Form No. J.(2)
Item No.2
NB/PG AR(Ct.)

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

HEARD ON: 01.08.2025

DELIVERED ON: 01.08.2025

CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

WP.TT 20 of 2025
With
I.A. No. CAN 1 of 2025

Goutam Hui
Vs.
The Commissioner, Directorate of Commercial Taxes, Government of West Bengal & Ors.

Appearance:-
Mr. Arnab Chakraborty
Mr. Aniket Chowdhury ..... for the petitioner

Mr. Tanoy Chakraborty
Mr. Saptak Sanyal ....for the respondents

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This writ petition has been filed challenging the order passed by the West Bengal Taxation Tribunal (for brevity, 'the tribunal') dated 28th March, 2025 in RN-21 of 2025 by which the application filed by the petitioner challenging the assessment order dated 10th December, 2024 was dismissed on the ground of availability of statutory appellate remedy. Aggrieved by such order, the writ petitioner has filed the present writ petition.

2. We have heard Mr. Arnab Chakaraborty, learned advocate for the petitioner and Mr. Tanoy Chakraborty, learned advocate for the respondents.

3. At the first instance, the writ petitioner has to cross the hurdle as to why he should not be relegated to avail the appellate remedy provided under the Act. However, upon a careful examination of the factual and legal issue involved in this case, we find that the issue involved in this case is fully legal and no disputed question of fact is required to be adjudicated in the matter and the matter can be resolved by taking note of the decision of the Hon'ble Supreme Court in the case of ***Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta & Ors. : (2020) 8 SCC 531***.

4. The assessing officer ought to have seen that in terms of the provisions of the Act and the Rules framed thereunder, the condition precedent to be eligible for input tax credit for the purchasing dealer is that the tax on which credit is claimed is deposited with the State exchequer by the supplying/selling dealer. However, the interpretation or reading of the said provision is by no means a corollary and is not a direct implication of the language used under section 22 of the Act and Rule 20 of the Rules. This is so because had the charging of tax been a corollary for depositing the same, the converse would also be true and that would mean that credit would be available to the purchaser so long as the selling dealer deposited the tax irrespective of whether they charge the same. Admittedly, the supplying dealer/SPS Steels Rolling Mills was subjected to insolvency proceeding under the provisions of the Insolvency and Bankruptcy Code, 2016 and the Allahabad Bank was the financial creditor, who filed the application before the learned tribunal and by order dated 8th April, 2019, the learned tribunal had approved the resolution plan and the matter stood disposed of. In such circumstances, in terms of the above decision, the respondent authorities cannot deny input tax credit to the writ petitioner and therefore, the assessment order has to be interfered with.

5. The interpretation given by the assessing officer is that the resolution plan referred to in the order passed by the National Company Law Tribunal is not binding upon it, is a wrong understanding of the legal position.

6. In the above decision, the Hon'ble Supreme Court held that section 31(1) of the IBC Code makes it clear that once a resolution plan is approved by the Committee of Creditors, it shall be binding on all stakeholders including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running business of corporate debtor on a fresh slate as it were. In this regard the Hon'ble Supreme Court referred to the decision of the Hon'ble Supreme Court in ***S.B.I. vs. V. Ramakrishnan : (2018) 17 SCC 394.***

7. In the subsequent decision in ***Ghanashyam Mishra & Sons Private Limited through the Authorised Signatory v. Edelweiss Asset Reconstruction Company Limited through the Director & Ors. : (2021) 9 SCC 657***, it was held: *"Bare reading of Section 31 of the I &B Code would also make it abundantly clear that once the resolution plan is approved by the adjudicating authority, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in sub-section (2) of Section 30, it shall be binding on the corporate debtor and its employees,. Members, creditors, guarantors and other stakeholders."* It was further held : *"Such a provision is necessitated since one of the dominant purposes of the I & B Code is revival of the corporate debtor and to make it a running concern."*

8. In the light of the same, the assessment order, which was impugned before the learned tribunal calls for interference. Accordingly, the writ petition is allowed. The order passed by the learned tribunal is set aside and the assessment order dated 10th December, 2024 is set aside.

9. In view of the above, I.A. No. CAN 1 of 2025 is also disposed of.

10. No costs.

11. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)