

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

**MA-4048/2019 In CP No. 02/I&BC/NCLT/MB/MAH/2018**

1. Abhijit Guhathakurta  
R.P. for the 13 Videocon Group namely :-
- |  |   |                    |
|--|---|--------------------|
| (i) Videocon Industries Limited,             | ) |                    |
| (ii) Videocon Telecommunications Limited,    | ) |                    |
| (iii) Evans Fraser & Co. (India) Limited,    | ) |                    |
| (iv) Millennium Appliances (India) Limited,  | ) |                    |
| (v) Applicomp India Limited,                 | ) | Corporate Debtor's |
| (vi) Electroworld Digital Solutions Limited, | ) | Companies under    |
| (vii) Techno Kart India Limited,             | ) | Common CIRP.       |
| (viii) Century Appliances Limited,           | ) |                    |
| (ix) Techno Electronics Limited.             | ) |                    |
| (x) Value Industries Limited,                | ) |                    |
| (xi) PE Electronics Limited                  | ) |                    |
| (xii) CE India Limited,                      | ) | All                |
| (xiii) Sky Appliances Limited.               | ) | ..... Applicants   |

V/s

Central Goods & Services Department. .... Respondents

In the matter of

State Bank of India .... Petitioner.

V/s

Videocon Industries Limited and Anr. ... Respondents.

Date of hearing :- 16.01.2020  
Order delivered on :- 27.01.2020

**Coram :**

Hon'ble Shri Chandra Bhan Singh, Member (T)  
Hon'ble Smt. Suchitra Kanuparthi, Member (J)

**For the Applicants :** Senior Counsel Mr. Gaurav Joshi a/w Mr. Ameya Gokhale a/w Radhika Indapurkar a/w Mr. Bryan Pillai i/b Shardul Amarchand Mangaldas & Co. Abhijit Guhathakurta RP present in person.

**For Respondents :** None for Respondents.

**Per: Chandra Bhan Singh, Member (T)**

**ORDER**

1. MA-4048/2019 – This Application has been filed by the Resolution Professional of the Corporate Debtor inter alia seeking directions to the Central Goods and Services Department to :
- restore the e-way facility to enable the Applicant to file Central Goods and Servicing Department returns on behalf of the Corporate Debtor;
  - accept the manual/physical filing of Central Goods and Services Department returns; and

- (iii) refrain from taking any coercive actions including the cancellation/suspension of the registration and/or blockage of e-way facility for filing of GST Department returns of the Corporate Debtor.
2. The Corporate Debtors are engaged in business of manufacturing, assembling and distribution of comprehensive range of consumer electronic and home appliances (hereinafter referred to as VIL). VIL is licensee of "Videocon Trademark", Videocon Telecommunications Limited to provide telecom services in six circles across India. It is engaged in the business of telecommunication and is the subsidiary of Electroworld Digital Solutions Limited which holds the interest in the telecommunications arm of VIL.
  3. In order to carry on business, Techno Electronics Limited (TEL), one of the above named Corporate Debtors, is registered under the Goods and Services Tax ("GST") laws, in the state of Uttarakhand bearing GST Identification Number 05AACCT6860AIZN. The CIRP of TEL commenced on August 31, 2018 vide the Admission Order of the same date.
  4. On 13<sup>th</sup> November, 2018, the Central Goods and Servicing Department issued a show cause notice to TEL stating that TEL's Central Goods and Services Department registration is liable to be cancelled on account of not having filed the GST returns for the period of August, 2017 till September, 2018 as required under Rule 61(5) of the Central Goods and Service Tax Rules, 2017.
  5. In response to the Show Cause Notice, Mr. Divyesh Desai, the resolution professional of TEL at that time sent a letter dated November 29, 2018 to the Respondent informing them of the commencement of the CIRP, the moratorium coming into effect as per the provisions of the Code, also further informing the Respondent that they may file a claim with respect to the amounts due to the Respondent.
  6. Subsequently, the Central Board of Indirect Taxes and Customs Notification 22/2019 – Central Tax was published on April 23, 2019 enforcing the provisions of the Central Goods and Services Tax (Fourteenth) Amendment Rules, 2018 Rule 12 of Notification No. 74/2018 – Central Tax, dated the 31<sup>st</sup> December, 2018 ("**Notification**"). Consequently, Rule 138E of the Central Goods and Service Tax Amendment Rules, 2017 came into force which provides that no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART-A of FORM GST EWB-01 in respect of a registered person, whether as a supplier or a recipient, who (a) being a person paying tax under Section 10, has not furnished the returns for two

