

OD-30 & 31

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/71/2025
IA NO: GA/1/2025

SREI EQUIPMENT FINANCE LIMITED
VS.
ASSESSMENT UNIT/VERIFICATION UNIT/
TECHNICAL UNIT/INCOME TAX DEPARTMENT & ORS.
AND
APOT/72/2025
IA NO: GA/1/2025

SREI EQUIPMENT FINANCE LIMITED
VS.
ASSESSMENT UNIT/VERIFICATION UNIT/
TECHNICAL UNIT/INCOME TAX DEPARTMENT & ORS.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Dated : 21ST MARCH, 2025

Appearance:

Mr. Somak Basu, Adv.
Mr. Swagato Kabiraj, Adv.
..for the appellant

Mr. Prithu Dudhoria, Adv.
..for the respondents

THE COURT: These two appeals have been filed challenging the order dated 7th March 2025 passed by the learned Single Bench in two writ petitions being WPO 141/2025 and WPO 142/2025.

The impugned orders in both the writ petitions are interim orders by which the respondent Income-tax Department was permitted to proceed further pursuant to the notices issued by the respondents under Section 148A(b) of the Income Tax Act, 1961 (the Act) dated 24th April 2023 for the two assessment years, namely 2016-17 and 2019-20.

The learned Single Bench held that the action to be taken by the Department including passing of any order shall abide by the result of the writ petition.

Aggrieved by such order, the appellant has filed the present appeals. With the consent of the learned Advocates on either sides, the appeals as well as both the writ petitions being WPO/141/2025 and WPO 142/2025 are taken up for disposal.

Since the facts are identical and the legal issue to be decided in both the appeals are common, we take up the facts in APOT 71/2025 which pertains to the assessment year 2016-17. The writ petition was filed challenging the order passed under Section 148A(d), dated 24th April, 2023 for both the assessment years. The appellant has also impugned the consequential notice issued under Section 142(1) of the Act. The first objection raised by the revenue was that the appellant/writ petitioner, being the corporate debtor, has no locus standi to file the writ petition because a resolution plan has been approved by the National Company Law Tribunal (NCLT) by order dated 11th August 2023. The learned Single Bench has recorded its objection in the impugned order. We are required to examine as to whether the objection raised by the Department was

sustainable. We need not labour much to decide this issue as the same has been answered by the Hon'ble Supreme Court in the decision in *Ghanashyam Mishra & Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited*, (2021) 9 SC 657. In the said appeal, one of the contentions raised by the appellant was that though NCLT had approved the resolution plan on 17th April 2018 and NCLT had dismissed the appeal on 18th August 2018, only thereafter on 17th August 2018 re-assessment order came to be passed for the period 2012-13, which was challenged in the writ petition. However, the same was dismissed on the ground that the resolution applicant therein, M/s. Vedanta Ltd., was the aggrieved person and a writ petition at the behest of the appellant before the Hon'ble Supreme Court, who was a corporate debtor, was not maintainable. The Hon'ble Supreme Court considered the said submission and in paragraph 153 of the judgment, it was held that the High Court erred in holding that the appellant company (therein) does not have locus to file the writ petition inasmuch as the management has been taken over by M/s. Vedanta Ltd. The resolution plan is in respect of corporate debtor and the successful resolution applicant only takes over the management of the corporate debtor in accordance with the resolution plan. The resolution applicant steps into the shoes of the corporate debtor. Such finding in this respect would also not be sustainable in law. Thus, the objection raised by the Department with regard to the locus standi of the appellant/writ petitioner has to necessarily fail and accordingly, the same stands rejected.

The next issue is whether the Department could have proceeded to pass the order under Section 148A(d) of the Act. It is not in dispute that NCLT admitted the application under Section 227 read with 239(2)(zk) of the Insolvency and Bankruptcy Code, 2016(IBC) on 8th October 2021 and public announcement thereof was given on 11th October 2022. It is not in dispute that the notice under Section 148A(b) of the Act was issued much after the public announcement, that is, on 30th March, 2023, for the assessment year 2016-17 and dated 24th March, 2023 for the assessment year 2019-20. The petitioner challenged the said notices by filing writ petitions contending that the appellant/writ petitioner was under the moratorium period and no proceedings can be initiated or continued against the appellant/writ petitioner. In this regard, several decisions of the Hon'ble Supreme Court have been relied on as well as the decision of the Division Bench of this Court. Taking note of this settled legal position, the writ petition was disposed of by the learned Single Bench of this Court by order dated 20th July, 2023 restraining the authorities from proceeding further pursuant to the notice issued under Section 148A(b) of the Act. Subsequently, the case was listed for clarification and the Court by order dated 27th July, 2023 made it clear that the Court has not gone into the issue of jurisdiction that has been raised by the petitioner and granted liberty to raise all points of law once the moratorium is lifted. Therefore, at the earliest point of time, the petitioner was prompt in challenging the proceedings initiated by the Department under Section 148A(d) of the Act by approaching this Court and the stand taken by the petitioner was accepted and taking note

of the fact that the moratorium was in operation, the Court restrained the authorities from proceeding further with the matter.

