

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

IA (IBC)/371/KOB/2023

IN

IBA/04/KOB/2020

(Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules 2016)

Memo of Parties

Imelt Extrusions Private Limited

Represented by its Managing Director

Mr. Abbas K A

Crescent Tower, Building No. VII/162A,

Kandanthara, Allapra P O,

Perumbavoor – 683556

...Applicant/Auction Purchaser

Versus

1. The Sub Registrar
Office of the Sub Registrar,
Edapally, AIIMS, Ponekkara P O,
Kochi – 682041
2. Mr. K Easwaran Pillai
Liquidator of Mathstraman
Manufactures and Traders Private
Limited,
Vijayakumar and Easwaran Chartered
Accountants, 6th Floor, Amrita Trade
Towers, S A Road, Pallimukku
Kochi – 682016

...Respondents

In the matter of:

Union Bank of India : Financial
Creditor

Versus

Mathstraman Manufacturers : Corporate
And Traders Private Limited Debtor

Order delivered on: 19.01.2024

Coram:

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Shri. Shyam Babu Gautam

TMT. (Retd.) Justice T Krishna Valli

Appearances:

For the Applicant

: Mr. Vinod P V, Advocate

For the Respondent No 1

: Mr. Arun Chandy, Govt Pleader

For the Respondent No 2

: Mr. K. Easwara Pillai, Liquidator

ORDER

Per: Shyam Babu Gautam, Member (T)

1. The present application is filed by M/s Imelt Extrusions Private Limited under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code') and Rule 11 of NCLT Rules, 2016 for directing the Sub Registrar to file the sale certificate in the Book No 1 under section 89(4) of the Registration Act, 1908.

2. The facts as narrated in the application and explained by the Learned counsel for the applicant are summarised hereunder:

- i. The Financial Creditor, Union Bank of India had filed an application under Section 7 of the Code for initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as the 'CIRP'), against, M/s Mathstraman Manufacturers And Traders Private Limited (hereinafter referred to as the 'Corporate Debtor') which was admitted vide order dated 20.11.2020 in IBA/04/KOB/2020. Since no Resolution Plan was received for the Corporate Debtor, this Tribunal ordered for initiation of the liquidation process of the Corporate Debtor and appointed the second respondent herein as the Liquidator of the Corporate Debtor.
- ii. In exercise of the powers conferred under Section 35 of the IB Code r/w Regulations 32 and 33 of the IBBI (Liquidation Process) Regulations, 2016., the liquidator caused a public notice for auction of the properties of the Corporate Debtor under Schedule I (5) of the IBBI (Liquidation Process) Regulation, 2016 inviting prospective bidders to submit their bid on the assets of the Corporate Debtor consisting of three block of Assets.
- iii. And further submitted that the applicant participated in the E-Auction process by depositing an EMD of Rs. 27.80 lakhs for the Block A Assets consisting of 31.78 Ares and emerged as the

successful bidder for a total bid amount of Rs. 3,88,00,000/-.
In pursuance of the successful bid, the liquidator issued a Letter of Intent on 24th December 2022 confirming the auction in favour of the Applicant herein.

- iv. Upon receipt of the entire sale consideration the Liquidator vide letter dated 16.08.2023 sent the Sale Certificate to the Sub Registrar, Edappally, the first respondent herein, to make an entry in Book No. 1 under Section 89 of the Registration Act, 1908. But the Sub Registrar issued a letter to the Liquidator refusing to make entry in Book No. 1 on the ground that necessary and applicable stamp duty has not been paid to the Sale Certificate as per Schedule 16 to the Kerala Stamp Act.
- v. The applicant submitted that the action of the first respondent in declining to file the sale certificate in Book No. 1 is a violation of Section 89 (4) of the Registration Act, 1908 and contrary to the law settled by the Hon'ble Supreme Court in Inspector General of Registration. v. Madhurambal (SLP No. 16949/2022). The Hon'ble Supreme Court held that:

“Learned counsel for the petitioner(s) has made a valiant endeavour to persuade us to interfere with the impugned judgment(s) but not successfully. It is logically so as this issue has been repeatedly settled and one may say, a consistent view followed the last 150 years. We may refer to the judgments by the Madras High Court in the Board of Revenue No.2 of 1875 (In Re: Case Referred) dated 19.10.1875 opining that a certificate

of sale cannot be regarded as a conveyance subject to stamp duty, by the Allahabad High Court in Adit Ram v. Masarat-unNissal opining that a sale certificate is not an instrument of the kind mentioned in clause (b) of section 17 of Act III of 1877 and is not compulsorily registrable and this Court's View in Esjaypee Impex Pvt. Ltd. v. Asst. General Manager and Authorised Officer, Canara Bank opining that the mandate of law in terms of Section 17(2)(xii) read with Section 89(4) of the Registration Act, 1908 only required the Authorised Officer of the Bank under the SARFAESI Act to hand over the duly validated Sale Certificate to the Auction Purchaser with a copy forwarded to the Registering Authorities to be filed in Book I as per Section 89 of the Registration Act and order of this Court in MA. No.19262/2021 in SLP(C) No.29752/2019 dated 29.10.2021 opining that once a direction is issued for the duly validated certificate to be issued to the auction purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act, it has the same effect as registration and obviates the requirement of any further action".

