

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT- I
(Special Bench)
KOLKATA**

**I.A. (IB) No. 1594/KB/2023
in
C.P(IB) No. 2149/KB/2019**

A Petition under section 7 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:-

Hempragati Vyapaar Private Limited

... Financial Creditor

versus

JPM Exports Private Limited

... Corporate Debtor

And

I.A. (IB) No. 1594/KB/2023

*An application under Section 35(1)(n) of the Insolvency and Bankruptcy Code,
2016.*

In the matter of:-

Avishek Gupta

... Applicant

Versus

- 1. Assistant Commissioner of Revenue, Directorate of Commercial Taxes**
- 2. YES Bank**

... Respondents

Date of pronouncement: 15th May 2024

Coram:

Smt. Bidisha Banerjee	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (through hybrid mode):

For the Liquidator : Mr. Udit Agarwal, Advocate
Respondent : Ex-parte

ORDER

Per Balraj Joshi, Member (Technical)

1. The Court convened through hybrid mode.
2. This I.A. has been filed by Avishek Gupta, under section 35 of the Insolvency and Bankruptcy Code (“Code”) seeking the following reliefs:
 - a. *To pass necessary orders upon the Assistant Commissioner of Revenue, Directorate of Commercial Taxes, West Bengal for removal of garnishee order;*
 - b. *To declare the debit transaction of Rs.90,450.25/- as void;*
 - c. *To pass necessary orders upon the Respondents to reverse the debit transaction of Rs.90,450.25/- and credit Rs.90,450.25/- along with 12% interest into the liquidation account;*
 - d. *Such further order or orders be passed and/or direction or directions be given as to this Hon’ble Tribunal may deem fit and proper.*
3. The learned Counsel submitted that *vide* order dated 27 January 2021, this Adjudicating Authority had admitted the Company Petition filed under section 7 of the Insolvency and Bankruptcy Code (“Code”) by HempragatiVyapaar Private Limited for initiating Corporate Insolvency Resolution Process (“CIRP”) against JPM Exports Private Limited (“Corporate Debtor”).
4. An order of liquidation of the Corporate Debtor was passed by this Adjudicating Authority 21 December 2021, whereby the Applicant was appointed as the Liquidator.
5. As per regulation 12 of the Insolvency and Bankruptcy Board (Liquidation Process) Regulations, 2016 (“**Liquidation Regulations**”), the Liquidator published Form B in two newspapers *viz.* Financial Express (English) and Ek Din (Bengali) on 25 December 2021 inviting claims from the creditors. The last date of submission of claims was 21 January 2022.

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6. Pursuant to the public announcement, the Liquidator received a claim from Commercial Tax Department amount to Rs.5,77,166/- (Rupees Five Lakh Seventy Seven Thousand One Hundred and Sixty Six only) which was admitted in full.
7. The Directorate of Commercial Taxes *vide* letter dated 21 March 2022 asked the Liquidator to deposit outstanding tax on account of arrears of professional tax. In reply to the same, the Liquidator stated that the Corporate Debtor is under liquidation and for any outstanding dues, claim form has to be submitted to the Liquidator. Ignoring the reply, the Directorate of Commercial Taxes sent several reminders for payment of outstanding dues *vide* emails dated 22 March 2022, 15 July 2022, 16 August 2022, 17 September 2022 and 12 October 2022 to which the Liquidator replied on 22 March 2022, 16 July 2022, 16 August 2022, 19 September 2022 and 13 October 2022 to file claim as per the Liquidation Regulations and also mentioning the inability to pay Directorate of Commercial Taxes as the Corporate Debtor was not in operation.
8. On 14 December 2022 the Liquidator issued two cheques dated 14 December 2022 as payment of liquidation cost from the current account of the Corporate Debtor from the current account of the Corporate Debtor drawn on YES Bank.
9. In spite of sufficient balance, the cheques were dishonoured. The Liquidator sent an email on 29 December 2022 to the officials of YES Bank to know the reason of the dishonour of cheques and another reminder email on 06 January 2023.
10. On 11 January 2023, YES Bank *vide* email informed the Liquidator that a garnishee order was issued against the account of the Corporate Debtor and Demand Draft of Rs.89,624.25/- (Eighty Nine Thousand Six Hundred and Twenty Four and Twenty Five Paise) is being sent to the Directorate of Commercial Taxes, West Bengal.
11. The Liquidator *vide* 12 January 2023 intimated YES Bank about the liquidation process and requested to remove the garnishee order and stop such payment from the account of the Corporate Debtor, but even after receipt of the letter, YES Bank issued the Demand Draft to Directorate of Commercial

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Taxes, West Bengal and the Corporate Debtor's account was debited with the total amount of Rs.90,451.25/- (Rupees Ninety Thousand Four Hundred and Fifty One Twenty Five Paise).

