realized on the sale of assets of the company liquidated, was inadequate even to discharge the dues of secured creditors.

15. In the light of the above discussion, the impugned demand notice is set aside for the reasons stated supra. The Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

11.12.2023

Speaking (or) Non Speaking Order

Index: Yes/No

Neutral Citation: Yes/No

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To:

1. The Superintendent of CGST & Central Excise,
Thiruvallur-I Range,
No.46, Vallalar Street, Periakuppam,
Thiruvallur - 602 001.

2. Mr.Radhakrishnan Dharmarajan,



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(IBBI Reg.No.IBBI/IPA-001/IP-P00508/2017-18/10909)

C/o RDH & Company D-3, Triumph Apartments, 114,
Jawaharlal Nehru Salai, Arumbakkam, Chennai - 600016.
Liquidator, Winwind Power Energy Private Ltd.,
Having registered office at 322/10, Vallal RCK Nagar,
Vengal Village, Thiruvallur Taluk & District, Chennai.

MOHAMMED SHAFFIQ, J.

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