

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
MA 377/2017 in CP 292/I&BP/2017

Miscellaneous Application in CP 292 filed under
Section 7 of IBC, 2016

In the matter of

Bharati Defence and Infrastructure Ltd. Applicant/Corporate
Debtor

vs.

Commissioner of Income Tax & Ors. Respondents.

Order delivered on 5.10.2017

Coram: Hon'ble B.S.V. Prakash Kumar, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

For the Applicant: Mr. Ravi Kadam, Sr. Advocate, Mr. Malhar Zakaria and
Mr. Aniket Nimbalkar, Advocate, i/b AZB & Partners.

For the Respondent: None present.

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

Oral Order dictated in the open court on 03.10.2017

The Applicant/Corporate Debtor filed the Application No.377/2017 to stay all the proceedings initiated by the Respondent against the applicant including proceedings initiated under Section 226(3) of the Income Tax Act, 1961, stating that the Assistant Commissioner of Income Tax (R3 herein) completed assessment of income of the applicant for Assessment Year 2014-15 under Section 143(3) of the Income Tax Act, 1961, wherein no demand was raised and a tax refund of ₹1,65,03,510 was determined to be payable to the applicant which was subsequently adjusted against the applicant's outstanding dues in accordance with Section 245 of the Income Tax Act, 1961.

R3 issued another assessment order on 23.12.2016. According to the applicant herein R3 called upon the applicant to pay the outstanding dues of ₹48,04,48,000 within three days from the receipt of the demand. The applicant's outstanding tax arrears as on 6.6.2017 are ₹46.39 crore. When the applicant failed to pay the tax demand made by R3, he initiated proceedings against the applicant under Section 226(3) of the Income Tax Act by issuing notice dated 10.3.2016 to the customers and notice dated 11.4.2017 to the bankers of the applicant directing them to forthwith pay to the tax department any amount due from them to, or held by them for or on account of the applicant.

The applicant submits that this Bench declared moratorium over this applicant company on 6.6.2017 under Insolvency and Bankruptcy Code, 2016, in pursuance thereof, a resolution professional appointed by this Bench informed R3 of the Order dated 6.6.2017, (i) not to proceed with any action for recovery of dues prior to the order dated 6.6.2017, (ii) not to initiate or proceed with any recovery proceedings and (iii) take any action including sending notice to the applicant's customers under Section 226(3) of the Income Tax Act, to remit funds directly to R3's account, as any such action would be in violation of the Code as well as the directions of this Bench.

Now the applicant filed this application stating that the garnishee proceedings initiated against this applicant shall remain suspended as long as moratorium is in force over this company.

The Counsel appearing on behalf of this applicant submits that since Section 14 of the Insolvency and Bankruptcy Code, 2016 empowers Adjudicating Authority to declare moratorium prohibiting all proceedings pending before any authority including execution of any judgement, decree or order in any court of law, tribunal, panel or any authority, this garnishee order shall remain under suspension until moratorium period is completed.

On filing this application by the applicant counsel, this Bench has issued notice to R3, i.e. Assistant Commissioner of Income Tax, situated at Large Tax Payer Unit 2, 29th Floor, Centre No.1, World Trade Centre, Cuffe Parade, Mumbai – 400 005 but R3 remained absent despite notice has been served upon R3 to explain as to why this application shall not be allowed.

Hearing the submission of the Counsel appearing on behalf of the applicant, it appears that Section 14 has made it clear that any proceeding pending before any

authority especially civil proceeding shall remain suspended until moratorium period is completed. In the same Section, Sub Section 3 says that if at all Central Government is interested to exempt any of the dues payable by the Corporate Debtor from moratorium, it will be notified by the Central Government in consultation with any financial sector/regulator, as the case may be.

Since the legislature itself has stated that dues notified by the Central Government alone will be exempted from the moratorium, it has to be construed that dues payable by the Corporate Debtor to the Central Government are not exempted unless such debts are notified by the Central Government. Since powers for exemption of debt payable to the Central Government from moratorium is vested with the Central Government in consultation, if at all any class of debt is to be exempted, the Central Government will notify the same, until such time, realisation of all dues to Central Government falls within the ambit of moratorium.

By giving a conjoint reading to sub-section 1(a) and sub section 3 of Section 14 and also by seeing other provisions of IB Code, now it has not been treated as crown debt, it has been made like any of the debt falling within the ambit of operational debt, therefore, the dues of the Government now cannot be seen as considered as before, i.e. under Companies Act, 1956. Since the legislature itself made government dues as a part of operational debt and for there being a power vested with Central Government to notify the debts as and when it requires, realising such dues while moratorium pending against the company shall be put on hold until moratorium period is completed.

Therefore, R3 is hereby directed not to act on garnishee notices until moratorium period is completed.

Accordingly, this application is disposed of.

Sd/-

V. NALLASENAPATHY
Member(Technical)

Sd/-

B. S. V. PRAKASH KUMAR
Member (Judicial)