- vi. The applicant further relied on the division bench order of the Hon'ble Telangana High Court in *Anirudh Agro Farms Pvt. Ltd. Vs. The State of Telangana* (Writ Appeal No. 414 of 2023), held that when an instrument is not submitted for registration and is being sent to the Registrar only for the purpose of filing in Book No. 1, it does not attract any stamp duty.

- vii. The Respondent No. 1 filed counter stating that this Tribunal lacks jurisdiction to interfere in any manner related to the registration of documents by a statutory body in compliance with the provisions of the Registration Act, 1908 and the Kerala Stamp Act, 1959 and stated that if the applicant is aggrieved by the steps/proceedings by the 1st respondent, the applicant is ought to approach the appropriate authority under section 31 of the Kerala Stamp Act, 1959. Respondent No. 1 relied on the decision of Apex Court in *M/s. Embassy Property Developments Pvt. Ltd V. The State of Karnataka and others 2020 13 SCQ 308*.
- viii. It was further argued that the Constitution of India allocates the authority for legislating on stamp duty and its rates between the Center and the States. The exclusive right to legislate on stamp duty rates for specific instruments listed in Entry 91 of List I of the Seventh Schedule lies with the Union Parliament. State legislatures, as outlined in Entry 63 of List II, have the exclusive power to make laws regarding stamp duty rates for all instruments not specified in Entry 91 of List I. While Entry 44 of the Concurrent List allows for making laws related to stamp duty, it does not encompass the authority to legislate on stamp duty rates.
- ix. Respondent no 1 further emphasized that Entry 16 of the Schedule to the Kerala Stamp Act, 1959 specifically mentions "sale certificate," and the duty applicable to it is the same as

the duty for conveyance chargeable under entries 21 or 22 of the schedule. Consequently, the sale certificate (Annexure A4) qualifies as an instrument subject to stamp duty, and the duty should have been paid on or before its execution date, as per the provisions outlined in Sections 3 and 17 of the Kerala Stamp Act, in conjunction with Entry 16 of the schedule.

- x. As per Section IV of the General Stamp Act, 1869 stamp duty is chargeable for every instrument mentioned in the 1st and 2nd schedules to the Act, executed in British India on or after the 15th day of January 1870. But 'certificate of sale' is not covered by any of the entries in the schedules to the Act. Whereas, Entry 15 of the ISI schedule dealt with duty payable in respect of conveyances and it was in that context the Madras High Court held that a certificate of sale cannot be treated as a 'conveyance' for stamp duty. The General Stamp Act of 1869 was later repealed and re-enacted as "The Indian Stamp Act, 1879'. But as per Entry 16 of Schedule-1 to the Kerala Stamp Act, 'certificate of sale' is chargeable to stamp duty. Thus, the General Stamp Act and the Kerala Stamp Act, 1959 are not in pari materia. And stated that the State is having the exclusive right to impose a rate of duty on all instruments other than those specified in Entry 91 of List 1, has competence to levy stamp duty on certificate of sale as well and hence the levy envisaged under Section 3 read with Section 17 and entry 16 of the schedule to the Kerala Stamp Act 1959 is valid and enforceable.

- xi. In accordance with Section IV of the General Stamp Act, 1869, stamp duty is applicable to every instrument listed in the 1st and 2nd schedules to the Act, executed in British India on or after January 15, 1870. However, the 'certificate of sale' does not fall under any of the entries in these schedules. The General Stamp Act of 1869 underwent repeal and re-enactment, emerging as "The Indian Stamp Act, 1879." Yet, Entry 16 of Schedule-1 to the Kerala Stamp Act designates the 'certificate of sale' as subject to stamp duty. Thus, the General Stamp Act and the Kerala Stamp Act, 1959 are not in pari materia and emphasise that the state holds exclusive authority to impose a duty rate on all instruments not specified in Entry 91 of List I. Consequently, the state is competent to levy stamp duty on a certificate of sale.
- xii. Respondent no 2, liquidator filed counter stating that the Registrar only requires to make an entry in Book No.1, which does not require registration, hence no stamp duty and registration charges are payable. Respondent no 2 also relied on the decision of the Hon'ble Supreme Court in *Inspector General of Registration. v. Madhurambal*, another decision of Hon'ble Telangana High Court in Writ Appeal No. 414 of 2023, *M/s. Anirudh Agro Farms Private Limited V. The State of Telangana* and the decision of Kerala High Court in the matter of *Krishnan K V Vs. State of Kerala and Others 2021(6) KHC 576*.

