NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1876 of 2024 & I.A. No. 6923 of 2024

IN THE MATTER OF:

Ellison Oil Field Services Pvt. Ltd. ...Appellant

Versus

CITOC Ventures Pvt. Ltd. & Ors. ...Respondent

Present:

For Appellant : Mr. Gaurav Mitra, Shubham Kulshreshtha, Satya Rath, Adv

For Respondent : Mr. Abhinav Vasisht, Sr. Adv. With Diwakar Maheshwari, Pratiksha Mishra, Vishnu Shriram, Adv. For RP/R3
Mr. Abhijeet Sinha, Sr. Adv. With Nikhil Bhat, Darpan Bhatia, Sanjay Agarwal, Adv. For R1
Mr. Gopal Jain, Rohan Rajadakshaya, Subash Bhat, Abhishek Sharma, Abhishek Jain, Adv. For R4 / SRA
Mr. Anurag Ojha, Sr., Vipul Kumar, Dipak Raj, Adv. for R2

O R D E R
(Virtual Mode)

Per: Justice Rakesh Kumar Jain: (Oral)

17.09.2025: This appeal is against the order dated 21.08.2024 passed by the NCLT, Mumbai Bench 1 by which an application bearing I.A No. 2277 of 2024 filed by the Appellant for grant of the prayers mentioned herein below has been dismissed.

> i. Declare that the Assignment Deed dated 13.12.2023, and the assignment of debt of Respondent No.2, in favor of Respondent No.1, is void and unenforceable;
> ii. Declare that Respondent No. 1 does not fall within the definition of "operational creditor" for the operational debt payable by the Corporate Debtor to Respondent No.2;
> iii. Direct Respondent No. 3 to reconstitute the CoC of the Corporate Debtor to reflect the status quo ante that existed prior

to the assignment of debt of Respondent No. 2, in favor of Respondent No.1;

iv. Reverse the effect and implementation of the decisions taken by the CoC during the period when Respondent No. 1 voting percentage was increased on the strength of Assignment of debt from Respondent No. 2;

v. Pending hearing of the present application, Respondent No. 1 shall not participate in the CoC meetings or exercise its vote on the strength on impugned assignment;

vi. Pending hearing of the present application, Respondent No. 1 increased voting share on account to impugned assignment shall not be counted while taking any decisions in the CoC meetings.

vii. Pass any other order or direction that this Hon'ble Tribunal deems fit and proper, in facts and circumstances of the present case.

2. The brief facts of this case are that SES Energy Services India Pvt. Ltd. (Corporate Debtor) was admitted to CIRP on 25.11.2022 on an application filed under Section 10 of the Code and Ms. Dipti Mehta was appointed as the Interim Resolution Professional (IRP) who was later on confirmed as RP.

3. The IRP made the public announcement on 26.11.2022 of the initiation of CIRP against the CD and for inviting claims from the creditors of the CD. Pursuant to which, the office of assistant commissioner of central GST and Excise Division (Respondent No. 2) submitted its claim in form B for an amount of Rs. 7,88,52,896/- on 29.12.2022 which was based upon show cause cum demand notice SCN No. 137/Pr. Commissioner, CGST & CEX, Mumbai East, Commissionerate dated 29.12.2020 issued by Pr. Commissioner, CGST & CEX Mumbai.

4. The Principal Commissioner, CGST & Central Excise, Mumbai East passed an order on 17.05.2023 bearing OIO No. 15/MRM/COMMR/ME/2023-24 regarding show cause notice on the basis of which the Respondent No. 2 filed the claim. In the said order, the concerned

authority confirmed the amount payable by the CD as Rs. 74,63,733/- being payable towards service tax alongwith applicable interest under Section 75 of the Finance Act, 1994, Rs. 10,000/- being payable towards penalty under Section 77 of the Finance Act, 1994 and Rs. 74,63,733/- being payable towards under Section 78 of the Finance Act, 1994. The aggregate liability of the CD in relation to the service tax, alongwith all applicable penalties (inclusive of interest of Rs. 122,06,577) came to Rs. 2,71,44,043/-.

5. The RP, in view of the order dated 17.05.2023 admitted the claim of Rs. 2,71,44,043/- in its entirety on 23.06.2023 and informed the Respondent No. 2 by an email. The Respondent No. 2 was admitted as a member of the CoC of the CD with a voting share of 12.76% in the CoC.

6. Ms. Dipti Mehta who was appointed as the IRP was replaced by Vijay Kumar V Iyer as the RP of the CD on an application I.A No. 1527 of 2023 filed on behalf of the CoC, by order dated 23.08.2023 passed by the Tribunal.

7. Respondent No. 2, vide email dated 01.12.2023 informed the RP that one CITOC Ventures Pvt. Ltd. (Respondent No. 1) has paid the entire amount of Rs. 2,72,18,885/- vide challan bearing CTIN Number 2311593956 on 24.11.2023 in respect of the entire 100% of the admitted claim of Respondent No. 2 against the CD.

