

IN THE INCOME TAX APPELLATE TRIBUNAL
"J" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 1356/Mum./2021
(Assessment Year : 2013-14)

Asstt. Commissioner of Income Tax
Central Circle-2(4), Mumbai

..... Appellant

v/s

M/s. Wizcraft International
Entertainment Pvt. Ltd.
5th Floor, Satyadev Plaza
Off New Link Road, Andheri (East)
Mumbai 400 053 PAN – AAACW1931D

..... Respondent

Assessee by : Shri Siddharth Srivastava
Revenue by : Shri Tejinder Pal Singh Anand

Date of Hearing – 31.05.2022

Date of Order – 06/06/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been preferred by the Revenue challenging the order dated 31.05.2021, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the Commissioner of Income Tax (Appeals)-48, Mumbai [*learned CIT(A)*] for the assessment year 2013-14.

2. During the course of hearing, at the outset, we noticed that in the case of the assessee, the matter is pending before the Insolvency

Professional in terms of the Insolvency and Bankruptcy Code, 2016 ("**the Code**") and moratorium period has been declared as per section 14 of the Code.

3. We further noticed that petition was filed by IDBI Bank Limited in its capacity as the Financial Creditor of Wizcraft International Entertainment Pvt. Ltd. ("**Corporate Debtor**"), under section 7 of the Code read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 before the Hon'ble Adjudicating Authority i.e. National Company Law Tribunal, Mumbai Bench, Mumbai ("**Hon'ble NCLT**") for initiation of Corporate Insolvency Resolution Process ("**CIRP**") of the Corporate Debtor.

4. Pursuant to the petition, Hon'ble NCLT appointed an interim resolution professional and declared moratorium period under section 14 of the Code. Further, we noticed that an application was filed for replacement of the Interim Resolution Professional and appointment of Shri Sanjay Garg (having Registration No. IBBI/IPA-001/IP-P-01865/2019-2020/12919) as a **Resolution Professional of the Corporate Debtor. Hon'ble NCLT vide order dated 22.10.2021 appointed Shri Sanjay Garg as the Resolution Professional of the Corporate Debtor as he was also authorised by the Committee of Creditors. Vide aforesaid order Shri Sanjay Garg was authorised to complete the resolution process expeditiously. The Resolution Professional has also issued letter of authority in favour of the Authorised Representative of the assessee in respect of present appeal before us.**

5. It is pertinent to note that as per the provisions of section 14 of the Code institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority shall be prohibited during the moratorium period. The period of moratorium shall have the effect from the date of such order till the completion of the corporate insolvency resolution process. During the course of hearing, the learned A.R. submitted that moratorium period commenced pursuant to **order dated 10.05.2021 passed by the Hon'ble NCLT** and the present appeal has been filed by the Revenue on 30.07.2021 i.e. after commencement of moratorium period and thus the same is in contravention of provisions of section 14 of the Code. Learned DR could not produce any material before us to rebut the submission so made on behalf of the assessee. Thus, in the present case, we are of the considered view that the appeal filed by the Revenue is an institution of suit against the corporate debtor after commencement of moratorium period, which is prohibited under section 14 of the Code. **Hon'ble Supreme Court in case of Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan (P.) Ltd. [2017] 88taxmann.com 202** held that even arbitration proceedings cannot be initiated after imposition of the moratorium u/s 14 (1) (a) has come into effect and it is *non est* in law and could not have been allowed to continue. **Further Hon'ble Supreme Court in the case of Pr. CIT v. Monnet Ispat & Energy Ltd. [SLP (C) No.6487 of 2018, dated 10-8-2018]** has upheld overriding nature and supremacy of the provisions of the Code over any

other enactment in case of conflicting provisions, by virtue of a non-obstante clause contained in section 238 of the Code. It is further pertinent to note that under section 178(6) of the Act, as amended w.e.f. 01.11.2016, the Code shall have overriding effect.

6. It is further pertinent to note the provisions of section 60(6) of the Code, which reads as under:

“(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.”

7. Recently, while interpreting section 60(6) of the Code, Hon'ble Supreme Court in New Delhi Municipal Corporation v/s Minosha India Ltd., in Civil Appeal No.3470 of 2022 (arising out of SLP (C) No. 8302 of 2021), vide judgment dated 27.04.2022, observed as under:

“27. In other words, notwithstanding the period of limitation under the Limitation Act, the Law Giver has thought it fit to provide that in respect of a corporate debtor if there has been an order of moratorium made in Part II, the period during which such moratorium was in place shall be excluded. 'For which an order of moratorium' cannot bear the interpretation which is sought to be placed by the appellant. The interpretation placed by the appellant is clearly against the plain meaning of the words which have been used. We have already undertaken the task of understanding the purport of the Code and the context in which section 60(6) has been put in place. This Court cannot possibly sit in judgment over the wisdom of the Law Giver. The period of limitation is provided under the Limitation Act. The law giver has contemplated that when a moratorium has been put in place, the said period must be excluded. We cannot overlook also the employment of words 'any suit or application'. This is apart, no doubt, from the words 'by a corporate debtor'. Interpreting the statute in the manner which the appellant seeks would result in our denying the benefit of extending the period of limitation to the corporate debtor, a result, which we think, would not be warranted by the clear words used in the statute.

28. Therefore, we are of the view that section 60(6) of the IBC does contemplate exclusion of the entire period during which the moratorium

was in force in respect of corporate debtor in regard to a proceeding as contemplated therein at the hands of the corporate debtor.”

8. In view of the above, we dismiss the present appeal filed by the Revenue in terms of the provisions of section 14 of the Code with the liberty to the Assessing Officer that as soon as the moratorium period is over, the Assessing Officer may prefer appeal afresh.

9. In the result, appeal by the Revenue is dismissed.
Order pronounced in the open court on 06/06/2022

Sd/-
PRAMOD KUMAR
VIDE PRESIDENT

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 06/06/2022

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai