IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH, DELHI

BENCH III

CA 776/C-III/ND/19 filed in IB/1404/ND/2019 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

In the matter of ***Prius Commercial Project Pvt. Ltd.***

Mr. Mahender Kumar Khandelwal. ....Applicant/Resolution Professional

Versus

The Assistant Commissioner, Central Goods and Service Tax (ITO), New Delhi ....Respondent

Order delivered on 3rd January, 2020

Coram:
Ch. Mohd. Sharief Tariq Member (Judicial)
K.K. VohraMember (Technical)

For the Applicant: Mr. Abhishek Sharma & Mr. Akhairaj Singh Advocates
For the Respondent: Assistant Commissioner & Advisor

ORDER

CA 776/C-III/ND/19:

1. Ld. Counsel for the Resolution Professional (RP) is present. The Assistant Commissioner, Central Goods and Service Tax (ITO), Government of NCT Delhi, Department of Trade and Taxes, GST along with Advisor is present. The Assistant Commissioner has filed the reply, which is taken on record.

2. The Counsel for the RP sought a direction to the Respondent to revoke the order of cancellation of GST Registration of the Corporate Debtor and to reinstate the same. Consequently, allow/permit the Applicant to file all tax Returns under the GST Laws/or under other applicable laws on behalf of the Corporate Debtor, either manually/physically or through electronic process.

3. It is further prayed that the Respondent be directed to keep in abeyance any proceedings (new or ongoing) against the Corporate Debtor during the CIR Process period. The Respondent in their reply submitted that the Corporate Debtor has to file the revocation of cancellation of Registration with the respondent Department in consonance with the provisions of CGST/DGST Act, and rules made there under, which is the sole available remedy against the cancellation Order dated 15.10.2019. The appeal is to be filed electronically in accordance with Section 107 of the CGST/DGST Act read with Rules 108 & 109 of the CGST/DGST Rules, 2017.

4. It is noted that in the present matter, the CIR Process was initiated against the Corporate Debtor viz. **Prius Commercial Project (P) Limited** on 9th August, 2019. The cancellation of GST Registration has been done on 15th October, 2019 i.e., during the declaration of Moratorium, which is in violation of the provisions of Section 14 of the IBC, 2016 and the order passed by this Tribunal.

5. It is submitted by the Counsel for the RP that the Corporate Debtor is not in a position to file GST Returns due to cancellation of the GST Number by the Respondent/ concerned authorities, and the CIR Process of the Corporate Debtor is badly affected.

6. The reasons stated in the application are plausible. Therefore, the Application is allowed and the order dated 15th October, 2019 by which the GST Number of the Corporate Debtor was cancelled is set aside. The Respondent/concerned authorities are directed to restore the GST Number of the Corporate Debtor within a period of two weeks from the date the Resolution Professional files the appropriate Form(s) for the renewal of the GST Number.

7. It is made clear that GST Returns shall be filed for the period of CIR Process/Moratorium and no coercive measure/penal action shall be taken against the CD including any deduction or adjustment by the CGST/DGST, for the period prior to the Moratorium, for which the claim has already been filed with the Resolution Professional. Further, no late fee/penalty shall be charged/levied for late filing of the Returns by the Corporate Debtor, as the delay, if any, is not attributable to the Corporate Debtor. In case any technical problem arises in filing the Returns by the Corporate Debtor, then GST Returns shall be allowed to be filed physically.

8. It is noted that the time line for compliance of this order shall be adhered to by the respondent/concerned authorities in letter & spirit, failing which the Resolution Professional is at liberty to file the appropriate application for initiating action against the respondent/concerned authorities in accordance with law.

9. The Resolution Professional is directed to obtain the certified copy of this order and send to the respondent/concerned authorities of CGST/DGST for compliance, as directed.

10. In terms of the above, the Application stands **disposed of.**

-Sd-

(K. K. VOHRA)
MEMBER (TECHNICAL)

-Sd-

(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)

Surjit
03.1.2020