IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

COURT - I

IA 978/2020

In

C.P.(IB)- 1371& 1372/(MB)/2017

CORAM: SMT.SUCHITRA KANUPARTHI

MEMBER (J)

SHRI V. NALLASENAPATHY

MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 20.03.2020

NAME OF THE PARTIES: Ruchi Soya Industries Limited

V/s

The Joint Commissioner of State Tax,

Commercial Taxes Department, Bhabua Circle

Section 60(5) of Insolvency & Bankruptcy Code, 2016.

ORDER

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This is an application filed by the applicant - Ruchi Soya Industries Limited, against the attachment order issued by the Respondent with the following prayers: -

a) "That this Hon'ble Tribunal be pleased to quash/set aside the:

1. *Demand notice dated 6th March 2020 bearing process no. 1530 issued by the Non Applicant to the Branch Manager, State Bank of India, AMY Mohania (being Exhibit "A-1" hereto); and*
2. *Demand notice dated 6th March 2020 bearing process no. 1527 issued by the Non Applicant to the Branch Manager, ICICIC Bank, Nariman Point, Mumbai Branch (being Exhibit "A-3" hereto).*

b) *That this Hon'ble Tribunal be pleased to direct the Non Applicant to refund to the Applicant a sum of Rs. 42,51,010/- (Rupees Forty Two Lacs Fifty One Thousand and Ten Only) within a period of 4 weeks from the date of such direction;*

c) *That pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to stay the effect, operation and implementation of:*

I. *The demand notice dated 6th March 2020 bearing process no. 1530 issued by the Non Applicant to the Branch Manager, State Bank of India, AMY Mohania (being Exhibit "A-1" hereto) and lift the attachment effected by the same; and*

II. *Demand notice dated 6th March 2020 bearing process no. 1527 issued by the Non Applicant to the Branch Manager, ICICI Bank, Nariman Point, Mumbai Branch (being Exhibit "A-3" hereto) and lift the attachment effected by the same.*

d. That pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to direct the Non Applicant and/or any other officer/ department/authority/person *acting through or under him, to not take any steps, coercive or otherwise, including but not limited to attaching any other accounts/ assets of the Applicant, in furtherance of the demand notice dated 6th March 2020 bearing process no. 1530 issued by the Non Applicant to the Branch Manager, State Bank of India, AMY Mohania (being Exhibit "A-1" hereto) and/or the demand notice dated 6th March 2020 bearing process no. 1527 issued by the Non Applicant to the Branch Manager, ICICI Ban, Nariman Point, Mumbai Branch (being Exhibit "A-3" hereto) and/or to recover any liability/ dues relating to the Financial Year 2013-2014."*

The counsel for the applicant submits that this application has been served to the respondent through an Email dt. 18.03.2020 to the usual email address of the Respondent. However, there is no representation from the side of the Respondents.

The counsel for the applicant submits that the Resolution plan has been approved by this adjudicating authority for the applicant - Ruchi Soya Industries Limited by an order dt. 24.07.2019 read with order dt. 04.09.2019, in terms of Section 31 of the Insolvency and Bankruptcy Code, 2016 (Code).

It is submitted that the respondent who was an operational creditor has not filed any claim before the Resolution Professional of the corporate debtor during the Corporate Insolvency Resolution Process. However, it seems that certain proceedings are pending before the Commercial Tax Authorities. Now the Respondent issued the following demand notices:

a. Notice dt. 06.03.2020 bearing process no. 1530 addressed to the Branch Manager, State Bank of India, A.M.Y. Mohania.
b. Notice dt. 06.03.2020 bearing process no. 1527 addressed to the Branch Manager, ICICI Bank Nariman Point, Mumbai Branch
    - Claiming a sum of Rs. 1,10,36,615/- as Tax due and/or penalty imposed or interest payable under the Bihar Value Added Tax Act, 2005 by the applicant and the said notices further direct that the concerned Banks are required to pay the Respondent the said amount due from the applicant from and out of funds available in the applicant's bank accounts.

The above said notices were also served to the applicant by an Email dt. 09.03.2020.

A bare perusal of the demand notices reveals that the Tax due pertains to the financial year 2013-2014. However, the fact is that the Resolution Plan under the Code has been approved in July 2019 and this tax liability pertains to the pre CIRP period.

Heard the counsel for the applicant. Prima facie we are of the view that as provided under Section 31 (1) of the Code the Resolution plan approved by the Adjudicating Authority is binding on all the stakeholders including the respondent herein. Further the respondent has not filed claim before the Resolution Professional and now suddenly the respondent cannot make any claim for the pre CIRP liability of the Corporate debtor after the approval of the Resolution Plan which is binding on all the stakeholders including the respondent herein and hence the demand notices issued by the respondent are hit by section 31 (1) of the Code read with section 238 of the Code.

In view of the above position the following ad interim order is passed:

a. Notice dt. 06.03.2020 issued by the respondent bearing process no. 1530 addressed to the Branch Manager, State Bank of India, A.M.Y. Mohania is stayed until further orders.
b. Notice dt. 06.03.2020 issued by the respondent bearing process no. 1527 addressed to the Branch Manager, ICICI Bank Nariman Point, Mumbai Branch is stayed until further orders.
c. The Branch Manager, State Bank of India, A.M.Y. Mohania is directed not to give effect to the notice issued by the respondent cited at (a) above.
d. The Branch Manager, ICICI Bank, Nariman Point, Mumbai Branch is directed not to give effect to the notice issued by the Respondent cited at (b) above.
e. The respondent is prohibited from issue of any further notice, on the same subject matter, to any of the banks where the applicant is having account.

The respondent is directed to file reply to the application before the next date of hearing by serving a copy to the other side.

List this matter for further consideration on 04.05.2020.

Sd/-	**Sd/-**
V. NALLASENAPATHY	**SUCHITRA KANUPARTHI**
Member (Technical)	Member (Judicial)