



SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**SPECIAL BENCH PHYSICAL HEARING**

**CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON'BLE MEMBER (J)  
CORAM: SRI. CHARANSINGH - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 12.07.2023 After Court-1 Hearings**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/880/2023 in Company Petition IB/308/2023
NAME OF THE COMPANY	Gayatri Projects
NAME OF THE PETITIONER(S)	State bank of India
NAME OF THE RESPONDENT(S)	Gayatri Projects
UNDER SECTION	7 of IBC

**ORDER**

**IA (IBC)/880/2023**

Order in this application is pronounced and disposed of vide separate sheets. In the result, the Petition is allowed to the extent indicated in the order, and with necessary directions to the Income Tax Authorities.

**Sd/-  
MEMBER (T)**

**Sd/-  
MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**HYDERABAD BENCH – II**

IA No.880/2023  
in  
CP(IB) No. 308/7/HDB/2022  
(u/s. 60(5) of IB Code, 2016 r/w Rules 11  
of the NCLT Rules, 2016)

**In the matter of:**

**Sai Ramesh Kanuparthi, R.P.**  
Of Gayatri Projects ltd.

...Applicant

AND

**Principal Chief Commissioner of Income-tax,**  
**Hyderabad**

... Respondent

**IN THE MATTER OF**

**State Bank of India**

... Financial Creditor/  
Original Petitioner

AND

**Gayatri Projects Ltd. (under CIRP)**

... Corporate Debtor

**Date of order: 12/07/2023**

**CORAM:**

**Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)**

**Shri Charan Singh, Hon'ble Member (Technical).**

**Counsels present:**

**For the Applicants** : Mr. Ramesh Kanuparthi

**For the Respondent** : -

**[PER: BENCH]**

**ORDER**

1. The present application is being filed by the Applicant under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 seeking directions against the Respondent to make payment/release of the assessed Income Tax Refunds due and payable to the Corporate Debtor as under:

1. Post initiation of CIRP on 19.01.2023 an amount Rs.11,81,93,690 which was adjusted against the past demand post CIRP on 19/01/2023 for A.Y 2021-2022
2. Proposed adjustment of Rs. 71,30,66,160 for A.Y 2022-2023 to be adjusted against the past demand post CIRP.

2. The facts of the case mentioned in the application are, briefly, as follows:

- i) The applicant submitted that in compliance with section 13, Section 14, section 15 and other applicable sections of the Insolvency and Bankruptcy Code, 2016 read with Reg. 6 of the CIRP Regulations, a public announcement was made on 19/11/2022 in English Newspaper Business Standard, All India Edition, Telugu Newspaper Mana Telangana, Hyderabad edition as well as on the website of the CD and by way of intimation to the Stock Exchange Viz., BSE and NSE and IBBI, calling the creditors to submit claims with proof.
- ii) Public announcement was made for intimating the commencement of Corporate Insolvency Resolution Process against M/s Gayatri Projects Limited.



A copy of the public announcement dated 19/11/2022 is enclosed as **Annexure B** to the application.

iii) The applicant has further submitted that via email dated 21/11/2022 he has given intimation of commencement of the CIRP of the Corporate Debtor and applicability of moratorium u/s 14 of the Code to the Income Tax Department. Copy of the email dated 21/11/2022 is enclosed as **Annexure - C** to the application.

iv) The applicant has submitted that during the examination of the books of account and other records of the CD, it was noticed that the CD was eligible for the Income Tax Refund of Rs. 56,54,62,472/- in respect of AY 2021-22, which was adjusted by the Income Tax Department against their demands of AY 2016-17 and AY 2018-19 in the following manner:

Period	Amount adjusted (Rs.)
Prior to commencement of the CIRP	44,72,68,582
Post commencement of the CIRP (19/01/2023)	11,81,93,690
Total	56,54,62,472

iv) Applicant submitted that vide email and letter dated 11<sup>th</sup> April, 2023, the applicant requested the Assessing Officer to reverse the impugned post CIRP adjustment of Rs. 11,81,93,690/- made by the department in violation of moratorium u/s 14 of the Code and refund the same in the account of the CD. Copy of the email and letter dated 11/04/2023 are enclosed as **Annexure - D** to the application. Status of Refund and adjustment as reflected in the Annual



Information Statement on income tax portal dated 10/04/2023, is enclosed as **Annexure – E** to the application.

v) It is submitted that, subsequently, on 2<sup>nd</sup> May, 2023, the CD received two separate emails from the Income Tax Department in respect of Income Tax Return of AY 2022-23 towards:

- a. Assessment of IT return u/s 143(1) of the Income-tax Act; and
- b. Intimation u/s 245 of the Income Tax Act giving opportunity to the assessee to put forward its objections prior to proposed adjustment of the income tax refund of Rs. 71,30,66,160/- against past demands by the income tax department.