8. Respondent No. 1 sent the debt assignment agreement (in short 'agreement') dated 13.12.2023 to the RP. The RP also received a latter dated 14.12.2023 in this regard.

9. After the receipt of agreement, the RP addressed an email to the members of the CoC on 20.12.2023 about the assignment of GST claim by Respondent No. 2 in favour of Respondent No. 1 and in compliance of

Regulation 28(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short 'Regulations'), the RP filed I.A No. 609 of 2024 under Section 60(5) before the Tribunal intimating it about the aforesaid assignment and the consequent modification to the composition of the CoC. The Tribunal passed an order on 21.02.2024, taking on record, the reconstitution of the CoC in view of the assignment.

10. The RP convened 16th meeting of the CoC and placed the revised list of creditors of he CD and the revised composition of the CoC of the CD before the members of the CoC.

11. On 17.02.2024, the present appellant addressed an email to the RP after two months of intimating alleging that assignment is not permissible in law. Similarly, one of the members of the CoC addressed an email to the RP contesting the legality and validity of the Assignment on 03.04.2024.

12. It is pertinent to mention that Mr. Iyer who had earlier replaced Ms. Dipti Mehta as the RP had resigned and thereafter by an order dated 23.04.2024, passed in I.A No. 1853 of 2024, Mr. Anish Nanawati was appointed as the new RP.

13. It is alleged that the present Appellant filed I.A No. 2277 of 2024 on 06.05.2024 to challenge the debt assignment deed dated 13.12.2024.

14. It is alleged by the RP that before the impugned order could have been passed on 21.08.2024 in I.A No. 2277 of 2024, plan submitted by Ocean Capital Market Ltd. (Respondent No. 4) was approved in 23rd meeting of the CoC by majority of 67.79% by show of hands.

15. However, the application i.e. I.A No. 2277 of 2024 filed by the Appellant was rejected by the Tribunal, inter alia, on the ground that in view of Regulation 28, the RP has not committed any error in taking note of such transfer of debt by R2 in favour of Respondent No. 1, the entire amount of Respondent No. 2 was paid by Respondent No. 1, therefore, there was no injury much less legal to Respondent No. 2 and that no statute bars receipt of money from the 3rd person against the dues of the assesse.

16. Aggrieved against the impugned order, this appeal has been preferred under Section 61 of the Code.

17. Mr. Gaurav Mitra, Adv. Appearing for Appellant has principally argued that the debt assignment agreement is not merely in the nature of settlement of GST dues/ receivables but transfer of all rights of the GST Department upon the assignee/Respondent No. 1. In this regard, he has referred to clause B of the agreement in which it is provided that "the assignor is desirous of assigning to and in favour of the Assignee, the receivables arising under the invoices and/or the outstanding service, tax demand, together with all the assignor's rights, title and interest in the invoices and the assignee is desirous of purchasing the receivables together with all the rights, title and interest of the assignor in the invoices subject to the terms and conditions herein."

18. He has also submitted that dues of Respondent No. 2 are in the nature of tax which cannot be assigned to be collected by a private individual or a company. In this regard, he has referred to article 265 of the Constitution of India which read as under:-

> "Taxes not to be imposed save by authority of law. No tax shall be levied or collected except by authority of law"

19. He has also submitted that Section 23 of the Indian Contract Act provides that "the consideration or object of an agreement is lawful unless it is forbidden by law or is of such a nature that if permitted, it would defeat the provisions of any law."

20. The context of referring to this provision of the Contract Act is that the imposition and collection of tax is a sovereign function which cannot be delegated. It is also submitted that there is no provision in the GST Act, 2017 which permits the assignment of its tax to be collected by a private party. He has further submitted that the imposition of tax by authority of law means that the tax can be imposed either by law enunciated by parliament or by state legislature depending upon the subject provided in the respective lists and the collection of the tax is also provided in the special statute. In this regard, he has drawn our attention to Maharashtra GST Act (MGST Act) in which the tax has been levied from the CD. He has particularly referred to Section 9, 32,76 and 79 of the said Act which are reproduced as under : -

> **Levy and collection.**
> 9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the Maharashtra goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
> **Prohibition of unauthorised collection of tax**.
> 32. (1) A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act.

(2) No registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.

Tax collected but not paid to Government.

76. (1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

(2) Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

Recovery of Tax

79. (1) Where any amount payable by a person to the Government under Recovery any of the provisions of this Act or the rules made thereunder is not paid, the of tax. proper officer shall proceed to recover the amount by one or more of the following modes, namely :-

(a) the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer;

(b) the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer;

...

(f) notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to

recover from such person the amount specified thereunder as if it were a fine imposed by him.

