

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 2394/Mum./2017
(Assessment Year : 2012-13)

Dy. Commissioner of Income Tax
Central Circle-5(3)
Erstwhile Dy. Commissioner of
Income Tax, Central Circle-36, Mumbai

..... Appellant

v/s

Global Softech Ltd.
Raghuvanshi Mill Compound
Senapati Bapat Marg
Near Mahalaxmi Station
Mumbai 400 013 PAN – AABCG1089R

..... Respondent

ITA No. 2464/Mum./2017
(Assessment Year : 2012-13)

Global Softech Ltd.
Raghuvanshi Mill Compound
Senapati Bapat Marg
Near Mahalaxmi Station
Mumbai 400 013 PAN – AABCG1089R

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle-5(2), Mumbai

..... Respondent

Assessee by : None
Revenue by : Shri Shekhar L. Gajbhiye (CIT-DR)

Date of Hearing – 07.03.2022

Date of Order – 16/03/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present cross appeals have been filed by either parties challenging the order dated 27.04.2015, passed by the learned Commissioner of Income Tax (Appeals)-53, Mumbai, under section 250 of the Income Tax Act, 1961 ("*the Act*"), for the assessment year 2012-13.

2. When the cross appeals were called for hearing, no one was present on behalf of the assessee to represent the case. There is no application seeking adjournment either. Considering the nature of dispute, we proceed to dispose-off the appeals *ex-parte* qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. During the course of hearing, at the outset, we noticed that in the case of the assessee, the matter is pending before the Insolvency Professional in terms of the Insolvency and Bankruptcy Code, 2016 ("*the Code*") and moratorium period has been declared as per section 14 of the Code.

4. We further noticed that petition was filed by Capman Conpro Pvt. Ltd. and Vighnahartha Corrugators Pvt. Ltd. in their capacity as the Financial Creditors of Global Softech Ltd. ("*Corporate Debtor*"), under section 7 of the Code read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 before the Hon'ble Adjudicating

Authority i.e. National Company Law Tribunal, Ahmadabad Bench, Ahmadabad ("Hon'ble NCLT") for initiation of Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor.

5. Pursuant to the petition, Hon'ble NCLT has, inter-alia, appointed Shri Hemant Sharma (Registration no. IBBI/IPA-002/IP-N00015/2016-17/10019) as the Interim Resolution Professional for conducting the CIRP and exercise all powers and subject to all duties as contemplated under the provisions of the Code.

6. It is pertinent to note that as per the provisions of section 14 of the Code institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority shall be prohibited during the moratorium period. The period of moratorium shall have the effect from the date of such order till the completion of the corporate insolvency resolution process. In the present case, the appeal filed by the Revenue is an institution of suit against the corporate debtor, which is prohibited under section 14 of the Code. Hon'ble Supreme Court in case of Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan (P.) Ltd. [2017] 88taxmann.com 202 held that even arbitration proceedings cannot be initiated after imposition of the moratorium u/s 14 (1) (a) has come into effect and it is *non est* in law and could not have been allowed to continue. Further Hon'ble Supreme Court in the case of Pr. CIT v. Monnet Ispat & Energy Ltd. [SLP (C) No.6487 of 2018, dated 10-8-2018] has upheld

overriding nature and supremacy of the provisions of the Code over any other enactment in case of conflicting provisions, by virtue of a non-obstante clause contained in section 238 of the Code. It is further pertinent to note that under section 178(6) of the Act, as amended w.e.f. 01.11.2016, the Code shall have overriding effect.

7. Further, as per section 31 of the Code, resolution plan as approved by the Adjudicating Authority shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. Thus, this will prevent State authorities, Regulatory bodies including Direct & Indirect Tax Departments from questioning the resolution plan. Therefore, there is no reason to keep this appeal pending.

8. In view of the above, we dismiss the appeal filed by the Revenue with the liberty to the Assessing Officer to file the appeal afresh after completion of moratorium period upon the revival of the Corporate Debtor as per Resolution Plan as approved by the Adjudicating Authority or upon appointment of the Liquidator, as the case may be.

9. Further, the appeal filed by the assessee also cannot be sustained as the assessee did not furnish any permission obtained from Hon'ble NCLT as held by the Hon'ble Madras High Court in Mrs. Jai Rajkumar v. Standic Bank Ghana Ltd. [2019] 101 taxmann.com 329. Further, no letter of authority issued by the Interim Resolution Professional in favour of the Authorised Signatory of the assessee, in respect of present cross-appeals

before us, has been filed. Nor it has been brought on record whether the Interim Resolution Professional has been authorised by the Committee of Creditors.

10. Accordingly, the appeal filed by the assessee is also dismissed with the liberty to file the appeal afresh by the Interim Resolution Professional / Resolution Professional, as may be substituted by the Hon'ble NCLT, on behalf of the Corporate Debtor with prior permission of the Hon'ble NCLT; or after completion of moratorium period upon the revival of the Corporate Debtor as per Resolution Plan as approved by the Adjudicating Authority or upon appointment of the Liquidator, as the case may be.

11. In the result, appeal filed by the assessee and the Revenue are dismissed.

Order pronounced in the open court on 16/03/2022

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 16/03/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai