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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 11844 of 2025

Decided on: 19.11.2026

Metenere Ltd. .....Petitioner

Versus

State of Himachal Pradesh and others ... Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Hon'ble Mr. Justice Yogesh Jaswal, Judge

Whether approved for reporting?[1] ***Yes***

For the petitioners : Mr. Goverdhan Lal Sharma, Advocate.

For the respondents : Mr. Ramakant Sharma, Additional Advocate General.

Ajay Mohan Goel, Judge *(Oral)*

By way of this writ petition, the petitioner has *inter alia* prayed for the following reliefs:-

> *"i. Hold and declare that the Impugned Show Cause Notice dated 16.09.2020 (Annexure P-5)issued under Section 73 of the CGST, and the claims/orders raised therein (Annexure P-7 Colly), stand extinguished and the proceedings permeating from the Impugned SCN are therefore infructuous; and*
>
> *ii. Hold and declare that the proceedings initiated against the Petitioner under Section 73/74 of the HP GST Act, raising claims pertaining to different assessment years (Annexure P-7 Colly), are ex-facie illegal, arbitrary, and per-se unsustainable, as the same*

[1] *Whether reporters of the local papers may be allowed to see the judgment?*

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stands extinguished.

iii. Direct that the payment of any Claims/Dues henceforth shall be subject to the outcome of the present petition;"

2. According to us, the present writ petition is not maintainable. The show cause notice issued to the petitioner under Section 73 of the HPGST Act culminated into an order which has been passed by the competent Authority, copy whereof is appended with the petition as Annexure P-4. Against this order passed by the Authority, there is a statutory remedy of appeal available under the provisions of the HPGST Act, i.e., Section 107 thereof.

3. The contention of learned Counsel for the petitioner that because the matter is squarely covered by the judgment of the Hon'ble Supreme Court of India passed in *Ghanshyam Mishra and Sons Pvt. Ltd.* vs. *Edelweiss Asset Reconstruction Co. Ltd*, (2021) 9 Supreme Court Cases 657 and, therefore, the petitioner can directly approach this Court, seeking the reliefs prayed for rather than availing the statutory remedy as is provided under the Act, does not satisfy us. According to us, as the action has been taken against the petitioner under the HPGST Act, which is both a procedural as well as a substantive law and as against the order which has been passed

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by the Authority under Section 73 of the said Act, there is a statutory remedy of appeal available, the petitioner has to exhaust the statutory remedy.

4. If there is a judgment of the Hon'ble Supreme Court of India on the issue, which as per the petitioner, is in favour of the petitioner, then it can always take benefit of the said adjudication by the Hon'ble Supreme Court of India before the Appellate Authority. However, on this plea that the issue is covered by the judgment of the Hon'ble Supreme Court of India, or may be for that matter, even by some judgment of High Court(s), the party cannot be permitted to evade the statutory remedy. According to us, if this practice is permitted, then the statutory provisions would be rendered otiose.

5. During the course of his arguments, to stress the point that the petitioner can directly approach this Court without invoking the statutory remedy, learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in **Ghanashyam Mishra and Sons Private Limited through the Authorised Signatory** Vs **Edelweiss Asset Reconstruction Company Limited through the Director and Others**, (2021) 9 Supreme Court Cases 657. He referred to para-93 and paras-134 to 140 thereof in support of his

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contention. In para-93 of the judgment, Hon'ble Supreme Court was pleased to hold as under:-

> *"93. As discussed herein above, one of the principal objects of the I&B Code is providing for revival of the corporate debtor and to make it a going concern. The I&B Code is a complete Code in itself. Upon admission of petition under Section 7 there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the corporate debtor is revived and is made an on-going concern. After CoC approves the plan, the adjudicating authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only*

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thereafter, the adjudicating authority can grant its approval to the plan. It is at this stage that the plan becomes binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans would go haywire and the plan would be unworkable."

6. Similarly, in paras-134 to 140 of the said judgment, Hon'ble Supreme Court was pleased to hold as under:-

"CIVIL APPEAL ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.11232 OF 2020

134. The present appeal arises out of the judgment and order passed by the Division Bench of the Allahabad High Court dated 6.7.2020 thereby, dismissing the petition filed by the appellant on the ground of availability of alternate remedy. The petition being Civil Misc. Writ Petition (Tax) No.354 of 2020 came to be filed seeking following reliefs:

"i. Issue a writ, order or direction in the nature of certiorari quashing the order dated 30.01.2020 passed by the

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Additional Commissioner Grade – 2 (Appeal) rejecting the appeal preferred by the petitioner in respect of Assessment Year 2015-16 (U.P. V A T) and affirming a demand of Rs. 232.60 Lacs raised on the petitioner;

ii. Issue a writ, order or direction in the nature of certiorari quashing the Communications/orders of the Joint Commissioner (Corporate), Ghaziabad holding that the proceedings in the State of U.P. would remain unaffected irrespective of the Resolution Plan of the petitioner being approved by the NCLT under the Insolvency and Bankruptcy Code as the NCLT order does not specifically prohibit these proceedings;

iii. Issue a writ, order or direction in the nature of mandamus directing refund of the amount which the petitioner is entitled to as a result of orders passed by the respondents;

iv. Issue a declaration that all proceedings pending before different authorities (assessing authority, first appellate authority or Commercial Tax Tribunal, Ghaziabad Bench) in respect of transactions entered into by the petitioner prior to the Transfer Date involving a consolidated amount

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of Rs. 769.73 Lacs stand abated in terms of the Resolution Plan approved by the NCLT under the Insolvency and Bankruptcy Code, 2016;

v. Issue a writ, order or direction in the nature of mandamus directing the Respondents to refund Rs. 248.92 Lacs/- deposited by the petitioner under protest in these proceedings and also to return the bank guarantee submitted for Rs.16.31 Lacs/-

vi. Issue a writ, order or direction in the nature of mandamus restraining the Respondents from passing any orders including penalty orders, raising any further demands, imposing any liability or taking any coercive steps including continuing with pending assessments / proceedings / litigation / appeals / revisions in respect of period prior to Transfer Date."

