BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **21.11.2023**

CORAM

THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

W.P.(MD)Nos.1546 & 1586 of 2020
and
W.M.P.(MD)Nos.1256, 1258, 1261, 1292, 1293 & 1295 of 2020

Sun Paper Mill Limited,
Represented by its Authorised Signatory,
Post Box No.2, Cheranmahadevi,
Tirunelveli – 627 714. ...Petitioner in both petitions

/Vs./

1.State of Tamil Nadu,
Rep by the Secretary to Govt.,
Energy Department,
Secretariat Fort.St.George,
Chennai-600 009.

2.The Collector,
Office of the District Collector,
Tirunelveli District.

3.The Thasildar,
Cheranmahadevi Taluk,
Tirunelveli District.

4.Chief Electrical Inspector to Govt. of Tamilnadu,
Thiru Vi Ka Industrial Estate,
Guindy, Chennai-32

5.The Electrical Inspector,
7B, C Colony, Perumalpuram,
Vasantha Nager,
Tirunelveli, Tamilnadu-627 007 ....Respondents in both petitions

PRAYER in W.P.(MD)No.1546 of 2020:- Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records comprised in Na.Ka.A4/14314/19 dated 21.08.2019 issued by the 2nd respondent and set aside the same as arbitrary and illegal and contrary to the provisions of the TamilNadu Tax on Consumption or Sale of Electricity Act, 2003 (Tamil nadu Act 12/2003) and the Notification No.II (2)/EGY/157(a)/2015 dated 01.04.2015 issued by the State of Tamilnadu.

PRAYER in W.P.(MD)No.1586 of 2020:- Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records comprised in Na.Ka.K4/22196/2018 dated 21.10.2019 on the file of the 2nd respondent and quash the same as arbitrary and illegal and ultra vires the provisions of Tamil Nadu Tax on Sale or Consumption of Electricity Act, 2003, and Tamil Nadu Tax on Sale or Consumption of Electricity Rules, 2003.

Appearance in both petitions:-

For Petitioner : Mr.Ragavanan Gopalan
for Mr.R.Parthasarathy

For Respondents : Mr.R.Baskaran
Additional Advocate General
assisted by
Mr.B.Saravanan
Government Advocate

COMMON ORDER

When the matters were taken up for hearing on 03.10.2023, this Court passed the following order:-

"*The subject matter of challenge in these two writ petitions pertains to the proceedings issued by the second respondent dated 21.08.2019, wherein, the petitioner has been directed to pay the E-tax that is due and payable for the period from April 2015 to March 2017, which is the subject matter of challenge in W.P.(MD) No.1546/2020 and for the period from 2003 to 2015, which is a subject matter of challenge in W.P.(MD) No.1586/2020.*

2. The main ground that has been raised in W.P(MD) No. 1546/2020 is that the petitioner is exempted from payment of E-tax since such demand is contrary to the provisions of the Tamil Nadu Tax on Assessment or Sale of Electricity Act, 2003 and the notification dated 01.04.2015.

3. The main ground that has been raised in W.P.(MD) No. 1586/2020 is that the levy is time barred and it is ultra vires the provisions of the Act and the Rules framed thereunder.

4. During the course of hearing, the learned counsel for the petitioner submitted that the petitioner underwent insolvency proceedings under the IBC Code and the moratorium was declared under Section 14 of the Code on 15.11.2017 and the paper publication was effected on 24.12.2017. The IRP was appointed and the resolution plan was approved on 01.05.2018 and it was subsequently confirmed and approved by the NCLT through proceedings dated 16.10.2018, thereby the entire credit was restructured. The learned counsel submitted that even after *the paper publication was effected, the fourth respondent did not make any claim with respect to the dues payable towards the electricity tax and therefore, the 4th respondent is barred from making any claim through the impugned proceedings dated 21.08.2019 and 21.10.2019 respectively. To substantiate this submission, the learned counsel relied upon the latest judgment of the Apex Court in Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat (P) Ltd., reported in 2023 SCC Online SC 842. The learned counsel specifically relied upon Paragraph Nos.54 and 55 of the judgment, wherein, it was held that after the assessment is made by a statutory authority, the authority has to submit their claims in terms of the procedure laid down under the Code within the time period prescribed under the IBC Code before the adjudicating authority. In the absence of the same, the authority loses their right to initiate recovery of dues. Even in the present judgment, the recovery was sought to be made by the electricity authority and the same was negatived by the Apex Court.*

5. The above judgment will have a bearing to the facts of the present cases. Before going into the other grounds raised by the petitioner, the respondents will have to convince this Court as to why the above judgment of the Apex Court cannot be made applicable to the facts of the present cases. If the respondents are not able to cross the preliminary issue that has now been raised, it may not be necessary for this Court to consider the other grounds that have been raised in these writ petitions.

