IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – II, CHENNAI

IA(IBC)/815(CHE)/2021
In
CP(IB)/768(CHE)/2018

(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

C. Ramasubramaniam
Liquidator of M/s. Padmaadevi Sugars Ltd.
"RAJI", 3B1, 3rd Floor, Gaiety Palace,
No. 1L, Blackers Road,
Chennai – 600 002 ...*Applicant*

-Vs.-

1. The Assistant Commissioner of GST & Central Excise
Maraimalai Nagar Division, Plot No.40, Ranga Colony,
Rajakilpakkam, Chennai – 600 073

2. The Superintendent of Central Tax
28/7, Madam Street, Near Moongil Mandapam,
Kancheepuram Range, Kancheepuram – 631 501

3. The District Registrar,
District Registrar Officer,
No.7, Nellukkara Street,
Periya Kanchipuram – 631 501

4. The Sub Registrar,
Walajabad Sub Registrar Office,
Sriperumbudur Road, Walajabad,
Kanchipuram – 631 605 ...*Respondents*

Order pronounced on 25th April, 2022

CORAM :

Justice (Retd.) S.RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicant : S. Sathiyanarayanan, Advocate
For Respondent 1&2 : Rajnish Pathiyil, Advocate

ORDER

Per: **Justice (Retd.) S.RAMATHILAGAM, MEMBER (JUDICIAL)**

Under consideration is an Application viz., IA(IBC)/815(CHE)/2021 filed by Mr. C. Ramasubramaniam, (hereinafter the "Applicant") Liquidator of M/s. Padmaadevi Sugars Limited (hereinafter the "Corporate Debtor") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter the "IBC") seeking the following reliefs:

> *(i) Directing the 1st and 2nd Respondent to remove the attachment on the Immovable Properties of the Corporate Debtor, vide its order dated 22.06.2018 to enable the Applicant to carry out the Liquidation process of the Corporate Debtor;*
>
> *(ii) Directing the 3rd and 4th Respondent from removing the entry of attachment reflecting in the Encumbrance Certificate; and*
>
> *(iii) Pass such other orders and further orders, as this Hon'ble Tribunal may deem fit and appropriate and thus render justice.*

2. The facts of the case are given briefly as hereunder:

The Corporate Debtor herein was ordered for liquidation by this Adjudicating Authority vide Common Order dated 20.04.2021 and appointed the Applicant herein as the Liquidator.

3. The Applicant avers that subsequent to his appointment as the Liquidator of the Corporate Debtor, he had intimated the

statutory authorities including the Respondents herein about the initiation of Liquidation process of the Corporate Debtor and requested to submit their claims if any in Form G as per the mandate. However, no claims were submitted by the 1st and 2nd Respondents herein.

4. The Applicant further avers that the subsequent to his assuming the office of the Liquidator of the Corporate Debtor he has found encumbrance certificates of the immovable properties of the Corporate Debtor like the factory land and building located at Pazhaseevaram village, Walajabad, in favour of the 2nd Respondent. The Applicant submits that the 1st Respondent vide its letter dated 22.06.2018 requested the 4th Respondent to create encumbrance over the Corporate Debtor's property towards the excise duty and Service Tax liability of the Corporate Debtor. The Applicant further submits that the Corporate Debtor has defaulted in payment of central excuse duty to the extent of Rs. 67,39,639/- (Rupees Sixty Seven Lakh Thirty Nine Thousand Six Hundred And Thirty Nine only) for the period beginning from January 2015 to July 2015. Furthermore, the Corporate Debtor has defaulted in payment of Service Tax to an extent of Rs. 52,91,173/- (Rupees Fifty Two Lakh Ninety One Thousand One Hundred and Seventy Three only) for the period of April 2014 to March 2016. In order to secure and recover the abovementioned liabilities the 1st Respondent vide its letter dated 22.06.2018 directed the 4th

Respondent to create encumbrance on the immovable properties of the Corporate Debtor. Consequently, the immovable properties were attached on 29.06.2018 in favour of the 2nd Respondent. It is submitted by the Applicant that the said attachment was made three months prior to the initiation of CIRP of the Corporate Debtor.

5. The Applicant avers that the 1st Respondent has attached the immovable properties of the Corporate Debtor which are part of the Liquidation estate and that since the amount purported to be due from the Corporate Debtor being one due during pre-CIRP Period, the Respondents should have filed their claim in the manner prescribed under IBC as tax liabilities of the Corporate Debtor fall under the category of Operational Debt.

Additionally, the Applicant avers that according to Section 238 of the IBC, IBC overrides Central Excise Act, 1944 and Finance Act 1994 in so far as the same is inconsistent with the provisions of the Code.

6. The Applicant places reliance on the decision of the Hon'ble Supreme Court in Pr. Commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd. SLP Appeal (c) No. 6483 of 2018 wherein, it upheld the supremacy of Section 238 of the Code and held the following:

"Given Section 238 of the Insolvency and Bankruptcy Code, 2016, it is obvious that the code will override anything inconsistent contained in any other enactment including the income tax."