3. We have heard the learned counsel for the applicant and the respondent and perused the materials available on record. The key issue under consideration is whether this Tribunal has the jurisdiction to consider this application. If so, the pivotal question is whether stamp duty is necessary for the 'Certificate of Sale' to be entered in Book 1, as mandated by Section 89 of the Registration Act, 1908.
4. The applicant/ auction purchaser herein has challenged the act of Sub Registrar, who issued a letter to the Liquidator refusing to make entry in Book No. 1 on the ground that necessary and applicable stamp duty has not been paid to the Sale Certificate as per Schedule 16 to the Kerala Stamp Act, 1959 as contrary to the law settled by the Hon'ble Supreme Court in *Inspector General of Registration. v. Madhurambal*. Respondent No. 1's primary argument is centred around questioning the jurisdiction of this Tribunal in matters related to the registration of documents by a statutory body, aligning with the provisions of the Registration Act, 1908, and the Kerala Stamp Act, 1959.
5. Section 89 (4) of the Registration Act, 1908 reads as follows:

Section 89. *Copies of certain orders, certificates and instruments to be sent to registering officers and filed. — (4) Every Revenue Officer granting a certificate of sale to the purchaser of immovable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole*

or any part of the immovable property comprised in the certificate is situated, and such officer shall file the copy in his Book No. 1.

6. According to Section 17 of the Registration Act, 1908, the legislation mandates registration for certain documents. Notably, Section 17(2)(xii) specifies that a certificate of sale, issued by a Civil or Revenue Officer as evidence of a sale conducted through a public auction, does not fall under the category of documents that require compulsory registration. The dictum laid down by the Hon'ble Supreme Court in *Inspector General of Registration v. Madurambal* was that filing of a sale certificate in Book No 1 as per section 89 of the Registration Act, 1908 has the same effect as registration and obviates the requirement of any further action.
7. Accordingly, the liquidator to file such 'certificate of sale' in Book no.1 was sent to Sub Registrar, Edapally. However, this was declined on the basis that the requisite stamp duty, in accordance with Entry 16 of the Kerala Stamp Act, 1959, had not been paid for the Sale Certificate.
8. Pursuant to Article 246 of the Constitution of India, the Union Parliament is bestowed with exclusive legislative authority over matters delineated in List I—Union List. Entry 91 of the Seventh Schedule under List I specifically address the 'Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies, and receipts.' It is crucial to underscore that the

'Certificate of Sale' does not fall within the ambit of List I. In contrast, under List II—State List, the State Legislature is vested with exclusive jurisdiction for legislative enactments. Entry 63 of the Seventh Schedule under List II pertains to 'Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.'

9. In the exercise of the powers conferred under the Constitution of India, the Kerala Stamp Act, 1959 was enacted by the State of Kerala. Section 3 of the Kerala Stamp Act reads as follows:

Section 3. Instruments chargeable with duty: *Subject to the provisions of this Act and the exemptions contained in the Schedule, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore, respectively, that is to say*

(a) every instrument mentioned in the Schedule which not having been previously executed by any person, is executed in the territories of the State of Kerala on or after commencement of this Act; and

(b) every instrument mentioned in that schedule which, not having been previously executed by any person, is executed out of the State of Kerala on or after that day relates to any property situate, or to any matter or thing done or to be done, in the territories of the State of Kerala and is received in the territories of the State of Kerala:

Provided that no duty shall be chargeable in respect of - -

(1) any instrument, executed by, or on behalf of, or in favour of, the Central Government of this or any other State Government in case

where, but for this exemption, the Central Government or the State Government, would be liable to pay the duty chargeable in respect of such instrument;

(2) any instrument for sale, transfer or other disposition either absolutely or by way of mortgage or otherwise of any ship or vessel or any part, interest, share or property of or in any ship or vessel.

Section 17. Instruments executed in the State of Kerala: - All instruments chargeable with duty and executed by any person in the State of Kerala shall be stamped before or at the time of execution.