6. The learned Additional Government Pleader seeks for some time to make his submissions. Post this case under the caption, 'for orders', on 09.10.2023."

2. The matters once again came up for hearing on 18.10.2023 and this Court passed the following order:-

"Heard the learned counsel for the petitioner and the learned Additional Advocate General appearing on behalf of the respondents.

2. During the course of hearing, the learned counsel for the petitioner also brought to the notice of this Court the judgment of the three Member Bench of the Apex Court in Ghanashyam Mishra and Sons (P) Ltd. vs. Edelweiss Asset Reconstruction Co. Ltd. reported in 2021 (9) SCC 657, wherein the Apex Court has categorically held that in respect of payment of dues arising under any law for the time being in force including the ones owed to the Central Government, any State Government or any local authority, which does not form a part of the approved resolution plan, shall stand extinguished. It was also held by the Apex Court that the amendment that was brought out in the year 2019 is only declaratory and clarificatory in nature and therefore, it must be deemed to be in force right from the inception of the Act. In view of the same, it was contended that the dues that are now claimed by the Electricity Department also gets extinguished.

3. The learned Additional Advocate General seeks for some time to go through the judgment that was relied upon by the learned counsel for the petitioner and make his submissions.

4. Post this case under the caption "Part Heard Cases" on 31.10.2023."

3. Heard Mr.Ragavanan Gopalan, learned counsel appearing for the petitioner and Mr.R.Baskaran, learned Additional Advocate General for the respondents.

4. In the instant case, the petitioner received a letter from the fourth respondent under the provisions of the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003, and the rules thereunder demanding for returns and payments of the electricity tax for the period from June, 2003 to March, 2012. A further letter was also issued on 22.02.2016 by the fourth respondent seeking payment of electricity tax from April 2013 to March 2014 along with interest on belated payments. Ultimately, after enquiry, the demand notice was issued. This Court has already extracted the grounds on which the proceedings of the second respondent has been put to challenge.

5. One of the creditors had initiated proceedings under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC" for brevity) against the petitioner company, which was taken on file by the National Company Law Tribunal (NCLT), Chennai, on 15.11.2017 and a moratorium was declared. The Insolvency Resolution Professional (IRP) was also appointed on

20.11.2017. The IRP caused public notice through newspaper advertisements and called upon the creditors including the statutory authorities to submit the details of the claims. Thereafter, IRP also issued a notice calling upon the expression of interest in the resolution plan of the writ petitioner. Thereafter, the resolution plan was submitted on 01.05.2018 and it was approved by the Committee of creditors and it was filed before the NCLT on 15.05.2018.

6. The NCLT, Chennai, by order dated 16.10.2018 directed to conduct the corporate insolvency resolution process as per the approved resolution plan. As per Clause 6 of the resolution plan, all the statutory dues payable by the writ petitioner, whether disputed or undisputed, and claims related thereto pending before various forums and Courts would stand extinguished in perpetuity.

7. The approval of the resolution plan by NCLT was put to challenge in an appeal filed before the National Company Law Appellate Tribunal (NCLAT), New Delhi. The appeal before NCLAT came to be dismissed on 25.10.2021 and thereby insolvency resolution process and the plan have attained finality. The facts narrated above will bring this case clearly within the scope of the issue that was considered by the Hon'ble Apex Court in ***Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and***

Others reported in ***2021 (9) SCC 657***. The relevant portions in the judgment are extracted hereunder:-

"84. It is clear, that the mischief, which was noticed prior to amendment of Section 31 of I&B Code was, that though the legislative intent was to extinguish all such debts owed to the Central Government, any State Government or any local authority, including the tax authorities once an approval was granted to the resolution plan by NCLT; on account of there being some ambiguity, 12 (2009) 12 SCC 209 the State/Central Government authorities continued with the proceedings in respect of the debts owed to them. In order to remedy the said mischief, the legislature thought it appropriate to clarify the position, that once such a resolution plan was approved by the Adjudicating Authority, all such claims/dues owed to the State/Central Government or any local authority including tax authorities, which were not part of the resolution plan shall stand extinguished.

