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

\+ W.P.(C) 10412/2024

SURYA EXIM LIMITED .....Petitioner

Through: Mr. Madhur Jain, Mr. Gautam Jain, Ms. Reshul Mittra & Mr. Manish Yadav, Advocates

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Rohan Jaitley, CGSC with Mr. Dev Pratap Shahi & Mr. Yogya Bhatia, Advocates for R-1

Mr. Aseem Chawla, SSC with Ms. Pratishtha Chaudhary & Ms. Poshali Dhillon, Advocates for Revenue

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% 30.07.2024

1. This writ petitioner impugns the order dated 03 May 2024 in terms of which the 16 day condonation of delay in the submission of returns has come to be rejected in purported exercise of powers under Section 119(2)(b) of Income Tax Act, 1961 [“**Act**”].

2. Undisputedly, the petitioner was admitted to Corporate Insolvency Resolution Process [‘**CIRP**’] on 03 February 2021 and the Resolution Plan ultimately came to be approved on 01 July 2022. The last date of filing of the return ordinarily would have been 15 March

2022. However, it is manifest from the aforesaid facts that the petitioner appears to have been constrained in light of the proceedings pending under the Insolvency and Bankruptcy Code, 2016 [‘**IBC**’].

3. It is in the aforesaid backdrop that we find ourselves unable to sustain the reasoning supplied by respondent no. 3 in the order dated 03 May 2024 under Section 119(2)(b) of the Act.

4. We note that while dealing with the aforesaid, the respondent no. 3 has in para 5.1 & 5.2 observed as follows:-

> “5.1. The field authorities have stated that the assessee has not submitted any documentary evidence to establish that there was any genuine hardship which prevented it from furnishing the ROI within the due date. The field authorities have further stated that Section 119(2)(b) provides remedy to the assessee in genuine cases of delay and as in this case, no genuine hardship has been brought on record by the assessee, the application of the assessee regarding condonation of delay may be rejected, if deemed fit.
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> 5.2. It is pertinent that when the new management takes over an entity through proceedings under Insolvency and Bankruptcy Code, 2016 then the insolvency & bankruptcy process and consequential non-compliances by the Resolution Professional (RP) are a matter of due diligence process which the acquirer company do carry out and the final decision to go ahead with the financial bid is after taking into account all the relevant strengths and weaknesses. In these circumstances, the condonation of delay petition is relying on factors which the new management has taken into consideration and the same cannot be relied upon for seeking condonation of delay.”

5. The aforesaid conclusions clearly fail to take into consideration that a moratorium was in effect during the pendency of the proceedings under the IBC. This, in itself, would have constituted genuine hardship quite apart from the state of flux which prevailed during the CIRP. Moreover, the ultimate delay caused was of 16 days only. In view of the aforesaid, we find ourselves unable to sustain the order impugned.

6. The writ petition is accordingly allowed. The order dated 03 May 2024 stands quashed and set aside. The matter shall stand remitted to the authority to consider the prayer for condonation of delay afresh bearing in mind the observations made hereinabove.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 30, 2024/*RM*