IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

IA 2897 of 2021
In
CP (IB) 1178 of 2017

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

IN THE MATTER OF

TJUK Trade Networks Private Limited
172/C Naigaum Croos Roadshop No. 1 Namu Building, Opposite Marathi Granth Sangralaya, Dadar, Mumbai - 400016.

… Applicant

V/s.

Mr. Devendra Jain
(Liquidator of Luthra Water Systems Pvt. Ltd.)
Top Floor, C/o Swati Jewellers, Spring Field, Judges Bungalow Road, Vastrapur, Ahmedabad, Gujarat - 380054.

… Respondent No. 1

Deputy Commissioner of State Tax
MUM-VAT-E-604 / MUMBAI-LTU-504
Mumbai LTU 01 Division, GST Bhavan, 27 Nesbit Road Mazgaon, Tadwadi, Maharana Pratap Chowk, Mumbai - 400010.

… Respondent No. 2

IN THE MATTER OF

Bell Finvest (India) Limited

… Financial Creditor

V/s.

Luthra Water Systems Private Limited

… Corporate Debtor

Order delivered on :- 18.01.2024

Coram:

Anil Raj Chellan — **Member (Technical)**

Kuldip Kumar Kareer — **Member (Judicial)**

Appearances:

For the Applicant : Adv. Nishant Chothani
For the Respondent/Liquidator : Adv. Tanushree Sogani

ORDER

Per: - Anil Raj Chellan, Member (Technical)

1. The instant Application has been filed by the Applicant to direct the Respondent No. 2 to file appropriate claim before the Respondent No. 1 for the period of 2015-2018 and discharge the Applicant from any or all proceedings; direct the Respondent No. 1/Liquidator to file the requisite tax return before the Respondent No. 2 for the period of 2015-2018; direct the Respondent No. 2 not to take any punitive measures against the Applicant qua liability arising out of the tax paid to the Corporate Debtor.

Facts of the case:-

2. The Applicant, who is in the business of last mile food distribution over

two decades entered into certain commercial transactions with the Corporate Debtor during the period from December, 2015 to March, 2018. The purchases undertaken during December, 2015 to March, 2016, FY 2016-2017 and FY 2017-2018 amount to Rs. 15,88,146.19/-, Rs. 86,90,698.30/- and Rs. 35,64,512.62/- respectively. During the said period as per the invoices, the Corporate Debtor has raised tax invoices against the goods purchased by the Applicant which included approximate tax (VAT/GST) as applicable during the relevant period. The Applicant states that all the payments in respect of the invoices generated during the period were paid by the Applicant as evidenced by the Bank statement of the Applicant annexed to the Application. In spite of making all payments including the taxes qua the purchases, the Respondent No. 2 initiated proceedings against the Applicant alleging evasion of tax by not recording or incorrect recording of sales and claiming incorrect deductions. The purchases made by the Applicant from the Corporate Debtor has been mentioned in the notice issued by the Respondent No. 2.

Submissions of the Applicant:-

3. The Applicant submitted that an amount of Rs. 1,98,517.01/- was stated in the VAT returns filed by the Applicant as the said amount was included in the purchase invoices generated by the Corporate Debtor during December, 2015 to March, 2016 and paid by the Applicant. However, since the amount paid by the Applicant was not deposited by the Corporate Debtor in the Government Treasury, it resulted in mismatch in the records of the Corporate Debtor. Further, the Corporate Debtor has not filed its return for the year 2015-2016.

4. Though the Applicant made various efforts to persuade the Respondent No. 2/Tax Authorities and impress upon them to accept the

submissions, the Respondent No.2 was not willing to accept the same. The Applicant contended that the above situation has arisen on account of the non-filing of returns by the Corporate Debtor. The request of the Applicant to the Respondent No. 1, the Liquidator of the Corporate Debtor to file the requisite tax returns relating to the relevant periods has still not been acted upon.

5. The Applicant is saddled with punitive action in the hands of the Respondent due to the default of the Corporate Debtor, though it had paid the VAT to the Corporate Debtor.

6. The Applicant, therefore, submitted that since the liability or the cause of action for the punitive action against the Applicant has arisen on account of the non-filing of VAT returns and/or non-deposit of collected amount by the Corporate Debtor with the Government Treasury. The Applicant relied on the decision of Hon'ble Jharkhand High Court in WP(T) No. 773/2018 along with WP(T) No. 5978/2018 which deals with a similar issue and sought stay of the punitive action initiated by the Respondent No. 2.