7. The Learned Counsel for Respondents 1 and 2 has filed a Counter on 10.11.2021 claiming that the application is not maintainable either in law or on facts. Further, it is averred that the 1st and 2nd Respondents have not received any intimation regarding submission of claim nor was any notice served upon them and that, the letter dated 22.04.2021 sent by the Applicant was received at the office of the Respondents only on 20.07.2021 through email.

8. The Learned Counsel for the 1st and 2nd Respondents averred that the 1st Respondent has created an encumbrance vide Na. Ka. No. 320(1)/2018 dated 23.08.2018 over an extent of 66.51 acre belonging to the Corporate Debtor as they had defaulted in payment of Excise Duty to the tune of Rs. 78,28,345/- from January 2015 till July 2015 and Service Tax of Rs. 52,28,298/- from April 2014 till March 2016 and that the same is required to be paid with an interest @ 15% till date of payment.

9. It is further averred by the Learned Counsel for the 1st and 2nd Respondents that the CIRP proceedings of the Corporate Debtor was initiated only on 15.10.2018, while the encumbrance was made under the statutory powers granted under Section 142(1)(c) and Section 87(c) of the Customs Act, 1944 and Finance Act, 1994

respectively. Therefore, the encumbrance that has been created would have to be settled first before considering any other debts or dues. It is further averred that, in the event where, the property is not sufficient to meet out the amount which is due along with penalty and interest, then the mechanism provided under section 53 of the IBC would come to play.

10. The Learned Counsel for the 1st and 2nd Respondents further avers that, the claim of the Applicant that IBC has an overriding non-obstante clause has no anvil in the present situation as the two enactments are in two different domains and that the recovery of taxes is a sovereign function and such taxes are required to defray expenses on account of services rendered to the citizens and to meet out social sector commitments of the Union of India.

11. Heard the Learned Counsels for the Parties and perused all the documents submitted in this regard. It can be seen that as the Corporate Debtor herein has been ordered for liquidation, and the properties in question were encumbered by the Respondents prior to the commencement of the CIRP. In these circumstances, it is pertinent to answer the question whether the encumbrance made for realizing tax dues which is a sovereign power of the State, prevail over IBC provisions. In this regard, considering the Insolvency and Bankruptcy Code, 2016, this Adjudicating Authority herein is only vested with limited scope as such whether the

Service Tax and Excise dues will fall within the ambit of a Secured financial debt or not. As the above dues do not fall under such category, the 1st and 2nd Respondent herein will not be able to realize their dues on first priority; ideally they have to submit their claim and realize the amount due from the Liquidator.

In view of the same, this Adjudicating Authority places reliance on the judgement of Hon'ble High Court of Hyderabad viz., **Leo Edibles & Fats Ltd v. the Income-tax Department** [W.P. No. 8560 of 2018 High Court of Hyderabad, Decided on 26.07.2018] wherein the following was observed:

> *The court observed that Section 36(3)(b) of the IBC clarifies that the liquidation estate assets may or may not be in the possession of the corporate debtor. It may also include encumbered assets. Therefore, the fact that an asset is encumbered, does not take it away from the liquidation estate for standalone attachment/realisation. Pertinently, since the IT Dept. is not a secured creditor, it cannot independently relinquish its security interests outside of the liquidation estate under Section 52. Hence, the NCLAT held that an attachment order over the properties would not bar the completion of the sale of the said property in favour of the petitioner. As far as the IT Dept. is concerned, it has to submit a claim before the resolution professional who would allocate the proceeds of liquidation as per the Section 53 priority order.*

From the above given Judgement, it can be understood that, the Central Excise Act and the Finance Act 1994 and the IBC, 2016 function under different fields and that, as far as liquidation process is concerned, the Liquidator is not barred from selling or listing the encumbered properties in the Liquidation Estate.

Moreover, it is a well settled position of law that when there are statutory remedies provided within an Act then such remedies must be exhausted first before approaching any other forum. Therefore, this Adjudicating Authority is of the view that, as appropriate remedy is open for the Applicant/ Liquidator to raise the attachment of encumbrance as applicable or any other relief as per the mechanisms provided under the relevant Act, such remedies shall be exhausted through mechanisms provided thereunder.

12. Furthermore, from the point of view of the Insolvency and Bankruptcy Code, 2016, this Adjudicating Authority can only look into the fact whether Service Tax and Excise duties fall under the category of a Secured financial debt or not. As they do not fall under such category, the authorities concerned shall not be able to realize their dues on first priority; ideally they have to submit their claim and realize the amount due to them from the liquidation asset of the Corporate Debtor herein.

Accordingly, this **IA(IBC)/815(CHE)/2021** stands **Disposed of**.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

HP