IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3151 OF 2024

Jubilant Enpro Private Limited & Anr. .. Petitioners
Versus
State of Maharashtra & Ors. .. Respondents

Mr. Sriram Sridharan a/w Mr. Shanmurga Dev for the petitioners.
Ms. Jyoti Chavan, Addl. GP for respondent-State.
Mr. Sushilkumar S. Shelke, Deputy Commissioner of State Tax.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.
DATE : 8th October 2024

P.C.:-

1. Ms. Chavan, learned counsel for the respondents, on instructions, states that the Department has not initiated any recovery action against the petitioner-company (new company) in respect of whom the resolution plan has been approved. She, however, states that the respondents intend to and are entitled to proceed for recovery of its dues against the Directors of IGOPL Offshore Private Limited (erstwhile company).

2. Besides, Ms. Chavan invites our attention to the statement in paragraphs 4 and 6 of the affidavit filed by Mr. Nitin Chakor Shaligram, Joint Commissioner of State Tax (LTU-2) which read as follows :-

> *"4. It is further submitted that, the Department has not initiated any recovery action against the company in respect of whom the Resolution Plan has been approved. However, the Respondents are entitled to*

proceed for recovery of its dues against the Director of the Company who were in management of the company at the relevant period as per Sec. 89 of CGST / MGST act 2017. Sec. 89(1) is reproduced as below :-

(1) Notwithstanding anything contained in the Companies Act, 2013 (18 of 2013), where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(2) It is submitted that the NCLT has by Order dated 09.10.2023 rejected the claim of the Plaintiff vis-à-vis the Company. However the Respondent can recover its legal dues from the Directors if they are involved by initiating appropriate proceedings.

5. ……………

6. It is further submitted that, there are other Assessment proceedings pending in respect of the said company in which assessment Orders have not been passed till date. The Respondent will pass the Assessment Orders in accordance with law, however shall not recover the said dues from the Petitioner Company but reserves its right to recover its dues from Other Directors if they are found responsible in accordance with law."

3. Considering the statement made by Ms. Chavan, on instructions and the statements in paragraphs 4 and 6 of the affidavit as quoted above, Mr. Srirdharan, learned counsel for the petitioners submits that the petition may be disposed of.

4. Accordingly, by accepting the statement made by Ms. Chavan on instructions and the above statements in the affidavit filed on behalf of the respondents, petition is disposed of. No order as to costs.

(Jitendra Jain, J.) **(M. S. Sonak, J.)**