

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P No. 31/(MAH)/2017
MA No.112/2017

CORAM:

Present: SHRI B.S.V. PRAKASH KUMAR
MEMBER (J)

SHRI V. NALLASENAPATHY
MEMBER (T)

ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 31.03.2017

NAME OF THE PARTIES: M/s. Gupta Coal India Pvt.Ltd.

SECTION OF THE COMPANIES ACT: I & BP Code 2016.

S. No.	NAME	DESIGNATION	SIGNATURE
1.	Adv. Farhan Dubash		
	Adv. Nilesh Sharma	Adv. for Applicants	
	Adv. Ashish Pyari		

ORDER

MA No. 112 IN CP No.31/I&B/NCLT/MB//MAH/2017

The Petitioner filed this Misc. Application against the Respondents namely Teshsildar, Nagpur City (R1) Ld. Collector, Nagpur City, Nagpur (R2) District Collector Ernakulam, Club Rd., Ernakulam South, Ernakulam, Kerala (R3) and Asst. Commissioner VAT Special Circle (Produce) Dept. of Commercial Tax, Mattancherry, Kochi, Ernakulam, Kerala (R4) seeking invalidation of impugned notice dated 15.3.2017 issued by R1 inter alia seeking stay of operation of impugned notice dated 15.3.2017 and also operation of the Recovery Certificate dated 17.2.2017 issued by R3.

On perusal of the Application moved by the Petitioner, it appears that 1st Respondent on 27.3.2017 proceeded to attach the company assets which are already covered under Moratorium issued by this Bench on 9.3.2017. The Petitioner Company submits that when R1&2 tried to attach the properties of the Petitioner company

basing on a Certificate dated 17.2.2017 stating that a sum of ₹10,15,48,010/- is payable on account of Sales Tax arrears from the dealers of the Petitioner Company under provisions Indian Revenue Recovery Act, the Petitioner Company submitted a letter on 27.3.2017 to R1 & R2 mentioning that this Bench has passed Moratorium Order on 9.3.2017 prohibiting institution of suits or continuation of pending suits or proceed against the Corporate Debtor including execution of any judgement, decree or order in any court of law, Tribunal, Arbitration panel or other authority. Inspite of it, R1 demanded for deposit of ₹25lacs by the petitioner before getting an order against the respondents not to proceed over the assets of the company. The petitioner counsel submits that a Roznama has been prepared by R1 stating that if a stay order has not been taken within 4 days regarding recovery proceedings, further action will follow for recovery basing on the orders for recovery. The Petitioner, in order to avoid this action, deposited a cheque for an amount of ₹25,00,000/- recording the protest over directions for deposit of the above ₹25,000.

Looking at the Roznama, it appears that 1st Respondent herein proceeded for attaching the property of the company basing on the certificate come from R3 & R4 regardless this Bench order dated 9.3.2017 declaring moratorium with consequential directions as mentioned u/s.14 of the I&B Code without getting into the section of law that envisaged no execution of proceedings can be initiated as long as the moratorium is in force. It is pertinent to mention that it is not possible for this Bench to give independent directions to each of the Creditors or Authorities not to proceed against the company for recovery, therefore, this Bench makes it clear that the order of Moratorium is binding upon the Respondents herein as well, because these Respondents fall within the phrase of authority proceeding to execute orders for recovery, hence these Respondents shall not proceed for attaching the properties of the company on the ground no specific order has been passed against the Respondents herein.

In view of these reasons aforementioned, the Respondents are herein directed to not to proceed against the company properties for recovery basing on the Certificate for Revenue Recovery dated 17.2.2017 issued by 3rd Respondent herein until further orders.

However, R1&R2 are further directed to explain on the next date of hearing as to why the Reliefs in this MA should not be granted.

List this matter for hearing on 11.4.2017.

Sd/-

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

Sd/-

V. NALLASENAPATHY
Member (Technical)