[Copy of the Intimations 143 (1) of the IT Act is annexed as Annexure – F and Intimation 245 of the IT Act is annexed as Annexure – G to the application.

vi) Applicant has submitted that on the same day i.e 02.05.2023, the applicant filed online objection against the proposed adjustment of Rs. 71,30,66,160/- on the ground that such an action of recovery of any past dues from CD is not permissible during the existence of moratorium under Section 14 of the Code. Copy of the email acknowledgement dated 02.05.2023 of the Income Tax Department is annexed as **Annexure – H** to the application.

vii) The Applicant has submitted a letter on 3.05.2023 to the jurisdictional Assessing Officer, Hyderabad, inter alia, requesting not to make any adjustment of the past demands against the Income Tax refund of Rs. 71,30,66,160/- in respect of A.Y 2022-23 and immediately refund the same in the account of the CD in view of the ongoing CIRP and moratorium u/s 14 of the Code. Copy of the



acknowledged letter dated 03 05 2023 is enclosed as Annexure – I to the application.

viii) The Applicant states that he has personally visited the Income Tax Department on several occasions and met with Deputy Commissioner and Chief Commissioner of Income Tax in relation to the above stated Income Tax refund of A.Y 2021-22 and AY 2022-23. Online grievance in this regard was also raised with the Income Tax department on 15.05.2023 and copy of the same is enclosed as Annexure – J to the application. Online status of the Income Tax Return of A.Y. 2022-23 shows "Refund kept on hold, Intimation u/s 245 is issued proposing adjustment of refund towards outstanding demand. Copy of the online status is enclosed as Annexure – K to the application.

ix) Response to online grievance was received from CPC reading as under

*"Dear Taxpayer, it is seen from CPC portal that your return for the said AY has been processed determining a lesser refund as The gross receipts shown in Form 26AS, on which credit for TDS has been claimed, are higher than the total of the receipts shown under all heads of income, in the return of income. Thus, while credit for TDS is being claimed, the corresponding receipts are not offered in the respective income schedules, to arrive at the taxable total income. Hence, the return of income filed is regarded as defective, as provided in Explanation (a) under section 139(9). Further, the said refund could not be issued due to one of the following reasons: a) Bank account is not validated successfully in the e-filing portal b) Bank account is validated but PAN is not linked to the bank account/ Name mismatch in PAN name and Bank account holder name c) Bank account is validated but post merger the new IFSC is."*

x) Applicant has submitted that as the response was unsatisfactory, feedback was provided online as under:



*"The intimation u/s 143(1) for AY 22-23 (Ref DIN: CPC/2223/46/326552141) clearly shows refund amount of Rs 71,30,66,160 /-. The nominated bank account for refund is verified as shown on the portal. The return having been already assessed and refund arrived at, the TDS mismatch issue has been taken into account You are therefore requested to kindly arrange for remittance of the said refund amount."*

xi) New grievance (acknowledgment no 12037085) was also filed on same day 19.05.2023 submitting as under (copy enclosed as Annexure L to the application):

*"Response to the grievance on the subject submitted on 15 May 2023 with acknowledgement no 11975706 has been received today (19 May 2023) but our issue has not been resolved. Kindly note that - The intimation u/s 143(1) for AY 22-23 (Ref DIN: CPC/2223/A6/326552141) clearly shows refund amount of Rs 71,30,66,160/-. The nominated bank account for refund is verified as shown on the portal. The return having been already assessed and refund arrived at, the TDS mismatch issue has been taken into account. You are therefore requested to kindly arrange for remittance of the said refund amount. Kindly note that we are unable to upload the NCLT order regarding commencement of insolvency process due to continuing server issues on the income tax portal"*

xii) The Applicant submitted that the action of the Department adjusting the Income Tax Refund of Rs. 11.81.93,690/- (A.Y. 2021-22) and proposed action of adjusting Income Tax Refund of Rs. 71,30,66,160/- (A.Y. 2022-23) against the past demands are invalid and in breach of the moratorium declared by this Hon'ble Bench u/s 14 of the Code. Further, the applicant submitted that he has contacted the Income Tax department as stated above for the Income Tax refund but there are neither any fruitful results nor any written confirmation that they would provide with the refund.



xiii) The Applicant submits that the CD is one of the largest infrastructure companies having various government projects of national importance and more than thousand employees and workmen. The CD is in acute financial crisis and funds are required on urgent basis to keep the infrastructure projects alive and to meet the various going concern expenses.

