

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**I.A. 1870 OF 2021**

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

Mr. Jayesh Sanghrajka

Resolution Professional/  
...Applicant

V/s

The Assistant Commissioner of Income  
Tax Range-3(1), Aayakar Bhawan

... Respondents

In the matter of

C.P.(IB) No. 4464/MB/2019

Gajendra Investment Limited

...Petitioner

Vs.

Satra Property Developers Private  
Limited

... Corporate Debtor

***Order delivered on: 26/10/2023***

***Coram:***

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice V.G. Bisht (Retd.)**  
Hon'ble Member (Judicial)

*Appearances:*

For the Applicant/RP : Mr. Nausher Kohli, Advocate

For the Respondent : Mr. Chintan Gandhi, Advocate

**ORDER**

*Per: Prabhat Kumar, Member (Technical)*

1. This Application IA 1870/2021 was filed by the Resolution Professional Sh. Jayesh Sanghrajka (“Applicant”) in the matter of M/s Satra Property Developers Pvt. Ltd. (Corporate Debtor) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 (“Code”), seeking an order of this Tribunal for the refund of the amount due as per Assessment Order alongwith Interest u/s 244A of the Income Tax Act, 1961 from The Asstt. Commissioner of Income Tax Range 3(1) (“Respondent”).
2. The Company Petition 4464/IB/MB/2019 was admitted by this Tribunal by its order dated August 10, 2020 admitting the Corporate Debtor into Corporate Insolvency Resolution Process (“CIRP”). Thereafter, the Applicant was appointed as IRP, who had, on August 15, 2020 published a public announcement in Free Press Journal and Navshakti that National Company Law Tribunal has ordered the commencement of Corporate Insolvency Resolution Process in case of Corporate Debtor.
  - 2.1. In the 1st CoC Meeting, the CoC resolved to appoint the Applicant as the RP of the Corporate Debtor, and the same was

confirmed by the Adjudicating Authority's order dated November 26, 2020.

2.2. The Income Tax Scrutiny Assessment for AY 2018-19 was ongoing and during the course of Assessment proceedings it was submitted that Corporate Debtor is undergoing Corporate Insolvency Resolution Process on account of Order passed by this Tribunal. Thereafter, Assessment Order for AY 2018-19 was passed on 19 April, 2021 determining refund of Rs. 1,50,49,868- (Rupees One Crore Fifty Lakhs Forty-Nine Thousand Eight Hundred Sixty- Eight Only). On 21 April, 2021 Notice under 245 was issued to the Corporate Debtor, wherein refund due was proposed to be adjusted against the outstanding demand of past years.

2.3. Corporate Debtor had already filed response, against all the demands outstanding that, since company is undergoing CIRP and this Tribunal has ordered moratorium, no demands can be recovered and hence they are automatically stayed till approval of resolution plan under 31(1) or passing of the order of liquidation. Despite the Submissions that Moratorium is declared and no recovery of demand can be made, the refund due was adjusted against the past demands on 15th May, 2021.

2.4. On May 15, 2021. the Applicant filed an application before the Assessing Officer, that despite the submission that Corporate Debtor was undergoing CIRP submitting that the recovery of demand is in contravention of the order of Moratorium commenced pursuant to the Order of This Tribunal and

provisions of the Insolvency and Bankruptcy Code, 2016. Thereafter, on numerous occasions the application was filed for release of refund due to Corporate Debtor however neither any order was passed nor refund was released. Thereafter, grievance was raised by filing of CPGRAM on 20 May 2021 vide CBODT/E/2021/1379) reiterating the submissions made before the assessing officer. CPGRAM was disposed-off by the Assessing Officer rejecting the grievance, stating “the refund was adjusted against the pending outstanding demand as per procedure established and there was no coercive recovery action taken in this case”.

2.5. Apart from the above, the Applicant by its various communications had requested the committee of Creditors to contribute their respective shares in the CIRP costs and expenses. However, the members of Committee of Creditors have failed to contribute towards their share of CIRP Costs. Due to insufficiency of funds, The Applicant is facing severe hardship in performing its duties as Resolution Professional of the Corporate Debtor. Considering these circumstances, the Applicant has preferred the present Application against the Respondent.

3. We have heard the Counsel and perused the material available on record.

3.1. The Respondents were served notice, however, none appeared.

3.2. We find that the Resolution Plan in the case of Corporate Debtor was approved by Committee of Creditors (“CoC”) on 12.08.2021 and the same is pending for the approval before this Tribunal.

3.3. Section 14 of the Code explicitly prohibits any set-off of claim against the money held by the Creditor after commencement of Moratorium. In this case, the moratorium commenced on 10.08.2020. It is undisputed fact that the refund due to the Corporate Debtor was determined by the Respondent on 19.04.2021 and this refund was appropriated by the Respondent against the outstanding tax demands against the Corporate Debtor after following the procedure contemplated u/s 245 of the Income Tax Act, 1961. Be that so, the provisions of section 14 of the Code expressly prohibits “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”.

3.4. The Income Tax Department was well within its right to appropriate the amounts refundable to an assessee (Corporate Debtor) towards the outstanding tax demands recoverable from it in the normal course. However, even if the Income Tax Department holds right to appropriate in terms of section 245 of the Income Tax Act, 1961, such rights

get suspended and could not be exercised during the moratorium period i.e. after commencement of CIRP.

4. In the present case, it is undisputed fact that the demand was appropriated on or after 21.04.2021 i.e. post commencement of moratorium, the Income Tax Department could not have exercised its right to recover at that point considering the fact that the moratorium was in force in case of Corporate Debtor. Accordingly, we hold that such appropriation of refund amount of Rs. 1,50,49,868- (Rupees One Crore Fifty Lakhs Forty-Nine Thousand Eight Hundred Sixty- Eight Only) is illegal, and as such the Respondents are under obligation to refund the same to the Corporate Debtor within 30 days from the date of communication of this Order. We are conscious of the fact that the Respondents would not have filed the case in such scenario, accordingly, the Applicant is directed to admit the claim of the Respondent in relation to tax demands to the extent appropriated from the refunds and consider the discharge of liability in this relation in accordance with the terms proposed under the Resolution Plan pending for approval. No separate claim shall be required to be filed by the Respondents in this respect.

5. In view of the above, the IA 1870 of 2021 is allowed.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)