21. It is contended by Mr. Gaurav Mitra that levy of tax is under the special statute, namely, MGST Act and it has been provided therein that it has to be collected in such manner as may be prescribed. In regard to prescription of recovery of tax, he has argued that the Tax has to be collected by a proper officer who is defined in Section 2(91) of MGST Act as Commissioner or the officer of the state tax who is assigned the function by the commissioner. He has thereafter submitted that the recovery of tax is provided in Section 79 of MGST Act by different modes but mode of recovery of tax by way of assignment of tax to a 3rd party is conspicuous by its absence. He has also referred to MGST Rules, 2017 and in particular chapter XVIII pertaining to "demands and recovery, rules 142-161 have been provided giving the powers and procedure for the proper officer to recovery the tax dues."

22. He has further submitted that if the assignment of tax is not permissible under the taxing statute, the CoC constituted by the RP in which at one point of time, Respondent No. 2 was the member and later on replaced by Respondent No. 1 is an illegal constitution which could not have approved the plan as has been done in the 23rd CoC meeting. In this regard, it is submitted that the law is well settled that illegal constitution of CoC vitiates the approval of the plan and pressed following judgments of this Court in the case of Jayanta Banerjee Vs. Shashi Agarwal, CA (AT) (Ins) No. 348 of 2020, Hindalco Industries Ltd. Vs. Hirakud Industrial Works Ltd., CA (AT) (Ins) No.

42 of 2022 and Dauphine Cables Pvt. Ltd. Vs. Praveen Bansal, RP, CA (AT) (Ins) No. 634 of 2023.

23. In the end, it is submitted that in so far as the Appellant is concerned it has locus to challenge the illegal claim admission of other creditors and replied upon a decision of this Court in the case of Aashray Social Welfare Society & Ors. Vs. Saha Infratech pvt. Ltd., CA (AT) (Ins) No. 904 of 2021.

24. On the other hand, Counsel for Respondent No. 2 has vehemently opposed the appeal and submitted that there is no error in the impugned order for interference by this Court. It is contended that once the CD, who had not paid its tax liability due towards Department of GST, had slipped into CIRP because of admission of the application filed under Section 10 on 25.11.2022, moratorium was imposed under Section 14 and as per Section 14(1)(a), Respondent No. 2 could not have recovered the amount of tax even though assessed by the GST Dept. on 17.05.2023, after filing of the claim on 29.12.2022 by Respondent No. 2 on the basis of show cause notice of an amount of Rs. 7,88,52,896/-, therefore, the nature of the amount lying with the CD has changed from a tax to a debt. It is submitted that the amount of Respondent No. 2 lying with the CD became an operational debt as defined under Section 5(21) of the Code which means "a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;"

25. It is submitted that as a natural corollary Respondent No. 2 became an OC as defined under Section 5(20) which means 'a person to whom an

operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;"

27. He has further submitted that the debt is also defined in Section 3(11) which means "a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;"

28. He has submitted that the word claim appearing in definition of debt is defined in Section 3(6) of the code which means "(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;"

29. It is thus submitted that if a right to payment is claim and claim is a debt and the dues of the Govt. is an operational debt and the authority who had to recover the debt becomes an operational creditor and has no other means to recover the said amount from the CD who has been pushed into CIRP after the admission of the application filed by it under Section 10 of the Code, except for resorting to filing of claim in terms of Regulation 7 of the Regulations. It is not a case where R2 has tried to collect tax from the CD which in any case could not have been collected because of the prohibition imposed under Section 14 of the Code after the admission of the application filed at the instance of the CD rather it is a case where the amount of tax has been changed into debt for which the only procedure prescribed is in the Code.

30. Counsel for Respondent No. 2 has further submitted that if Respondent No. 2 has already turned into an OC then the provision of the Code also permits the assignment of its debt and in this regard, he has again referred to the definition of Operational Creditor provided in Section 5(20)

which means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

31. It is further submitted that once the creditor who may be an OC assign or transfer the debt to any other person during the CIRP period then it has to be brought to the notice of the RP which has been done in the present case by Respondent No. 1. He has also argued that in so far as Article 265 of the Constitution of India is concerned, there is no dispute that it is a constitutional mandate that tax can be imposed only by authority of law and no tax can be levied or collected except by authority of law.

32. In the end, it is submitted that entire amount of the debt which was to be paid by the CD has been paid by the assignee.