Entry 16 of the Schedule of the Kerala Stamp Act, 1959 reads as follows:

[THE SCHEDULE]

SCHEDULE TO KERALA STAMP ACT, 1959 (ACT 17 OF 1959)

As amended by Acts 19 of 1963, 17 of 1967, 29 of 1969, 6 of 1972, 7 of 1973,
Finance Acts 19 of 1983, Finance Act 1985, Stamp Amendment Act 14 of 1988. Finance
Ordinance No 9 of 1991 & Stamp Amendment Act 16 of 1991.

SL No.	Description of instrument	Proper Stamp Duty
(1)	(2)	(3)
16.	Certificate of sale (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court or by the Government, Collector or other Revenue Officer.	The same duty as on a conveyance (No. 21 or 22 as the case may be) for a consideration equal to the amount of the purchase money only.*

10. Upon a combined and straightforward reading of Section 3, Section 17 and Entry 16 in the Schedule of the Kerala Stamp Act, 1959, it is evident that the Certificate of Sale assumes the status of an instrument subject to stamp duty at the time of execution.
11. We are relying on the judgment rendered by the Hon'ble Supreme Court in the case of *M/s. Embassy Property Developments Pvt. Ltd v. The State of Karnataka* where the Apex Court held that
- 37. Clause (c) of Sub-section (5) of Section 60 is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the government or a statutory authority in relation to a matter that is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase "arising out of or in relation to the insolvency resolution" appearing in Clause (c) of Sub-section (5).*
12. Under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016, NCLT is vested with residuary jurisdiction to adjudicate on any question of law or fact arising in connection with the insolvency resolution of the Corporate Debtor. It is crucial to note, however, that the NCLT's jurisdiction is confined to matters within the scope of insolvency proceedings, and it cannot extend its authority to issues lying beyond the ambit of the Insolvency and Bankruptcy Code. Any interpretation of Section 60(5)(c) that allows the NCLT to exercise jurisdiction over matters unrelated to insolvency proceedings would be at odds with the precedent

established by the Hon'ble Supreme Court in the case of M/s. Embassy Property Developments Pvt. Ltd v. The State of Karnataka.

13. We are further emphasizing the decision of the Hon'ble Supreme Court in *Gujarat Urja Vikas Nigam Limited v Amit Gupta and Others* held that:

*67. The institutional framework under the IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. In the absence of a court exercising exclusive jurisdiction over matters relating to insolvency, the corporate debtor would have to file and/or defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts and courts of appeal. A delay in completion of the insolvency proceedings would diminish the value of the debtor's assets and hamper the prospects of a successful reorganization or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner. Pursuing this theme in *Innoventive (supra)* this court observed that - "13. One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up the insolvency process". The principle was reiterated in *Arcelor Mittal (supra)* where this court held that- "the non-obstante Clause in Section 60(5) is designed for a different purpose: to ensure that the NCLT alone has jurisdiction when it comes to applications and*

proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings”.

Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency-related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. However, in doing so, we issue a note of caution to the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist.

14. The residuary jurisdiction conferred by Section 60(5) of the Insolvency and Bankruptcy Code is circumscribed by the requirement that it can only be invoked to adjudicate disputes exclusively arising from or pertaining to the insolvency of the corporate debtor; a discernible connection with the insolvency proceedings must be evident. Simultaneously, in the exercise of jurisdiction under Section 60(5), it is imperative not to supplant the legitimate jurisdiction of other courts, tribunals, and forums, especially when the dispute lacks a distinct connection with the insolvency of the corporate debtor. In the present context, the filing of an Interlocutory Application by the applicant/successful bidder to register the sale certificate in Book No. 1 without the requisite stamp

duty does not exhibit a rational nexus with the insolvency proceedings of the Corporate Debtor. Furthermore, it is noteworthy that this Tribunal does not function as a Writ Court, and as such, it is not within its purview to adjudicate upon the constitutional validity of the provisions of the Kerala Stamp Act, 1959.

15. In light of the existence of a statutory remedy within the framework of the Kerala Stamp Act, 1959, and the fact that the Applicant has not invoked the available remedy under the aforementioned Act, we maintain the view that NCLT lacks jurisdiction over decisions made by statutory authorities in the discharge of their duties. Consequently, we **dismiss** this application, with liberty to the applicant to approach the Adjudicating Authority under the Kerala Stamp Act, 1959 for appropriate remedies, if he is so advised.

SHYAM BABU GAUTAM Digitally signed by SHYAM BABU GAUTAM
Date: 2024.01.19 15:53:06 +05'30'
SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

T.KRISHNAVALLI Digitally signed by T.KRISHNAVALLI
Date: 2024.01.19 15:52:42 +05'30'
JUSTICE T.KRISHNA VALLI
MEMBER (JUDICIAL)

Signed on this the 19th day of January, 2024.

Krishna