

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 5430 of 2016

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GARDEN SILK MILLS LIMITED & 1 other(s)
 Versus
 LIQUIDATOR OF PETROFILS COOPERATIVE LIMITED & 1 other(s)

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Appearance:

MS AMRITA M THAKORE(3208) for the Petitioner(s) No. 1,2
 MR ROHAN LAVKUMAR SHAH for NANAVATI ASSOCIATES(1375) for the
 Respondent(s) No. 1
 RULE SERVED for the Respondent(s) No. 2

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CORAM: HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 01/07/2022

ORAL ORDER

1. Heard Ms. Amrita M. Thakore, the learned advocate appearing for the writ-applicants and Mr. Rohan Lavkumar Shah, the learned advocate appearing for Nanavati Associates, the learned advocate for the respondent No.1.

2. By way of present writ-application under Article 226 of the Constitution of India the writ-applicants have prayed for the following reliefs :-

“(A) Your Lordships be pleased to issue a writ of or in the nature of certiorari or a writ of or in the nature of mandamus or any other writ, order or direction quashing and setting aside all show cause notices / demand notices issued by the respondent no. 1 upon the petitioner claiming amounts from the petitioner and the order dated 16.2.2016 passed by the

respondent no. 1 at Annexure O hereto.

(B) Your Lordships be pleased to issue a writ of or in the nature of mandamus or any other writ, order or direction directing the respondent no. 2 not to register any charge or other encumbrance of any nature on any of the properties of the petitioner no. 1 on the basis of the order dated 16.2.2016 passed by the respondent no. 1 at Annexure O hereto.

17B(1) This Hon'ble Court may be pleased to issue a writ of or in the nature of mandamus or any other writ, order or direction holding and declaring that the respondent no. 1's alleged claim and the impugned order dated 16.2.2016 passed by the respondent no. 1 stands extinguished and no longer remains in existence in light of the successful Corporate Insolvency Resolution Process of the petitioner no.1.

17(B)(2) This Hon'ble Court may be pleased to issue a writ of or in the nature of mandamus or any other writ, order or direction directing the respondent no. 2 to reverse/delete the Mutation Entry No. 5675 in Village Form No. 6 in respect of the petitioner's lands bearing Revenue Survey Nos. 14/2(6), 22 paiki 1(6), 22 paiki 2 (6), 22 paiki 3(6). 23(6). 26(6), 27(6), 28(6), 20 paiki 1(6), 29 paiki 2(6), 30(6), 31(6), 32(6), 37(6), 38(6), 40(6), 41(6), 42(6), 42-A(6), 43(6) situated in Taluka: Palsana, District: Surat.

(C) Pending admission, hearing and final disposal of this petition, your Lordships be pleased to:

(i) *Stay and suspend the operation and implementation of the order dated 16.2.2016 passed by the respondent no. 1 at Annexure O hereto.*

(ii) *Direct the respondent no. 2 not to register any charge or other encumbrance of any nature on any of the properties of the petitioner no. 1 on the basis of the order dated 16.2.2016 passed by the respondent no. 1 at Annexure O hereto.*

(iii) *Restrain the respondents from taking any coercive steps for recovery against the petitioners pursuant to the order dated 16.2.2016 passed by the respondent no. 1 at Annexure O hereto.*

(D) *Ex-parte ad interim relief in terms of prayer C above be granted.*

(E) *Such other and further reliefs as deemed just and expedient in the facts and circumstances of the present case be granted.”*

3. Ms. Amrita M. Thakore, the learned advocate appearing for the writ-applicants submitted that the writ-applicants have filed present writ-application inter alia challenging the legality and validity of the order dated 16.2.2016 (Annexure-O) passed by the respondent no.1 declaring that an amount of Rs.

3,20,79,087/- is due from the writ-applicant no.1 and seeking to impose a charge on the writ-applicant no.1's property for recovery of the said amount, on the grounds inter alia that the impugned order is wholly without jurisdiction and authority of law, violative of the principles of natural justice, without following due process of law, arbitrary, unreasonable, highhanded, unconstitutional, illegal and void. On 7.4.2016, this Court issued notice and granted ad interim relief. Thereafter, the petition was admitted vide order dated 14.3.2019 and interim relief was continued.

3.1 Ms. Thakore, the learned advocate submitted that during the pendency of the writ-applicant, certain developments have taken place which are brought on record by the writ-applicants by way of Civil Application No.1 of 2022 for amendment which was allowed vide order dated 17.6.2022.

