



W.P.No.27225 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.27225 of 2022
and
W.M.P.No.26423 of 2022

M/s.Splendid Metal Products Limited,
(Formerly known as Sujana Metal Products Ltd.,)
Rep by its Head Finance – Sudheer Royachoti
Regd.Office: Plot No.24, Municipal No.8-2-248/1/7/24,
North Wing, Second Floor,
Nagarjuna Hills, Panjagutta,
Hyderabad – 500 082,
Telengana State.

... Petitioner

Vs.

1.The Assistant Commissioner (State Taxes),
Thiruvallur Assessment Circle,
No.6/6, Lal Bahadur Sasthri Street,
Periyakuppam,
Thiruvallur District.

2.The Sub-Registrar,
Arani,
Thiruvallur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,



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for issuance of a Writ of Mandamus, to direct the 1st respondent herein to issue appropriate direction to the 2nd respondent to remove the entry of encumbrance charge created in respect of petitioner's property situated at lands over an extent of 12.04-1/2 Acres at Manchankaranai in Tiruvallur District in S.Nos.172/1A, 174/1A, 173/1, 173/3, 270/2A, 272/2A1, 202/2, 170/1A, 170/1B, 173/1, 270/1, 270/2, 172/2, 205/5, 203, 270/1A, 173/2, 272, 272/2C, 200/2, 203, 204/3B.

For Petitioner : Mr.Vijay Narayan
Senior Counsel for
M/s.R.Hemalatha

For Respondents : Mr.C.Harsharaj
Additional Government Pleader

ORDER

Before the NCLT, a Corporate Insolvency Resolution proceedings was initiated against the Sujana Metal Products Limited. The said company was taken over by the petitioner under the provisions of the Insolvency and Bankruptcy Code, 2016, after an application was filed by the Resolution Professional to approve the Resolution Plan submitted by the petitioner herein.



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2. By an order dated 08.04.2021, NCLT, Hyderabad approved the Resolution Plan submitted by the petitioner and thus took over the assets and liabilities of the said company namely Sujana Metal Products Limited. Before the Resolution Plan was approved by the NCLT, Hyderabad as the Adjudicating Authority under the provisions of Insolvency and Bankruptcy Code, 2016, the respondents/Commercial Tax Department had also made a claim before the Resolution Professional who admitted the claim of the respondents/Commercial Tax Department for a sum of Rs.5,47,85,279/- and paid a sum of Rs.57,021/- which is about 0.1% of the amount due to the respondents/Commercial Tax Department. This was in accordance with the Resolution Plan submitted by the petitioner which was approved by the Committee of Creditors under the provisions of Insolvency and Bankruptcy Code, 2016.

3. After the petitioner took over the said company, the petitioner has sent a representation dated 06.06.2022 and has requested the respondents to remove the encumbrance in the light of the order passed by the NCLT, Hyderabad approving the Resolution Plan submitted by the petitioner under the provisions of Insolvency Bankruptcy Code, 2016.



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4. The learned Senior Counsel for the petitioner submits that the law on this aspect has been settled by the Hon'ble Supreme Court in the case of ***Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and others*** in C.A.No.8129 of 2019. A specific reference was drawn to Paragraph Nos.73, 77, 86 and 87 reads as under:-

“73. It could thus be seen, that in the speech the Hon'ble Finance Minister has categorically stated, that Section 238 provides that I&B Code will prevail in case of inconsistency between two laws. She also stated, that there was question about indemnity for successful resolution applicant and that the amendment was clearly making it binding on the Government. She stated, that the Government will not make any further claim after resolution plan is approved. So, that is going to be a major sense of assurance for the people who are using the resolution plan. She has categorically stated, that she would want all the Hon'ble Members to recognize this message and communicate further that I&B Code gives that comfort to all new bidders. They need not be scared that the taxman will come after them for the faults of the earlier promoters. She further states, that once the resolution plan is accepted, the earlier promoters will be dealt with as individuals for their criminality but not the new bidder who is trying to restore the company.

77. 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



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authorities once an approval was granted to the resolution plan by NCLT; on account of there being some ambiguity, 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.

86.As discussed hereinabove, one of the principal objects of I&B Code is, providing for revival of the Corporate Debtor and to make it a going concern. I&B Code is a complete Code in itself. Upon admission of petition under Section 7, there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure, that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the Corporate Debtor is revived and is made an on-going concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction, that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can grant its approval to the plan. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. The



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legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.

87. We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief. We therefore hold, that the 2019 amendment is declaratory and clarificatory in nature and therefore retrospective in operation."

5. It is submitted that in view of the above, the encumbrance that is still reflecting against the properties which were taken over by the petitioner have to be removed as the law contemplates a fresh lease pursuant to the orders passed by the NCLT as an Adjudicating Authority of the Resolution Plan submitted under the provisions of Insolvency and Bankruptcy Code, 2016.

