11 09.04.2024
AN Ct. No. 01
RP

MAT 601 of 2024
with
IA No. CAN 1 of 2024

Ramsarup Industries Limited & anr.
Vs.
Union of India & anr.

Mr. Ratnanko Banerjee, ld. Sr. Adv.
Mr. Siddhartha Sharma
Mr. Rishav Dutt
Mr. S. Mitra
... For the appellants

Mr. Aryak Dutt
Mr. Soumen Bhattacharjee
... For the respondent no. 1

Mr. Kaushik Dey
Mr. Tapan Bhanja
... For the CGST Authorities

1. This intra-Court appeal filed by the writ petitioner is directed against the order dated 13.03.2024 in WPA 3351 of 2024. In the said writ petition, the appellant had challenged the order-in original dated 21.11.2023 passed by the respondents under the provisions of the CGST Act, 2017. By the said order, the demand of service tax as demanded in the show cause notice dated 05.11.2019 was affirmed and a demand of service tax to the tune of Rs. 20,15,758/- was made in terms of Section 73(1) of the Finance Act, 1994 read with Section 174(2) of the CGST Act, 2017; order of recovery for applicable interest and a penalty equal to the tax amount was affirmed.

2. The appellant had challenged the said

proceedings before the learned writ court raising certain points of law viz. i) whether through the resolution plan which has been approved by the NCLT, Kolkata Bench, all debts and/or liabilities of the appellant/writ petitioner accrued till the date of approval of resolution plan were wiped off and the appellant being a corporate debtor came out as a clean slate in the eye of law; ii) whether it is well settled that the moment the resolution plan is approved all the creditors of the said corporate debtor are estopped from making any claim against the corporate debtor for any dues which arose prior to the date of the approval of the resolution plan; iii) whether on perusal of the resolution plan would also reveal that the appellant no. 1 is not liable to make any payment to the respondent no. 2 for any alleged claim of respondent no. 2 which default has occurred prior to the approval of the resolution plan; iv) whether the second respondent had deemed notice of the proceedings under the Insolvency and Bankruptcy Code, 2016 against the 1st appellant and hence he is not entitled to any amount whatsoever either as claimed in the order-in original dated 21.11.2023 or otherwise; v) whether since the resolution plan does not provide for any payment to the respondent authorities, the appellant no. 1 is not liable to pay any payment; vi) whether the order-in original dated 21.11.2023 was passed without jurisdiction by the respondent no. 2.

3. Apart from the above questions, there are other points of law also canvassed in the writ petition. The

order impugned in the writ petition being an appellable order, the learned Single Judge dismissed the writ petition holding that the appellant should avail the alternate remedy.

4. We have elaborately heard learned counsel for the respective parties elaborately.

5. In the instant case, the proceedings before the NCLT, Kolkata Bench for approval of a corporate resolution plan was initiated in the year 2018, to be precise, on 08.01.2018 and the show cause notice was said to have been issued on the erstwhile company dated 05.11.2019. The resolution plan was approved by the NCLT, Kolkata Bench on 04.09.2019 and affirmed by the NCLT, New Delhi on 04.03.2021 and a special leave petition filed against the said order before the Hon'ble Supreme Court was dismissed on 04.05.2021.

6. Thus, it is seen that the process under the Insolvency and Bankruptcy Code, 2016 had commenced much prior to the issuance of the show cause notice. Therefore, the above points of law are required to be considered, more particularly, the law laid down by the Hon'ble Supreme Court in several decisions of which we may refer to the decisions in the case of *Ruchi Soya Industries Ltd. & Ors. vs. Union of India & ors. reported in (2022) 6 SCC 343* wherein the Hon'ble Supreme Court held that the claim in respect of the demand having not lodged before the appropriate authority after public announcements were issued under Sections 13 and 15 of

the I.B.C., as such, on the date on which the resolution plan was approved by the NCLT, all claims stood frozen and no claim, which is not part of the resolution plan, would survive.

7. Learned counsel appearing for the appellant submitted that in response to the notices which were issued in terms of the provisions of the I.B.C., some of the authorities including the service tax authorities had lodged claim before the Insolvency Resolution Professional, however, nothing was done by the second respondent herein in respect of the subject issue.

8. Thus, we are satisfied that points of law are required to be decided in the writ petition and, therefore, the appellant need not be relegated to avail the alternate appellate remedy under the Act, more so, when the jurisdiction of the second respondent has been questioned.

9. Therefore, we are of the view that the writ petition should be heard after an affidavit-in-opposition is filed by the respondents and a decision should be taken on merits and in accordance with law.

10. In the result, the appeal and its connected application stand **allowed** and the order passed in the writ petition is set aside. The writ petition is admitted for hearing. The order-in original dated 21.11.2023 impugned in the writ petition shall remain stayed till the disposal of the writ petition. The respondents are directed to file their affidavit-in-opposition within four weeks from date. Reply thereto, if any, be filed within three weeks thereafter. List

before the appropriate Bench after nine weeks.

(T. S. Sivagnanam)
(Chief Justice)

(Hiranmay Bhattacharyya, J.)