Submissions of the Liquidator/Respondent No. 1:-

7. The Respondent No. 1 submitted that pursuant to the liquidation order passed against the Corporate Debtor vide order dated 18.12.2019 by this Tribunal and appointment of the Respondent No. 1 as the Liquidator, he had published Form B on 20.12.2019 inviting claims against the Corporate Debtor with 19.01.2020 as the last date for submission of claim. Pursuant to the above, the Respondent No. 2 filed its claim in Form G for Rs. 66,96,944/- on 28.02.2020 which was admitted by the Liquidator and added to the list of stakeholders of the Corporate Debtor.

8. The Respondent No. 3 further submitted that he had also verified the

transactions of the Applicant with the Corporate Debtor and the same appeared to be genuine transactions. The above fact was also stated to be substantiated from the ledger of the Applicant maintained in the books of the Corporate Debtor for the period of 01.12.2015 to 31.03.2018.

9. The Liquidator also stated that the records of the Corporate Debtor manifested that the VAT was collected by the Corporate Debtor at the relevant point of time, however, the same was not deposited by the Corporate Debtor to VAT authority, the Respondent No. 2.

10. Pursuant to an order dated 05.05.2022 the Liquidator has sent an intimation notice dated 20.05.2022 to the Respondent No. 2 and the Respondent No. 2 pursuant to the said intimation filed a revised claim dated 15.06.2022 in Form B.

11. In the circumstances, the Respondent No. 1 submitted to pass appropriate orders in the interest of justice.

Submissions of Respondent No. 2:-

12. The Respondent No. 2 submitted that the Applicant had claimed input tax credit/set-off on the purchases of goods from the Corporate Debtor which was disallowed for the reason that the amount was not paid in the Government Treasury. Since the input tax credit/set-off as claimed by the Applicant in its original returns is not granted, assessment order dated 04.10.2019 for the period FY 2015-16, dated 18.03.2021 for the period FY 2016-17 and dated 30.07.2021 for the period FY 2017-18 were issued against the Applicant. However, on an appeal filed by the Applicant, the Hon'ble Appellate Joint Commissioner of Sales Tax vide his orders dated 02.08.2021 and 29.09.2021 had stayed the recovery of dues from the Applicant.

13. The Respondent No. 2 sought rejection of the Application on the grounds that the very purpose of the present Application is to shift the liability and delay the appeal process, presently there is no coercive action against the Applicant on account of the stay granted by the Joint Commissioner of Sales Tax and hence is liable to be dismissed.

Analysis

14. We have heard the Counsel for the parties and perused the records.

15. The parties have admitted that the Applicant purchased goods from the Corporate Debtor during the period 2015 to 2018, the invoices raised for the transactions included VAT/GST as applicable, the Applicant made payment of the tax amount to the Corporate Debtor and the Corporate Debtor failed to deposit the collected tax with the Government Treasury. While the Applicant sought relief on account of the payment of tax to the Corporate Debtor, the Respondent No. 2 contended that the said relief by way of input tax credit/set-off as claimed by the Applicant cannot be granted on account of the non-deposit of the amount in the Government Treasury. In support of the above, the Respondent No. 2 relied on Section 48(5) of the Maharashtra Value Added Tax Act, 2002 which provides that in no case the amount of set-off or refund on any purchase of goods shall exceed the amount of tax paid in the government treasury in respect of the same goods.

16. It is relevant to observe that the Respondent No. 2 has not disputed the collection of tax by the Corporate Debtor during the relevant period. Fully recognizing the above payment by the Applicant to the Corporate Debtor, the Respondent No. 2 has also filed its revised claim before Respondent No. 1 which has been admitted. When the Respondent had decided to make a claim against the Corporate Debtor for a share in the

distribution from the Liquidation estate of the Corporate Debtor, we do not consider it appropriate for the Respondent No. 2 to proceed simultaneously against the Applicant for the same amount.

17. The judgment of Hon'ble Jharkhand High Court in WP(T) No. 773/2018 and WP(T) No. 5978/2018 relied upon by the Applicant is squarely applicable in the present case. We are also satisfied that the Applicant being a dealer who acted in a bonafide manner cannot be punished for the default of another party, the Corporate Debtor which is undergoing proceedings under the Code and the Respondent No. 2 has submitted his claims to the jurisdiction under the Code.

18. Having regard to the facts and circumstances of the case, we are of the considered view that the Applicant is entitled to a discharge to the extent of amount of tax paid to the Corporate Debtor during 2015-2018 for which the Respondent No. 2 has filed its claim before the Liquidator/Respondent No. 1.

19. Accordingly, **IA 2897 of 2021** is **allowed.**

Sd/-

ANIL RAJ CHELLAN
Member (Technical)

Sd/-

KULDIP KUMAR KAREER
Member (Judicial)

ANKIT