6. On the other hand, the learned Additional Government Pleader for the respondents would submit that against the order passed by the NCLT, Hyderabad dated 08.04.2021 in I.A.No.981of 2020 in CP (IB)



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No.666/7/HDB/2018, the Commercial Tax Department proposes to file a Writ Petition before the High Court of Telangana, Hyderabad. It is submitted that the law on the subject has been later clarified by a bench of equal strength in the context of secured creditors such as statutory bodies to whom an assessee was in default in **State Tax Officer Vs. Rainbow Papers Limited** (2023) 9 SCC 545, wherein, it was held as under:-

“51.If the established facts and circumstances require discretion to be exercised in a particular way, discretion has to be exercised in that way. If a resolution plan is ex facie not in conformity with law and/or the provisions of IBC and/or the Rules and Regulations framed thereunder, the Resolution would have to be rejected. It is also a well-settled principle of interpretation that the expression “may”, if circumstances so demand can be construed as “shall”.

56.Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of IBC. Under Section 53(1)(b)(ii), the debts owed to a secured creditor, which would include the State under the GVAT Act, are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date.”

7. The learned Additional Government Pleader for the respondents has specifically drawn to Paragraph Nos.51, 52 and 56 from the decision of the Hon'ble Supreme Court in **Ghanashyam Mishra and Sons Private**



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Limited Vs. Edelweiss Asset Reconstruction Company Limited and

others in C.A.No.8129 of 2019 which reads as under:-

“51. This Court thereafter in paragraph 16 reproduced the relevant paragraphs contained in the report of the Bankruptcy Law Reforms Committee Report of 2015. Thereafter, this Court reproduced all the relevant provisions of I&B Code in paragraphs 18 to 26.

52. This Court in the case of **Innoventive Industries Ltd.** (supra) thereafter elaborately discussed the scheme of the various provisions of the I&B Code in paragraphs 27 to 32, which read thus:

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditor. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under

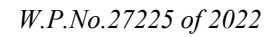


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Section 5(21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed Interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. **The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the**



29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in 'Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing-i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

31. The rest of the insolvency resolution process is also very important. The entire process is to be completed within a period of 180 days from the date of admission of the application under Section 12 and can only be extended beyond 180 days for a further period of not exceeding 90 days if the committee of creditors by a



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voting of 75% of voting shares so decides. It can be seen that time is of essence in seeing whether the corporate body can be put back on its feet, so as to stave off liquidation.

32. As soon as the application is admitted, a moratorium in terms of Section 14 of the Code is to be declared by the adjudicating authority and a public announcement is made stating, inter alia, the last date for submission of claims and the details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims. Under Section 17, the erstwhile management of the corporate debtor is vested in an interim resolution professional who is a trained person registered under Chapter IV of the Code. This interim resolution professional is now to manage the operations of the corporate debtor as a going concern under the directions of a committee of creditors appointed under Section 21 of the Act. Decisions by this committee are to be taken by a vote of not less than 75% of the voting share of the financial creditors. Under Section 28. a resolution professional, who is none other than an interim resolution professional who is appointed to carry out the resolution process, is then given wide powers to raise finances, create security interests, etc. subject to prior approval of the committee of creditors."

[emphasis supplied]

56. Another three Judges Bench of this Court in the case of Karad Urban Cooperative Bank Ltd. vs. Swwapnil Bhingardevay & Ors. (supra), taking a similar view, has observed thus:

"14.The principles laid down in the aforesaid decisions, make one thing very clear. If all the factors that need to be taken into account for determining whether or not the corporate debtor can be kept running as a going concern have been placed before the Committee of



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Creditors and CoC has taken a conscious decision to approve the resolution plan, then the adjudicating authority will have to switch over to the hands off mode. It is not the case of the corporate debtor or its promoter/Director or any- one else that some of the factors which are crucial for taking a decision regarding the viability and feasibility, were not placed before CoC or the resolution professional....".”

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

9. The order passed by NCLT on 08.04.2021 in I.A.No.981 of 2020, in response to the application filed by the Resolution Professional approving the Resolution Plan by the Committee of Creditor under Section 31(1) of the Insolvency and Bankruptcy Code, 2016 is an appealable order under Section 61 of the Insolvency and Bankruptcy Code, 2016 and ought to have been appealed before the NCLAT. Section 61 of the Insolvency and Bankruptcy Code, 2016 contemplates a limitation of 30 days + 15 days to file such an appeal before the NCLAT. The law on the subject of limitation is clear. The Hon'ble Supreme Court has clearly held in several cases where specific period of limitation is



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prescribed for condoning the delay. Section 5 of the Limitation Act cannot be invoked to entertain such an application or an appeal. Thus, at this distant point of time the Commercial Tax Department cannot file an appeal before the NCLT against the order of the NCLT dated 08.04.2021 passed in I.A.No.981 of 2020 approving the Resolution Plan submitted by the petitioner herein under Section 31(1) of the Insolvency and Bankruptcy Code, 2016. Therefore, although the respondents may have a case for setting aside the aforesaid order of the NCLT, in absence of a valid challenge to the same in time before NCLAT, the respondents/Commercial Tax Department cannot take a stand contrary to the order passed by the NCLT on 08.04.2021 in I.A.No.981 of 2020.

10. That apart, the respondents/Commercial Tax Department had also filed a claim petition before the Resolution Professional as mentioned above.

11. Under these circumstances, Court is of the view this Writ Petition deserves to be allowed. Accordingly, it is allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.



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Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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To

- 1.The Assistant Commissioner (State Taxes),
Thiruvallur Assessment Circle,
No.6/6, Lal Bahadur Sasthri Street,
Periyakuppam,
Thiruvallur District.
- 2.The Sub-Registrar,
Arani,
Thiruvallur District.



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