- consecutive tax periods; or (b) being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two months.
7. The Applicant mentions that TEL has been filing its statutory returns of GSTR-1, regularly and it has been filed upto October 2019. It is admitted that due to severe financial hardship, TEL was unable to deposit GST in the form of GSTR 3B for the period of August 2017 till August 2018, prior to the commencement of the CIRP.
  8. Pursuant to the commencement of the CIRP of TEL on August 31, 2018, TEL attempted to deposit GST collected from customers on the online GST portal. The required GST amount pertaining to the period from September 2018 till June 2019 was deposited by TEL on a monthly basis on the GST portal in the electronic cash ledger. However, due to the design and mechanics of the GST portal, in order to deposit GST on the online GST portal for a particular month, a taxpayer is required to first deposit GST and filed returns for all preceding months. The RP in TEL mentions that the GST Department liability pertaining to the period from July 2019 till October 2019 is being processed and the same shall be deposited shortly.
  9. Since the Corporate Debtors have not filed returns and not paid GST for the period prior to the commencement of Corporate Insolvency Resolution Proceedings, the GST portal is not allowing filling of returns or payment of GST till the past Central Goods and Servicing Department dues are paid. Therefore, while the Applicant is eager to comply with GST laws, the Applicant has been unable to file returns and pay Central Goods and Servicing Department during the moratorium period.
  10. The GST authority has now blocked the e-way facility for filing of returns of Central Goods and Servicing Department, thus making the operations of the factory practically impossible and jeopardizing the maintenance of TEL as a going concern in terms of the provisions of the Code. Additionally, it is also apprehended by the Applicant that the Respondent may cancel the GST registration of TEL in light of the Show Cause Notice issued by the GST Department.
  11. The Central Goods and Servicing Department registrations are required for operation of TEL as a going concern and cannot be terminated during the moratorium period in violation of the provisions of the Code. It is submitted by the Resolution Professional that the moratorium under section 14 of the I&B Code vide the respective Admission Orders will apply to all the registrations, licenses

and permits including the Central Goods and Servicing Department registrations obtained by TEL. Section 14 of the I&B Code, inter alia, provides as below :-

- “ (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 judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.”

12. In view of the same, it is imperative that the GST registrations obtained by TEL, one of the Corporate Debtors, is also preserved during the moratorium period to enable the Corporate Debtors to find a potential resolution applicant and successfully complete the Corporate Insolvency Resolution Proceedings.
13. While the Applicant had endeavoured to file GST returns online as well as deposit GST online, however, he is unable to file the GST returns for the moratorium period due to the technical constrains owing to the GST portal requiring past dues to be paid first (which pertained t the period prior to commencement of CIRP) and consequently, the Corporate Debtors' GST liabilities cannot be deposited, till the time the dues pertaining to the period prior to the commencement of CIRP are fully paid.
14. It is noteworthy that while the GST laws do not restrict deposition of GST in a particular month if the prior GST dues are not paid, the online portal restricts the same. Further, the Hon'ble National Company Law Tribunal, Chandigarh Bench, in a case of ***M/s Hind Tradex Ltd. V/s M/s Lakshmi Precision Screws Ltd., CA No. 491 of 2018***, has recognised that a resolution professional is unable to file returns during the moratorium period due to the design of the online GST portal, which leads to an unnecessary and avoidable non-compliance with law. Accordingly, the Hon'ble Tribunal was pleased to pass the following Orders :-
- “Having heard the learned counsel for the parties, we allow this application partly, permitting the Interim Resolution Professional/Resolution Professional to file the regular returns in accordance with the provisions of the Goods and Services Tax Act and the related provisions in physical form and also pay the taxes collected by the Interim Resolution Professional/Resolution Professional, as the case may be in accordance with the provisions of Goods and Services Tax Act and the respondents-Departments are directed to accept the payment of the tax and the returns in physical form.”
15. In view of the above precedents and the provisions of the Code and the ongoing CIRP of the Corporate Debtors, and in order to allow the Applicant to comply with the GST laws and also to allow the Government to be able to collect tax dues, it is imperative that the GST Department accepts manual monthly returns along with

physical GST deposits during the moratorium period. Further, the GST registration ought not be cancelled to ensure that the Applicant can run the business as a going concern in terms of the provisions of the Code.

16. In view of the above this Bench directs the GST Department to :-
- (a) To restore the e-way facility for filing of the GST returns in respect of Corporate Debtors all Companies including Techno Electronics Limited currently under Corporate Insolvency Resolution Proceedings.
  - (b) The GST Department is directed not to take any coercive steps against the Corporate Debtors viz. list which are under Corporate Insolvency Resolution Process and are under moratorium. The GST Department may refrain from suspending/terminating/cancelling or taking any other adverse or coercive steps against these companies with relation to GST registration and under unpaid dues.
  - (c) The GST Department may accept manual/physical filing of the GST regular returns in accordance with the provisions of the Sales, GST tendered manually during the moratorium period.

This will ensure the compliance of the Corporate Debtors of the GST Laws.

18. **MA-4048/2019 is "Allowed".**

Sd/-

**CHANDRA BHAN SINGH  
MEMBER (TECHNICAL)**

27.01.2020  
Aah

Sd/-

**SUCHITRA KANUPARTHI,  
MEMBER (JUDICIAL)**