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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 6876/2024 & CM APPL. 28692/2024

ENERGO ENGINEERING PROJECTS LIMITED .....Petitioner

Through: Ms. Bani Dikshit, Advocate.

versus

DIRECTOR GENERAL OF INCOME TAX & ORS. .....Respondents

Through: Mr. Debesh Panda, SSC, MS. Zehra Khan, JSC, Mr. Vikramaditya Singh, JSC, MS. Anaunita Shankar, Ms. Maanvi Jain & Mr. Ishan Puri, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

O R D E R

% **02.12.2024**

1. The petitioner has filed the present petition, *inter-alia*, impugning a notice dated 23.02.2024 issued under Section 148A(b) of the Income Tax Act, 1961 (hereafter *the Act*) as well as an order dated 31.03.2024 passed under Section 148A(d) of the Act, seeking to reopen the petitioner's assessment for the assessment year (AY) 2017-18. The petitioner also impugns a notice dated 31.03.2024 issued under Section 148 of the Act initiating reassessment proceedings, in respect of AY 2017-18.

2. The petitioner's case is that it has undergone a Corporate Insolvency

Resolution Process under the provisions of the Insolvency and Bankruptcy Code, 2016 (hereafter *IBC*) and was taken over as a going concern under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The order dated 04.08.2023, passed by the National Company Law Tribunal (hereafter *the NCLT*) clearly indicates the same. The said order also expressly provides that all the claims, which were not a part of the statement of claims filed before the Resolution Professional, would stand extinguished. The relevant extracts of the said order read as under:

> "14. Further, as on the date of approval by the Adjudicating Authority, all such claims which are not a part of statement of claims, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the statement of claims.
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> 15. Consequently, the auction purchaser takes over the Corporate Debtor as a going concern, without any past liabilities/past claims as all past liabilities/past claims stands extinguished, sans such liabilities that are required to be discharged for running the Corporate Debtor as going concern.
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> 17. In view of the above discussion, this Adjudicating Authority hereby direct as follows:-
>
> a) the sale of the Corporate Debtor as a going concern be governed as per the relevant provision of IBC Code, 2016 and the terms contained in Sale Document, Process Document and Letter of Intent issued by the Liquidator for the sale of Corporate Debtor as going concern.
>
> b) the Successful Auction Purchaser to file necessary application(s) before the necessary forum/ authority in order to avail the necessary relief and concessions, in accordance with

> respective laws.
>
> 18. The Applicant is expected to take over and run the Corporate Debtor on a clean slate basis in terms of the process document and subject to the compliance of various applicable laws and provisions of IBC, 2016 and regulations. With the aforesaid findings, the present I.A. 2819 of 2022 stands disposed of in all respects."

3. Notwithstanding the above, the Assessing Officer (hereafter *the AO*) issued the impugned notice under Section 148A(b) of the Act. The petitioner responded to the said notice, *inter-alia,* contending that since no claim had been filed before the NCLT and the past claims were extinguished, the petitioner's assessment for prior years could not be reopened. However, the said contention was rejected by the impugned order dated 31.03.2024, passed under Section 148A(d) of the Act, on the ground that the petitioner was sold through the liquidation process and as a going concern.

4. Although, the AO has referred to the order dated 21.03.2022 passed by the NCLT in paragraph 6 of the order passed under Section 148A(d) of the Act, he had failed to notice the operative part of the order dated 04.08.2023, as is set out above. Plainly, in terms of the said order, no claims prior to the cut-off date can be sustained.

5. This issue is squarely covered by the decision of the Hon'ble Supreme Court in ***Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited: (2021) 9 SCC 657.***

6. Accordingly, the impugned notices issued under Section 148A(b) and 148 of the Act as well as the impugned order passed under Section 148A(d) of the Act are set aside.

7. The petition is allowed in the aforesaid terms. Pending application is

also disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

DECEMBER 02, 2024/*at*

Click here to check corrigendum, if any