

OD-22

WPO/1018/2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

MCNALLY BHARAT ENGINEERING CO. LTD.
VS
UNION OF INDIA & ORS.

BEFORE:

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

Date : 30th January, 2025

Appearance :

Mr. Pranit Bag, Adv.

Mr. A.K. Dey, Adv.

..for the petitioner

Mr. Amit Sharma, Adv.

Mr. Prayas Sarkar, Adv.

...for the respondents.

1. The Court: The petitioner invoked the writ jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India, alleging arbitrary, high-handed and unlawful actions by the respondent authorities.

2. The petitioner is a company incorporated under the Companies Act, 1956, with its registered office at the 4, Mangoe Lane, 7th Floor, Kolkata, West Bengal- 70001. The petitioner has consistently complied with the statutory requirements and fulfilled tax obligations in a timely manner under applicable laws.

3. For the assessment year 2019-20, the petitioner filed its return of income on November 30, 2019, declaring a loss of ₹4,27,04,92, 401/-. This return was processed under Section 143(1) of the Act on June 1, 2020, leading to a refund of ₹24,85,36,310/- sanctioned in favour of the petitioner.

4. The Bank of India subsequently initiated proceedings under section 7 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal (NCLT), Kolkata Bench, for Corporate Insolvency Resolution Process (CIRP) against the petitioner. The NCLT admitted the petition on April 29, 2022, and ratified the appointment of a Resolution Professional by the Committee of Creditors on August 26, 2022.

5. On December 19, 2023, the NCLT approved a resolution plan submitted by BTL EPC Limited, fixing the appointed date as the date of the NCLT order and the effective date as February 17, 2024. The resolution plan, binding on all stakeholders, expressly stipulated that no proceedings or inquiries could be initiated or continued against the petitioner for the period prior to the effective date.

6. Notwithstanding the resolution plan, the respondent no.4 issued a notice under Section 148A(b) of the Act dated March 27, 2023. This notice alleged suspicious transactions involving the petitioner, M/s. Ranisati Metal Industries and certain shell entities, seeking explanations.

7. The petitioner, in response, submitted a detailed reply on April 17, 2023, supported by documentary evidence. The reply emphasized the moratorium imposed under Section 14 of the Insolvency and Bankruptcy

Code, 2016 (IBC), and argued that reassessment proceedings were impermissible.

8. Despite these submissions, the respondent authorities issued an order under Section 148A(d) of the Act and a consequential notice under Section 148 of the Act, both dated April 22, 2023, initiating reassessment proceedings against the petitioner.

9. The Learned Counsel appearing on behalf of the petitioner submits that the impugned reassessment proceedings initiated under Section 148A(b) of the Income Tax Act, 1961 and the subsequent notices and orders issued under Sections 148A(d) and 148 are entirely without jurisdiction and ought to be quashed. The petitioner asserts that the respondent authorities have failed to adhere to the statutory requirements mandated under the Income Tax Act and have acted in a manner that is arbitrary, illegal, and contrary to established legal principles.

10. The petitioner contends that the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC), which is a special statute, have an overriding effect over the Income Tax Act, 1961. The moratorium imposed under Section 14 of the IBC, along with the resolution plan approved by the National Company Law Tribunal (NCLT), categorically prohibits the initiation or continuation of any proceedings against the petitioner for the period prior to the effective date stipulated in the resolution plan. The petitioner draws the court's attention to Serial No. 36 under the heading "*Taxation*" in the resolution plan, which explicitly states that no reassessment or revision

proceedings shall be initiated for the period prior to the effective date and any consequential demand shall be deemed non-existent.

11. The petitioner submits that the respondent authorities have blatantly disregarded the binding nature of the NCLT's order and the provisions of the approved resolution plan. The failure of the respondents to respect the finality and overriding effect of the resolution plan constitutes a violation of judicial discipline and undermines the legal safeguards provided under the IBC.

12. It is also argued that the reassessment proceedings have been initiated based on allegations of suspicious transactions with shell entities, which the petitioner categorically denies. The petitioner states that all transactions in question have been duly accounted for and disclosed in its audited financial statements under the head "*Revenue from Operations*" for the relevant financial year. The allegations of escapement of income are thus baseless and lack substantive evidence.

13. Additionally, the petitioner submits that its detailed responses to the notices issued under Section 148A(b) were not given due consideration. The petitioner had specifically raised objections regarding the lack of jurisdiction and the bar on reassessment proceedings due to the provisions of the IBC and the resolution plan. However, these objections were summarily disregarded by the respondent authorities.

14. The petitioner contends that the actions of the respondent authorities, including the initiation and continuation of reassessment proceedings, constitute an abuse of power. The failure to conduct a proper inquiry, the

reliance on incomplete and selective information, the disregard for statutory limitations, and the overriding effect of the IBC collectively render the proceedings illegal and unsustainable in law.

15. In light of the above submissions, the petitioner prays for the issuance of a writ of *mandamus* to quash the notice dated March 27, 2023 under Section 148A(b), the order dated April 22, 2023 under Section 148A(d), and the notice under Section 148, along with all consequential proceedings. The petitioner also seeks a writ of *mandamus* directing the respondent authorities to refrain from initiating or continuing any proceedings against the petitioner in violation of the resolution plan approved by the NCLT.

16. Submissions of the Learned Counsel appearing for the respondents is that the respondent authorities submit that the reassessment proceedings for the A.Y. 2019-20 were initiated upon receiving credible information regarding bogus sale transactions amounting to ₹16,00,51,002/- allegedly booked in the name of shell companies M/s Ranisati Metal Industries, Manik Marchantiles Pvt Ltd., and M/s Garima Exim Pvt Ltd. during the F.Y. 2019-20. Pursuant to this information, a notice under Section 148A(b) of the Income Tax Act, 1961, was issued to the petitioner on March 27, 2023, directing the petitioner to show cause as to why reassessment proceedings should not be initiated.

17. The petitioner responded to the notice on April 17, 2023, requesting a deferral of the proceedings due to the ongoing Corporate Insolvency Resolution Process (CIRP) and indicating that further documentary evidence was being collated to substantiate the genuineness of the transactions. After

due consideration of the submissions and upon making necessary inquiries, the respondent passed an order under Section 148A(d) on April 22, 2023, holding that the matter warranted reassessment and issued a notice under Section 148.

18. The petitioner, in compliance with the notice, filed its Return of Income on May 20, 2023. Thereafter, notice under Section 143(2) was issued on June 18, 2024 and the petitioner responded on June 21, 2024. The respondents submit that the petitioner actively participated in the reassessment proceedings, acknowledging their lawfulness.

19. The respondents contend that the Resolution Plan approved by the NCLT does not prohibit reassessment proceedings initiated prior to the "Appointed Date." While the petitioner has referred to Serial No. 36 of the Resolution Plan under the heading "Taxation," the respondents emphasize that it prohibits only reassessment proceedings initiated after the Appointed Date and offers no relief for proceedings already initiated. Additionally, the petitioner has not demonstrated the existence of an "Effective Date" as defined in the Resolution Plan.

20. The respondents further rely on the judgment in ***Dishnet Wireless Ltd. vs. ACIT*** reported in **[2022] 139 taxmann.com 493**, wherein the Hon'ble Madras High Court held that proceedings under the Insolvency and Bankruptcy Code, 2016, cannot dilute the statutory rights of the Income Tax Department under the Income Tax Act, 1961. The court upheld that reopening of assessments under Section 148 is permissible even where CIRP is involved.

21. In view of these submissions, the respondents assert that the reassessment proceedings were lawfully initiated and do not contravene the provisions of the IBC or the approved Resolution Plan. They pray for dismissal of the writ petition and seek permission to continue the reassessment proceedings in accordance with the law.

22. On perusal of the documents brought before the Court and considering the submissions made on behalf of the parties, this Court is of the view that the initiation of reassessment proceedings under Sections 148A(b) and 148A(d) of the Income Tax Act, 1961 and the subsequent issuance of the notice under Section 148, were in violation of the statutory preconditions under the Act. The respondents failed to conduct a preliminary inquiry under Section 148A(a) and acted solely on external reports without demonstrating independent application of mind, thereby rendering the proceedings arbitrary and illegal.

23. Section 14 of the IBC imposes a moratorium that prohibits proceedings against a company undergoing Corporate Insolvency Resolution Process (CIRP). Furthermore, the resolution plan approved by the National Company Law Tribunal (NCLT) has overriding authority, as per Section 238 of the IBC and expressly precludes reassessment or revision proceedings for the period prior to the effective date stipulated in the plan. The respondents' actions are in direct contravention of these provisions.

24. In ***Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*** reported in **(2021) 9 SCC 657** it was held that:

“95. i) That once a resolution plan is duly approved by the Adjudicating Authority under sub section (1) of Section 31, the claims as provided 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. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan...

*...(iii) Consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, **if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.**”*

25. The respondents failed to provide the petitioner with complete access to third-party statements and materials relied upon in initiating the reassessment. This deprived the petitioner of a fair opportunity to rebut the allegations, constituting a breach of natural justice. Moreover, the reassessment proceedings initiated by the respondents were beyond the statutory limitation period prescribed under the Income Tax Act, further vitiating their validity.

26. For the foregoing reasons, the Court holds that the reassessment proceedings initiated against the petitioner are without jurisdiction, arbitrary, and unsustainable in law. Consequently, the writ petition is allowed, and the impugned notices and orders issued under Sections 148A(b), 148A(d), and 148 of the Income Tax Act, along with all consequential proceedings, are quashed. The respondents are further directed to refrain from initiating or continuing any proceedings against the petitioner in violation of the resolution plan approved by the NCLT.

27. All pending applications are accordingly disposed of.

28. There will be no order as to costs.

29. All parties shall act on the server copy of this order, duly downloaded from the official website of this Hon'ble Court.

(RAJARSHI BHARADWAJ, J.)