135. The High Court found, that the appellant has an alternative efficacious remedy of filing the Second Appeal and as such, deemed it fit to not to entertain the said petition. The basic grievance of the appellant in the writ petition was, that after the resolution application was approved by the Adjudicating Authority and the

management of the Corporate Debtor was transferred to the resolution applicant, all the claims stood extinguished and the proceedings in respect thereof could not continue.

136. The main ground raised on behalf of the respondent is, with regard to availability of alternate remedy. The second ground raised is, since the transfer date is prior to 2019 amendment to Section 31 of the I&B Code, the said amendment would not be applicable to the debts owed to the State Government or Central Government.

137. As held by this Court in catena of cases including in the cases of Babu Ram Prakash Chandra Maheshwari vs. Antarim Zilla Parishad Muzaffar Nagar37, Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors.38, Nivedita Sharma vs. Cellular Operators Association of India & Ors.39, Embassy Property Developments Pvt. Ltd. vs. State of Karnataka and Others 40 and recently in the case of Kalpraj Dharamshi (supra), that non-exercise of jurisdiction under Article 226 is a rule of self-restraint. It has been consistently held, that 37 (1969) 1 SCR 518 38 (1998) 8 SCC 1 39 (2011) 14 SCC 337 40 (2020) 13 SCC 308 the alternate

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remedy would not operate as a bar in at least three contingencies, namely,

(1) where the writ petition has been filed for the enforcement of any of the Fundamental Rights;

(2) where there has been a violation of the principle of natural justice; and

(3) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

138. In the foregoing paragraphs, we have held, that 2019 amendment to Section 31 of I&B Code is clarificatory and declaratory in nature and therefore will have a retrospective operation. As such, when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject matter of the petition are the proceedings, which relate to the claims of the respondents prior to the approval of the plan, in the light of the view taken by us, the same cannot be continued. Equally the claims, which are not part of the resolution plan, shall stand extinguished.

139. In this view of the matter, we find, that relegating the appellant to the alternative remedy would serve no purpose. A party cannot be made to run from one forum to another forum in respect of the proceedings and the claims, which are not permissible in law.

140. The appeal therefore is allowed. The impugned judgment and order dated 6.7.2020 passed by the Allahabad High Court is quashed and set aside. We hold and declare, that the respondents are not entitled to recover any claims or claim any debts owed to them from the Corporate Debtor accruing prior to the transfer date. Needless to state, that the consequences thereof shall follow."

7. In terms of the said judgment of the Hon'ble Supreme Court, the principles reiterated by the Hon'ble Supreme Court for the contingencies where alternative remedy would not operate as a bar are:

"(1) where the writ petition has been filed for the enforcement of any of the Fundamental Rights;

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(2) where there has been a violation of the principle of natural justice; and

(3) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

8. In the present case, the petitioner has approached this Court feeling aggrieved by an order that has been passed by the competent Authority pursuant to issuance of a notice under Section 73 of the HPGST Act.

9. It is not the case of the petitioner that the Authority which issued the notice under Section 73 of the HPGST Act was not having the jurisdiction to issue the notice or that the impugned order passed under Section 73 of the Act was passed by an Authority not having the jurisdiction to pass the said order. Further there is no challenge to the vires of any Statute in the petition. The petitioner has not approached this Court against the infringement of any fundamental right, as is enshrined under Chapter III of the Constitution of India and the grievance of the petitioner is vis-à-vis a statutory notice issued to him under Section 73 of the HPGST Act and the order passed upon the said statutory notice by the statutory Authority, as is envisaged under the Act.

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10. As we have already observed herein above, there is a statutory remedy of appeal provided against the impugned order under the HPGST Act. Whether the impugned order passed by the Authority is sustainable in law or not, be it on the touchstone of the judgment of the Hon'ble Supreme Court being relied upon by the petitioner, referred to above or otherwise, can be decided by the Appellate Authority in the appeal. It is not the case of the petitioner herein that the Appellate Authority, which is the statutory Appellate Authority, is precluded from hearing the appeal on the grounds, on the basis whereof, the petitioner intends to assail the impugned order or for that matter, the show cause notice before this Court.

11. That being the case, the petitioner cannot be permitted to bypass the statutory remedy and, in our considered view, the petitioner has to avail the statutory remedy, as is available to it under the HPGST Act.

Accordingly, this petition is dismissed, but with liberty to the petitioner that in case it is so advised, it may avail the statutory remedy, as is provided under the HPGST Act. We further observe that for the purposes of calculation of limitation, the time which has been spent by the petitioner while pursuing this remedy

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before us, shall be excluded by the Appellate Authority, in case, the petitioner does approach the Appellate Authority by way of an appeal etc. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

(Yogesh Jaswal)
Judge

November 19, 2026
(*narender*)