....

101. Therefore, in our considered view, the aforesaid provisions leave no manner of doubt to hold, that the 2019 amendment is declaratory and clarificatory in nature. We also hold, that even if 2019 amendment was not effected, still in light of the view taken by us, the Central Government, any State Government or any local authority 35 2018 SCC OnLine Cal. 142 would be bound by the resolution plan, once it is approved by the Adjudicating Authority (i.e. NCLT).

Conclusion

102. In the result, we answer the questions framed by us as *under:*

102.1. That once a resolution plan is duly approved by the Adjudicating Authority under sub section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

102.2. The 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

102.3. Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued."

8. It is also pertinent to take note of the judgment of the Hon'ble Apex Court in ***Paschimanchal Vidyut Vitran Nigam Ltd., vs. Raman Ispat Private Limited and Others*** reported in ***2023 SSCOnLine SC 842***. The relevant portions are extracted herein:-

"54. The views expressed by the present judgment finds support in the decision reported as Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs38. In that case, Section 142A of the Customs Act 1962 was in issue – authorities had submitted that dues payable to it were to be treated as 'first charge' on the property of the assessee concerned. In the resolution process, it was argued that the Customs Act, 1962 acquired primacy and had to be given effect to. This court, after noticing the overriding effect of Section 238 of the IBC, held as follows:

> *"55. For the sake of clarity following questions, may be answered as under:*
>
> *(a) Whether the provisions of the IBC would prevail over the Customs Act, and if so, to what extent?*
>
> *The IBC would prevail over the Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.*
>
> *(b) Whether the respondent could claim title over the goods and issue notice to sell the goods in terms of the Customs Act when the liquidation process has been initiated?*
>
> *Answered in negative.*
>
> *56. On the basis of the above discussions, following are our conclusions:*
>
> *(i) Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.*
>
> *(ii) After such assessment, the respondent*

authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority.

(iii) In any case, the IRP/RP/liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC."

55. Similarly, in Duncans Industries Ltd. v. AJ Agrochem, Section 16G of the Tea Act, 1953 which required prior consent of the Central Government (for initiation of winding up proceedings) was held to be overridden by the IBC. In a similar manner, it is held that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non-obstante clauses (i.e., Section 173 and 174). The position of law with respect to primacy of the IBC, is identical with the position discussed in Sundaresh Bhatt and Duncan Industries (supra) [refer also: Innoventive Industries (supra), CIT v. Monnet Ispat & Energy Ltd., Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., and Jagmohan Bajaj v. Shivam Fragrances Private Limited]."

9. It is clear from the above judgments that even after the amendment of Section 31 of IBC, the legislative intent was to extinguish all debts owed to Central Government, any State Government or any local authority, including the tax authorities, once an approval was granted to the resolution plan by NCLT.

10. In the instant case, NCLT has approved the resolution plan on 16.10.2018 and the appeal filed against the same was also dismissed by NCLAT through order dated 25.10.2021 and accordingly, insolvency resolution process and the plan have attained finality and as a result, liability that is now claimed by the respondents gets extinguished.

11. In the light of the above discussion, the impugned proceedings of the fourth respondent and the consequential proceedings initiated by the second respondent under the Revenue Recovery Act are hereby quashed and both the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

21.11.2023

NCC : Yes/No
Internet :Yes/No
Index :Yes/No
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TO:-

1.The Secretary to Govt.,
Energy Department,
Secretariat Fort.St.George,
Chennai-600 009.

2.The Collector,
Office of the District Collector,
Tirunelveli District.

3.The Thasildar,
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4.Chief Electrical Inspector to Govt. of Tamilnadu,
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5.The Electrical Inspector,
7B, C Colony, Perumalpuram,
Vasantha Nager,
Tirunelveli, Tamilnadu-627 007

N.ANAND VENKATESH, J.

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Common Order made in
W.P.(MD)Nos.1546 & 1586 of 2020

Dated:
21.11.2023