

459

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM

Shri Vijay Pratap Singh
Hon'ble Member (J)
Shri S. Vijayaraghavan
Hon'ble Member (T)

T.P. No. 43/2017

In the matter of:

The Companies Act, 1956;

-And-

In the matter of:

An application under Sections 391(2) to 394 of the said Act;

-And-

In the matter of:

Middleton Hotels Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having its registered Office at 10, Middleton Street, Kolkata – 700 071, in the State of West Bengal, within the aforesaid jurisdiction;

-And-

In the matter of:

Moksh Investors Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at Century Towers, Room No.505, 5th floor, 45, Shakespeare Sarani, Kolkata – 700 017 in the State of West Bengal, within the aforesaid jurisdiction;

-And-

In the matter of:

1. Middleton Hotels Private Limited
2. Moksh Investors Private Limited

..... PETITIONERS

Counsels on Record

1. Mr. Sanjay Yadav, D.D. on behalf of R.D.(E.R.)
2. CA Shashi Agarwal on behalf of the Petitioner

Date of Pronouncing the Order: 24th April 2017

82



ORDER

Ld. Counsel for the parties are present. The present petition is pending for amalgamation of the companies and it appears from the record that in this case, the Regional Director has filed Affidavit-in-Reply enclosing the report of Income Tax Authorities wherein it is mentioned that :

- "1) In connection with amalgamation scheme of the above transferor/transferee companies, it appears from the record that above-mentioned cases were centralised to the then DCIT,CC-XIII, Kolkata (now merged with ACIT, CC-4(1), Kolkata with Surana Group of Cases. Accordingly assessment of all the cases including the above companies were completed u/s 135A/153C of the Act, Department filed appeal before the Hon'ble Income Tax Appellate Tribunal against the order of Ld. C.I.T.(Appeal) where the assessee companies filed Cross Objection before I.T.A.T. Hon'ble ITAT vide its combined order dated 29.02.2016 in respect of S.A. Suppliers Pvt. Ltd. allowed the Cross Objection of the assessee company and dismissed department's appeal, since the Hon'ble ITAT, Kolkata have already quashed the assessment framed u/s 153A of Surana Group of cases as regards validity of assessment pertaining to Share Application money or loans.
- 2) Department filed further appeal to Hon'ble Calcutta High Court against the order of ITAT in respect of S.A. Suppliers Pvt. Ltd. which is pending in court.
- 3) Further, a fresh search and seizure operation was carried out in Surana Group including the above mentioned assessee companies on 02.03.2016 by the Director of Income Tax (Investigation), Kolkata. Accordingly, for co-ordinated assessment proceedings all the cases of Surana Group including (1) S.A. Suppliers Pvt. Ltd., (2) Southern Avenue Inn Pvt. Ltd. & (3) Middleton Hotels Pvt. Ltd. were centralized to this charge. Hence, the undersigned is going to reopen u/s 153A/153C

4



read with section 143(3) of the income Tax Act, 1961 of all the cases pertaining to Surana Group for A.Ys from 2010-11 to 2015-16 and 2016-17 respectively as well as the above transferor /transferee companies.

If the Arrangement/Amalgamation procedure of above transferor/ transferee companies is carried out it will be very difficult to frame the assessment proceedings each of the transferor/ transferee company mentioned above for A.Ys from 2010-11 to 2015-16 & 2016-17.

In view of the above, it is observed that it is not justified to carry out the Scheme of Amalgamation of the above mentioned transferor/ transferee companies before the completion of assessment proceedings on account of Search & Seizure operation conducted on 02.03.2016 of Surana Group of Cases."

It also appears from the record that relying on the above-mentioned report of the Income-Tax Authorities, the Hon'ble High Court has passed an order dated 03.10.2016 wherein a direction was passed in this case. In view of the objection raised by the Income-Tax Authorities, the matter was adjourned till November, 2016

Income-Tax Authorities has again sent a report dated 23.11.2016 wherein it is mentioned that the assessment procedure is on its process which will be barred by limitation on 31.12.2017. As the procedure required involvement from assessee's side also, the case could be disposed off early if it is carried out smoothly. As such, the arrangement/amalgamation procedure of the above transferor and transferee companies is sanctioned the whole assessment procedure will be disturbed, which may lead to loss of revenue as well.

In view of the report of the Income-Tax Authorities and observation of the Hon'ble High Court in its order dated 03.10.2016, we think it appropriate to await for the assessment proceedings regarding the transferor and transferee companies on

21



account of search and seizure operation which has been carried out on the transferor/ transferee companies on 02.03.2016 and the case has been reopened and all the assessment will be time-barred by 31.12.2017. The Regional Director is further directed to issue a letter to the Income-Tax Authorities to know the present status in this regard from Income-Tax Authorities.

List on dated 31st May, 2017.

Sd/-
(S. Vijayaraghavan)
Member (Technical)

Sd/-
(Vijay Pratap Singh)
Member (Judicial)

Dated, the 24th day of April, 2017