3. In view of the above facts, the Applicant seeks intervention of this Hon'ble Tribunal to direct the Income Tax Department to release the Income Tax refunds of A.Y. 2021-22 and 2022-23.

4. Despite notice and opportunity given, respondent failed to file any counter/contest in this petition. We have heard learned RP and peruse the record. At the outset, it is to be stated that this Tribunal vide order in **C.P. (IB) No 308/7/HDB/2022** dated 15.11.2022 had ordered initiation of CIRP against CD, imposed moratorium under Section 14 IBC and has also appointed IRP. It is relevant to extract Section 14(1) of IBC which is as follows:

**“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. Record placed before us reveals that public announcement has been made as mentioned above on 19.11.2022. Record further discloses that RP found that CD was eligible for IT refund of Rs.56,54,62,472 of which an amount of Rs. 44,72,68,582 was prior to commencement of CIRP and amount of Rs.11,81,93,690 post commencement of CIRP.

6. According to RP, IT department had adjusted an amount of Rs. 11,81,93,690/- against the IT demand for A.Y 2016-2017 and A.Y 2018-2019 and proposed the action of adjusting income tax refund of Rs. 71,30,66,160/- in AY 2022-23 against the past demands, despite the order of moratorium passed by this Hon'ble tribunal. RP further submits that these amounts brought into account of CD which is in acute financial crises for purposes of keeping infrastructure projects alive and to meet various going concern expenses.

As already stated that despite notice and opportunity respondents had not offered its explanations to this petition.



Thus, the contention put forth by RP remain unrebutted.

7. In this backdrop, legal position in respect of implications of order of moratorium passed in this case when examined in ***Dena Bank v M/s Noida Software Technology Park Ltd (CA-2816/2019 In IB-1344/PB/2018)***, the ***NCLT, Delhi Bench has held as under:***

*“5. The applicant (Resolution Professional) has claimed the refund of Rs. 24,38,146/- for AY 2009-10 and AY 2018. As far as the refund of Rs. 8,98,590/- for AY 2009-10 is concerned, the same was granted vide order dated 05.02.2019 and date of payment was 19.02.2019 and CIRP was commenced vide order dated 08.02.2019. Thereafter, with respect to the refund of Rs. 15,39,556/- for AY 2018-19. The date of payment was 15.09.2019. Since date of payment for both the refund was post CIRP of the CD, hence the IT Department cannot adjust the same because once Moratorium is commenced, the IT Department cannot recover the amount due by way of adjustment of previous outstanding demands. The Tax Authorities cannot proceed with execution, distress or recovery. Statutory authorities are included under the definition of “Operational Creditors” [Section 5(20) of IBC], and accordingly, they will have to file their claim with the Resolution Professional for recovery of their dues in the requisite form. The RP will verify their claim, and make payment only in accordance with the priority laid down under Section 53 of IBC.*

**6. Pr. Commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd** the Hon’ble Supreme Court [**2018 (8) TMI 1775**], held that; “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 Act.”



7. Therefore, in terms of the above, we direct the Respondent Income Tax Department to refund the amount of Rs. 24,38,146/-.”

8. Therefore, in light of above legal position coupled with Section 14(1) of IBC when the action of the respondent is examined. We have, no doubt in our mind that the respondent under law is bound to refund Rs.56,54,62,472/- to the account of CD for the purpose of ongoing CIRP of CD.

Hence, the following order is passed.

- 1) Respondent is directed to refund Rs.56,54,62,472/- to CD account within seven days from date of the order and shall file compliance.
- 2) Respondent is at liberty to file its claim with RP as per provisions of Code.
- 3) Claim for interest as made by RP is disallowed.

Therefore, this application is allowed to the extent indicated above and disposed off.

**Sd/-**

**CHARAN SINGH**  
**MEMBER (TECHNICAL)**

**Sd/-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA**  
**MEMBER (JUDICIAL)**

*S.S Namratha*