The NCLT approved the resolution plan by order dated 11.8.2023 which was informed to the Income Tax Department by the appellant/writ petitioner on 1.10.2024. The department by communication dated 8.10.2024 stated that the department proposes to continue with the re-assessment proceeding. The petitioner filed an objection dated 28.10.2024 pointing out the legal position, referring to various decisions of the Hon'ble Supreme Court and requested the authorities to drop the proceeding. Thereafter, the department sought for clarification from the petitioner by communication dated 24.12.2024 calling for the copy of the order passed by the NCLT and also to indicate the relevant paragraphs. This direction was complied with by the petitioner by submitting an on-line reply dated 30.12.2024 in which the authority reiterated the jurisdictional issue and requested to drop the proceeding. Despite the two objections given by the appellant/assessee the department proceeded to pass an order under section 148A(d) of the Act dated 24.4.2023. On perusal of the order we are surprised to note that the objections regarding the jurisdiction of the authority to continue the proceeding has not been dealt with by the assessing officer and proceeded to make certain observations on merits and held the transaction to be a bogus transaction and that it remained unexplained. The manner in which the assessing officer has passed the order dated 24.4.2023 has to be necessarily deprecated. The purpose of issuing a show cause notice is to afford an opportunity to the assessee to explain and if

the assessee has made an explanation, the assessing authority is duty bound to consider the explanation and deal with the points raised in the explanation and then proceed to record his conclusion. This basic principle has been lost sight of by the assessing officer while passing the order dated 24.4.2023. This ground would be more than sufficient to quash the said order and the entire proceeding. However, since submissions were made on either side on the other issue as well, we have examined the other contentions. To decide the other issues as to whether the assessing officer could have continued the proceeding on and after the admission of the application by NCLT and the public announcement thereof and after the NCLT has approved the resolution plan, we find the answer in the decision of the Hon'ble Supreme Court in *Ghanashyam Mishra (supra)* wherein the Hon'ble Supreme Court held that once the resolution plan is duly approved by the adjudicating authority under sub-section (1) of section 131, the claims as directed in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. It was further held that on the date of approval of the resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceeding in respect to a claim, which is not part of the resolution plan. The decision of the Hon'ble Supreme Court is clearly apply to the facts of the case on and after approval of the resolution plan which was done by NCLT on

11.8.2023 the assessing authority could not have proceeded further and on this ground also the order impugned in the writ petition is liable to be set aside. The learned advocate appearing for the revenue placed reliance on the decision of the Hon'ble Single Bench of the High Court at Madras in the case of *M/s. Dishnet Wireless Limited vs. Assistant Commissioner of Income Tax (OSD) WP/34668/2018 etc.* dated 17.6.2022. In the said decision, the Hon'ble Court took note of the decision in *Ghanashyam Mishra (supra)* and, however, did a distinction between the voluntary and non-voluntary insolvency and sought to distinguish the decision and observed that the said decision has not been rendered in the context of voluntary corporate insolvency. Going by the scheme of IBC we find that there is no such distinction curbed out between voluntary and non-voluntary corporate insolvency and the consequences also do not make any such distinction pursuant to a petition filed under section 7 of the IBC. This issue was considered by the Hon'ble Division Bench of the High Court at Delhi in *M Tech Developers Pvt Ltd. vs. NFAC, Delhi & Anr. WP(C) 15567/2022 dated 15.4.2024.* We agree with the view expressed by the Division Bench of the High Court at Delhi in *M Tech Developers Pvt Ltd. (supra)*. Apart from that, it is also to be noted that in terms of section 238 of the Act of IBC there is an overriding effect. The said provision states that the provision of IBC shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of such law. At this juncture, we may refer to section 178 of the Income Tax Act, 1961, more particularly, sub-section (6) which states that the

provision of section 178 shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force except the provision of Insolvency and Bankruptcy Code, 2016. Thus, a conjoint reading of both the above provisions will clearly show that the provision of IBC shall override the provision of the Income Tax Act. In this regard we refer to the decision of the Hon'ble Supreme Court in *Special Leave to Appeal (C) Nos.6483/2018 , PCIT vs. Monnet Ispat And Energy Ltd.* dated 10.8.2018 wherein the Hon'ble supreme Court has held that going by section 238 of IBC it is obvious that the court will override anything inconsistent contained in any other enactment, including the Income Tax Act.

Thus, for all the above reasons, we hold that the proceeding initiated by the respondent/department commencing from the issuance of notice under section 148A(b) of the Act and culminating in the order passed under section 148A(d) of the Act and the consequential notice issued under section 142(1) of the Act should ex facie without jurisdiction and unsustainable in law.

For the above reasons, the appeal and the writ petition are allowed and the orders impugned in the writ petition are quashed.

The stay application being IA No:GA 1 of 2025 stands allowed.

(T.S. SIVAGNANAM, C.J.)

(CHAITALI CHATTERJEE (DAS), J.)

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