33. Counsel for the RP has submitted that initially the claim was filed by Respondent No. 2 for an amount of Rs. 7,88,52,896/- but that was on the basis of show cause cum demand notice which was finally decided by the Commissioner, CGST & Central Excise and the amount payable was found Rs. 2,71,44,043/- which has been totally admitted. He has further submitted that the debt assignment deed was presented by Respondent No. 1 on the basis of which the assignee was given a place in the CoC with voting share of the assignor and the change in the constitution of the CoC was duly intimated to the AA by filing an application bearing I.A No. 609 of 2024. He has further submitted that as RP he has not committed any error in the performance of his duties and had collated the claim on the basis of order supplied by R2 dated 17.05.2023. It is submitted that after the approval of the plan, the Appellant has been paid its entire claim of Rs. 116577461 by a demand draft which has been encashed by

the Appellant on 14.02.2025, therefore, the Appellant should not have any grievance either to file the application bearing I.A No. 2277 of 2024 or even to pursue this appeal as the Appellant is no more an aggrieved person whereas in order to file an appeal under Section 61, a person 'aggrieved' is a sine qua non.

34. Counsel for Respondent No.1 has also repeated the same argument which has been raised by Respondent No. 2 contending that assignment is not of a collection of tax but assignment is of resolution of debt at the instance of R2. It is submitted that had it been a case of assignment of tax then perhaps the argument raised by the Appellant may be correct because the tax has to be collected under the authority of law and not by delegation.

35. Counsel appearing for SRA (Respondent No. 4) has submitted that the plan was approved on 21.08.2024. Letter of intent was issued on 24.08.2024 and the amount of Rs. 8 Cr. was paid on 27.08.2024 whereas the Appeal has been filed by the Appellant on 14.09.2024 as an after thought. He has also submitted that the Appellant does not have any locus standi to maintain this appeal because he has not suffered any legal injury as the amount of the Appellant has already been disbursed as stated by RP.

36. We have heard Counsel for the parties and perused the record with their able assistance.

37. The issue involved in this appeal travels in a narrow compass as to whether Respondent No. 2 can assign its debt to Respondent No. 1 in the

absence of any provisions in the MGST Act or in violation of Article 265 of the Constitution of India or under the provisions of the Code?

38. As we have given the facts in detail in the earlier part of this order, therefore, in order to avoid repetition it would be suffice to mention that this Court has to decide as to whether the Respondent No. 2 has assigned its duties of collection of tax from the CD or the amount of tax as debt after the CD slipped into CIRP by resorting to the provisions of the Code.

39. There are two shades of the same money. If the amount claimed by R2, as a tax department, from the CD who has not gone into CIRP then the said amount has to be collected by the R2 under the relevant statute and rules framed thereunder because of the fact that not only Article 265 of the Constitution of India provides that the taxes not to be imposed save by authority of law but no tax shall be levied or collected except by authority of law which means that it can be only levied or collected under the provisions of specific statute which may either be legislated by the parliament or state legislature. In the case of GST, the tax statute has been enacted both by parliament as well as state legislature. However, if the amount of tax is not collected and meanwhile the CD is pushed into CIRP and moratorium is imposed under Section 14 then the execution of an order of any authority is also prohibited. In the present case, the amount crystallised to be recovered from the CD, by order dated 17.05.2023 passed by the R2 is Rs. 2,71,44,043/- but it cannot be recovered under the provisions of the GST Act or MGST Act, therefore, R2 had rightly filed its claim on 29.12.2022 in form B prescribed under Regulation 7 and RP has also rightly collated the claim to the tune of Rs. 2,71,44,043 because earlier amount of Rs.

7,88,52,896/-was tentative as it was the amount mentioned in the show cause cum demand notice whereas the amount of Rs. 2,71,44,043/- is the amount finally determined as payable by order dated 17.05.2023 by the competent authority but once, R2 wears the hat of OC, it has a right to assign its debt also as per provisions of the Code. This has precisely been done by Respondent No. 2 in favour of R1 who had agreed to reimburse the entire amount without any discount.

40. Thus, in our considered opinion, the Tribunal has not committed any error in dismissing the application of the Appellant challenging the assignment of debt by way of debt assignment agreement.

41. Although, we have decided the issue which has been framed earlier but we have also found from the data given by the RP, obtained from website of the IBBI, as per which the total claim submitted by creditors to the RP in respect of CD was Rs. 2,048,349,108.95 out of which RP admitted Rs. 1,067,903,334.22 and out of this amount, the amount of Income Tax Department was Rs. 433,422,050.00

42. It is pertinent to mention that the application on which CIRP has been initiated is filed by non else than the CD under Section 10. SRA has given the plan of Rs. 39 Cr. approx. but the dues of the Income Tax department have been totally wiped out as it has been given zero.

43. This aspect of the matter is also required to be looked into. Besides this, the issue of assignment by the Tax Department is also to be relooked because in the debt assignment agreement, discount rate has also been provided which means that the collection, receivables etc. of the tax can be reduced at the time of assignment as well.

44. With these observations, we are of the considered opinion that there is no merit in the present appeal and the same is hereby dismissed. The parties shall bear their own costs. I.A.s, if any, pending is/are hereby closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

Sc/RR