**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI COURT – VI**

**ITEM NO. 701**

**IA/5523/2021 In IB-2924/ND/2019**

**IN THE MATTER OF:**

**Mr. Naveen Sachdeva (M/s. Jay Packaging)**

**...Applicant**

**V/s.**

**M/s. Magppie International Ltd.**

**...Respondent**

**Order under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.**

**Order delivered on: 13.10.2023**

**CORAM:**

**SHRI. P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)**
**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Order pronounced in open Court vide separate sheets.

IA/5523/2021 stands disposed off.

**SD/-** **SD/-**

**(Rahul Bhatnagar)** **(P.S.N Prasad)**
**Member (Technical)** **Member (Judicial)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**COURT VI, NEW DELHI**

**I.A. 5523/2021**

**IN**

**Company Petition No. (IB) – 2924/(ND) /2019**

*Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016*

**<u>In the matter of:</u>**

**Mr. Naveen Sachdeva (M/s. Jay Packaging)**

...Applicant

**VERSUS**

**M/s. Magppie International Limited**

...Corporate Debtor/ Respondent

**<u>And in the matter of:</u>**

**Mr. Naveen Sachdeva (M/s. Jay Packaging)**

...Applicant

**VERSUS**

**MR. SUKHCHAIN SINGH**

(Joint Commissioner, Central GST, Rohtak Commissionerate)

...Respondent

**Order delivered on: 13.10.2023**

**CORAM:**

**SHRI. P.S.N. PRASAD, MEMBER (JUDICIAL)**

**SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

## ORDER

## PER-P.S.N PRASAD, MEMBER (JUDICIAL) & RAHUL BHATNAGAR, MEMBER (TECHNICAL)

**1.** This is an application filed by the Applicant u/s 60(5) of the IBC, 2016 seeking the following reliefs:

a. Pass an order setting aside the Order of the GST Commissioner dated 08.07.2021 and;

b. Direct the GST Commissionerate to recall their Show Cause Notice in the view of moratorium.; and

c. Pass any other such orders as this Tribunal may deem fit in the interest of justice, equity and good conscience.

**2.** The brief facts as averred by the Applicant for filing the present Application are as follows:

i. That the present application is particularly regarding the order adjudicating the Show Cause Notice issued u/s 74(1), 50, 122 of CGST Act, 2017 and Section 20 of the

IGST Act, 2017 demanding recovery of ITC along with penalty interest from the corporate debtor, post the initiation of CIRP.

ii. That pursuant to the Show Cause Notice dated 22.10.2020 directing the Corporate Debtor to produce all the evidence in support of their defense, the Authorized Legal Representative of Mr. Vivek Raheja, Resolution Professional for M/s Magppie International Ltd, appeared for the personal hearing via video conference mode on 22.06.2021 and made submissions that were heard in detail. The submissions clearly explained the existence of moratorium period and further that the present claim under the GST is to be made to the Resolution Professional in accordance with the provisions of IBC, 2016.

iii. That reliance is placed on the Circular issued by the Principal Commissioner (GST) dated 23.03.2020 clarifying the issues under GST Law for Companies under IBC, 2016.

iv. That the present claim made during the moratorium period will cause hamper to the CIRP of the Corporate

Debtor and the very intent behind Section 14 of the IBC, 2016, to provide a standstill period where the creditors cannot enforce any individual claims or action as it may frustrate the object of the corporate insolvency resolution process.

**3.** The Respondent has filed its reply stating as follows:

i. That the Show Cause Notice issued under the provisions of CGST Act,2017 has already been adjudicated by the Adjudicating Authority vide Order-in-Original dated 08.07.2021. Thus, the relief sought in the present application does not survive and the application is liable to be dismissed which was infructuous on 24.11.2021, the date of filing of the present application itself.

**4.** We have heard the submissions of both the parties. The present Application has been filed by the Applicant praying for setting aside the Order of the GST Commissioner dated 08.07.2021. The order dated 08.07.2021 was passed to adjudicate the show cause notice dated 22.10.2020 which was issued by the Respondent. It is the case of the Applicant that such show-cause notice is barred by Section 14, IBC, 2016. Section 14(1), IBC, 2016 is reproduced herein for ready reference:

> 14. Moratorium. - (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -
>
> (a) the 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;
>
> (b)transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;
>
> (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
>
> (d)the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

**5.** In accordance with Section 14 of IBC, 2016, an action cannot be initiated for recovery of tax and penalty, whereas present proceedings are just for adjudication of the demand raised against the taxable person and therefore is not covered under Section 14 of IBC, 2016 as claimed by the Applicant.

**6.** The Applicant has stated that the show-cause notice and order dated 08.07.2021 were issued in contravention of GST circular dated 23.03.2020. The relevant portion of the circular is reproduced below:

> "In accordance with the provisions of the IBC and various legal pronouncements on the issue, no coercive action can be taken against the corporate debtor with respect to the dues for period prior to insolvency commencement date. The dues of the period prior to the commencement of CIRP will be treated as 'operational debt' and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC. The tax officers shall seek the details of supplies made/received and total tax dues pending from the corporate debtor to file the claim before the NCLT."

**7.** From the above, it is evident that the circular bars coercive action against the Corporate Debtor. The GST Authorities also have to take note of the objects sought to be achieved by the Insolvency & Bankruptcy Code, 2016 and also have to appreciate that the provisions of the IB Code, 2016 shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. The GST Authorities cannot enforce a claim for recovery during the period of moratorium. However, in the present matter, no coercive action has been taken by the Respondent. Mere adjudication of the amount of GST or penalty payable does not amount to coercive action. Reliance in placed on the judgment of Hon'ble Supreme Court in the matter of *Sundaresh Bhatt, Liquidator of ABG Shipyard Versus Central Board of Indirect Taxes and Customs* wherein it was held as follows:

> *"That the authorities can only take steps to determine the tax, interest, fines or any penalty which is due. However, the authority cannot enforce a claim for*

*recovery or levy of interest on the tax due during the period of moratorium."*

**8.** In light of the above, IA/5523/2021 stands disposed off accordingly.

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|---|---|
| **SD/-** | **SD/-** |
| **(RAHUL BHATNAGAR)** | **(P.S.N. PRASAD)** |
| **MEMBER (TECHNICAL)** | **MEMBER (JUDICIAL)** |