12. The Liquidator filed an appeal against the garnishee order and reversal of the amount of Rs.89,624.25/- with the Joint Commissioner of Professional Tax on 21 February 2023 which is pending.
13. The learned Counsel submitted that once the liquidation order is passed, moratorium applied and no suit or other legal proceedings can be initiated against the Corporate Debtor.
14. It is further submitted that section 238 of the Code envisages that the Code shall override the other laws and hence the Code shall prevail over the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979.
15. The Directorate of Commercial Taxes, West Bengal was aware that the Corporate Debtor was undergoing Liquidation and had filed its claim, but still proceeded to issue garnishee order to YES Bank.
16. The learned Counsel submitted that the Liquidator wrote several emails to Directorate of Commercial Taxes to return the garnished amount as the Corporate Debtor is under liquidation and all the payments are to be made as per section 53 of the Code but did not receive any response from the Department.

Analysis and Findings

17. Heard the Learned Counsel appearing on behalf of the Applicant and perused the record. As directed *vide* order dated 10 October 2023, notice was sent from the Registry to the Respondents *via* speed post and email which were duly delivered. Despite service of notice, the Respondents failed to appear and hence were declared as *ex-parte* on 14 December 2023.
18. The issue before us is whether the notice for garnishee under section 16 of the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979 *vide* Memo No. 1342/17/8/22 is sustainable under law.

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19. The Liquidation Process of the Corporate Debtor was initiated on 21 December 2021, the Liquidator made public announcement on 25 December 2021 calling forthwith all the claims.
20. On perusal of the emails dated 16 August 2022, 19 September 2022, 12 October 2022, 13 October 2022 exchanged between the Liquidator and Assistant Commissioner of Revenue, West Bengal, the Liquidator has informed the Assistant Commissioner of Revenue to file the claim as per the Liquidation Regulations. The Liquidator *vide* letter dated 22 March 2022 informed the Assistant Commissioner of Revenue that as per section 33(5) and section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor.
21. The notices for payment of P.Tax have been sent during the period of Liquidation of the Corporate Debtor i.e. after 21 December 2021. Further, YES Bank has carried out the Garnishee Order and issued demand draft after initiation of liquidation process.
22. It is to be noted that the Code and the West Bengal State Tax on Professions, Trades, Callings and Employment Act, 1979 each have their own respective domains of application. Unless it detects a glaring disagreement in the way the two laws operate, this Adjudicating Authority is required to read them harmoniously as a first attempt, but the West Bengal State Tax on Professions, Trades, Callings and Employment Act, 1979 is superseded in the event of a disagreement by the Code. This Adjudicating Authority must determine whether there is a contradiction between the application of two separate statutes under the current circumstances. We would like to place reliance on the judgment of the Hon'ble Supreme Court in *Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs*¹ wherein it is held that the Code being the more recent statute shall prevail.
23. We would like to further place reliance on the judgment of the Hon'ble High Court of Kerela in *Kerela State GST Department v. National Company Law Tribunal and Anr.*² wherein the Hon'ble High Court after taking into

¹(2022) ibclaw.in 103 SC

²(2024) ibclaw.in 85 HC; WP (C) 39185 of 2022

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consideration section 14 of the Code, section 33(5) of the Code and section 238 of the Code observed that:

“5. The Supreme Court, in the case of S V Kandoakar v. V M Deshpande² held that the authorities can only take steps to determine the tax, interest, fines or any such penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium. The Supreme Court in Sundaresh Bhatt (supra) agreed with the said ratio laid down in V M Deshpande (supra) and held that the authority could only initiate assessment or reassessment of the duties or other levies. However, they cannot transgress such boundary and proceed to initiate recovery in violation of Sections 14 and 33(5) of the IBC. The Interim Resolution Professional or the Liquidator, as the case may be, is empowered to question the legality of the assessment order before the deputed authority.

5.3 Thus, after declaring the moratorium, there is an embargo on enforcing the demand, but there is no embargo under Section 14, read with Section 33(5) of the IBC, for determining the quantum of tax and other levies, if any, against the Corporate Debtor.”

24. In the present case, the Assistant Commissioner of Revenue has acted in contravention of the Code. There is no ambiguity that the Respondents may only take action to ascertain the amount of taxes, interest, fines, or other penalties that are owed, but cannot pursue a claim for recovery on taxes that are due during the moratorium at a forum other than that of the liquidator. It is pertinent to mention that a moratorium is in place even during liquidation.
25. The Assistant Commissioner of Revenue and the authorities of YES Bank, although being informed about the provisions of the Code have acted in violation of the Code.
26. In view of the above, the order of garnishee under section 16 of the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979 *vide* Memo No. 1342/17/8/22 cannot be acted upon due to aforesaid reasons and as such it is directed that the amount of the Demand Draft (supra) shall be returned to YES Bank to be deposited in the account of the Corporate Debtor within two weeks from the date of this order.

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27. Further YES Bank is directed to retract its actions with respect to the Current Account of the Corporate Debtor.
28. In view of the above directions, *I.A. (IB) No. 1594/KB/2023 are hereby disposed of.*
29. List the C.P. (IB) No. 2149/KB/2019 on 2nd July 2024 further consideration.
30. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
31. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
32. File be consigned to the records.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on the 15th day of May, 2024.

GGRB_LRA