3.2 Ms. Thakore, the learned advocate submitted that the writ-applicant no.1 company has undergone Corporate Insolvency Resolution Process ("CIRP") before the National Company Law Tribunal, Ahmedabad ("NCLT") under the provisions of the Insolvency and Bankruptcy Code, 2016 ("IBC"). During CIRP, the respondent no.1 had not filed any claim with the Resolution Professional of the writ-applicant no. 1 ("RP") and hence its alleged claim as Operational Creditor stood extinguished. Ultimately, the Resolution Plan dated

19.9.2020 along with its Addendum dated 23.9.2020 ("Resolution Plan", at Annexure P) submitted by one MCPI Private Limited was unanimously approved by the Committee of IBC. Thereafter, of Creditors the ("CoC") NCLT in passed accordance Approval with Section Order dated 30(4) 1.1.2021 approving the Resolution Plan under Section 31(1) of IBC and copy of the said Approval Order is Annexure Q to the writ-application.

3.3 Ms. Thakore, the learned advocate submitted that the respondent no. 1 had not filed any objections to the Resolution Plan before NCLT, nor did the respondent no.1 challenge the approval thereof before the National Company Law Appellate Tribunal ("NCLAT"). The Commissioner of Central Excise, Surat had challenged the Approval Order before NCLAT, which dismissed the appeal on 27.7.2021 and upheld the Resolution Plan and copy of the said order dated 27.7.2021 is at Annexure R to the writ-application.

3.4 Ms. Thakore, the learned advocate submitted that in view of the above, the Resolution Plan is binding on all stakeholders and creditors of the writ-applicant no.1 in terms of Section 31(1) of IBC. The implementation of the Resolution Plan has been successfully and irreversibly completed.

3.5 Ms. Thakore, the learned advocate submitted that the Hon'ble Supreme Court, in the case of **Committee of Creditors**

of **Essar Steel India Limited v. Satish Kumar Gupta, (2020) 8 SCC 531**, has held that once a resolution plan is approved by the Coc it shall be binding on all stakeholders. She submitted that in the case of **Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited [C.A. No. 8129 of 2019 decided on 13 April 2021]**, the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the NCLT under Section 31(1) of IBC it 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, and no proceedings in respect of such dues for the period prior to the date on which the NCLT grants its approval under Section 31 of IBC can be continued.

3.6 Ms. Thakore, the learned advocate submitted that as per the financial outlay proposed under the Resolution Plan, the payments to Operational Creditors towards operational debt was "NIL" payment for settlement of all statutory dues and claims. Several provisions of the Resolution Plan, such as Article 3.5.1, 3.5.2, 3.5.3(a), 3.7.1, Clause 6.1 in Annexure 4, Annexure 5, etc. make it evident that the claims of all operational creditors stand extinguished and proceedings in relation to such claims and/or taxes, whether initiated, completed or not, stand extinguished, terminated, withdrawn and shall not be proceeded with.

3.7 Ms. Thakore, the learned advocate submitted that the alleged claim of the respondent no.1 stands extinguished in law and cannot be recovered. In light of this, the charge which is sought to be recorded on the basis of the impugned order dated 16.2.2016 over the petitioner no. 1's lands [being lands bearing Revenue Survey Nos. 14/2(6), 22 paiki 1(6), 22 paiki 2 (6), 22 paiki 3(6), 23(6), 26(6), 27(6), 28(6), 20 paiki 1(6), 29 paiki 2(6), 30(6), 31(6), 32(6), 37(6), 38(6), 40(6), 41(6), 42(6), 42-A(6), 43(6) situated in Taluka: Palsana, District: Surat ("said lands")] vide Mutation Entry No. 5675 made in Village Form No. 6 on 12.4.2016 copy of which is at Annexure S to the writ-application, is required to be reversed / set aside.

4. Mr. Rohan Lavkumar Shah, the learned advocate appearing for Nanavati Associates, the learned advocate for the respondent No.1 has not controverted the submissions advanced by Ms. Thakore, the learned advocate appearing for the writ-applicants.

5. In view of the above submissions advanced by Ms. Thakore, the learned advocate appearing for the writ-applicants, the present writ-application stands allowed in terms of Prayers 17(B1) and 17(B2). Rule is made absolute to the aforesaid extent.

(VAIBHAVI D. NANAVATI,J)

K.K. SAIYED