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

\+ W.P.(C) 9488/2025

OYO HOTELS AND HOMES PRIVATE LIMITED .....Petitioner
Through: Mr Ajay Vohra, Sr. Advocate with Mr Manuj Sabharwal, Advocate.

versus

PRINCIPAL COMMISSIONER OF INCOME-TAX DELHI - 7 & ORS. .....Respondents
Through: Mr Puneet Rai, SSC.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

O R D E R

% 10.07.2025

CM APPLs. 40049/2025 and 40050/2025

1. Exemption allowed, subject to all just exceptions.

2. The application is disposed of.

W.P.(C) 9488/2025 and CM APPL. 40048/2025

3. Issue notice. Mr. Rai, the learned counsel appearing for the Revenue, accepts notice.

4. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to the respondents not to treat the Assessee in default under Section 220(6) of the Income Tax Act, 1961 [**the Act**] in view of the outstanding demand of ₹11,39,93,05,320/- arising out of the assessment order dated 28.12.2022 in respect of Assessment Year [**AY**] 2021-22 till the disposal of the petitioner's appeal.

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5. The petitioner had filed its return of income for AY 2021-22 disclosing a loss of ₹8,59,11,33,141/-. The said return was picked up for scrutiny and the Assessing Officer [**AO**] passed an assessment order dated 28.12.2022 assessing the petitioner's income at ₹31,41,99,76,520/- as against the loss declared by the petitioner. The AO had, *inter alia,* added a sum of ₹38,85,51,75,255/- which as received as premium on issuance of Compulsorily Convertible Preference Shares by the Assessee to its holding company M/s Oravel Stays Ltd. The AO held that the premium was in excess of the fair market value.

6. Admittedly, the issue whether share premium received by the Assessee on issuance of shares to its holding company could be taxed under Section 56(2)(viib) has been decided in favour of the Assessee and is covered in favour of the Assessee by the ITAT's decision in Assessee's case for AY 2018-19, *albeit* arising from an appeal preferred against an order passed under Section 263 of the Act.

7. If the aforesaid addition on account of the share premium is deleted, the demand, as sought to be raised, would stand extinguished. In the given facts, the learned Commissioner of Income Tax [**CIT**] had also passed an order dated 13.02.2024 granting stay of the recovery of the demand for a period of three months, subject to the petitioner depositing a sum of ₹1 crore, which the petitioner has deposited. By an order dated 31.07.2024, the stay was further extended by a period of six months effective from 13.05.2024.

8. The petitioner has also filed an application for early disposal of its appeal, which has not been considered as yet.

9. This court is informed that the petitioner's appeal before the National

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Faceless Assessment Centre [**NFAC**] is at the final stage. In the peculiar facts and circumstances of the case, we consider it apposite to stay the impugned demand till the disposal of the petitioner's appeal by NFAC. The petition is disposed of in the aforesaid terms.

10. Considering that the hearing was held by video conferencing on 04.02.2025, we also request NFAC to dispose of the petitioner's appeal as expeditiously as possible and preferably within a period of eight weeks from date.

11. Pending application shall also stand disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

JULY 10, 2025/tr

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