



Company Under Corporate
Insolvency Resolution Process
vide Order of Hon'ble Adjudicating
Authority, New Delhi

Ref: CALS/ST.EX./2017-18

29.03.2018

BOMBAY STOCK EXCHANGE LIMITED
DEPARTMENT OF CORPORATE SERVICES
FLOOR 25, PHIROZE JEEJEEBHOY TOWERS,
DALAL STREET
MUMBAI-400001

Our Scrip Code: 526652

Subject: Order by Hon'ble Income Tax Appellate Tribunal (ITAT), Delhi Benches, New Delhi

Dear Sir,

In furtherance of our earlier intimations about the Assessment Order u/s 148 of the Income Tax Act, 1961 ('Act') for the AY 2008-09 passed by Income Tax Department, New Delhi on 29th December, 2016 raising a demand of Rs. 5,86,02,81,490. The Company had filed before the Hon'ble Income Tax Appellate Tribunal (ITAT) against the order of CIT(A)-12, who had rejected our plea and contention in the in appeal No. 47/17-18, vide its order dated 25.09.2017.

In context of the aforesaid, the Company had filed a Stay application before the Hon'ble ITAT for seeking stay of aforesaid demand of Rs. 5,86,02,81,490/- inclusive of interest. However, Hon'ble ITAT was also apprised with the fact that the Corporate Insolvency Resolution Process (CIRP) has been initiated against the Company and Moratorium has also been commenced as per the Insolvency and Bankruptcy Code, 2016.

In this context the ITAT has passed the order dated 16.03.2018, (received to the Company on 28.03.2018), declaring the stay application as infructuous in the lights of the facts that the Moratorium as per Section 14 of Insolvency and Bankruptcy Code has come into effect as per which, continuation of any pending suits of proceedings against the Corporate Debtor (i.e. the Company), including execution of any judgement, decree or any order in any Court of law, Tribunal, Arbitration panel or other Authority has been prohibited.

Hence, on the basis of the aforesaid facts the Hon'ble Tribunal has dismissed the aforesaid Stay Application in *limine*.

The Copy of the aforesaid order is also enclosed herewith for your reference. This is for your information and record please.

Thanking you,

Yours faithfully,
For **Cals Refineries Ltd**


(Suvindra Kumar)
Company Secretary
ACS-22747
Encl. a.a.



CALS REFINERIES LIMITED

CIN. No: L51909DL1984PLC018775

Regd Off: 209, 2nd Floor, Suneja Tower-II, District Center, Janakpuri, New Delhi-110058, India

Phone: +91 (11) 45067736 Email: info@calsrefineries.com Web: www.cals.in

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'Friday', NEW DELHI**

**BEFORE SHRI L.P.SAHU, ACCOUNTANT MEMBER
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**Stay Application no. 749/Del/2017
(In ITA No. 7062/Del/2017)
AY: 2008-09**

Cals Refineries Ltd. 209, 2 nd floor, Suneja Tower 2 Janakpuri New Delhi 110 058 PAN: AAACC0069N	vs.	ACIT, Circle 5(2) New Delhi
(Appellant)		(Respondent)

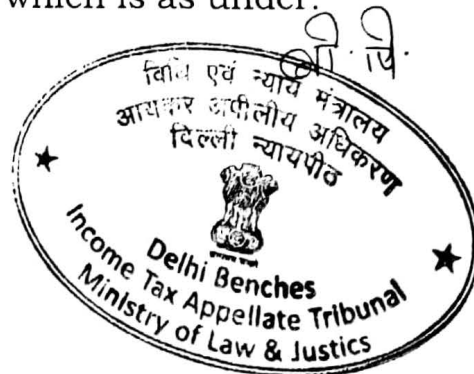
Appellant by	Sh. K. Sampath, Adv.
Respondent by	Ms. Ashima Neb, Sr.D.R.
Date of Hearing	09.03.2018
Date of Pronouncement	16.03.2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

The present Stay Application has been filed by the applicant seeking stay of outstanding demand of Rs.5,86,02,81,490/- inclusive of interest.

2. From the documents placed before us we find that assessee has filed short facts regarding the demand that is outstanding in the present case which is as under:

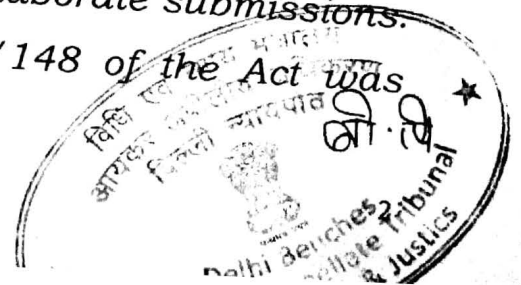


SHORT FACTS REGARDING THE DEMAND OF THE TAX, INTEREST, PENALTY, FINE, ESTATE DUTY OR ANY OTHER SUM, RECOVERY OF WHICH IS SOUGHT TO BE STAYED

Assessment in the above case was completed at an income of Rs.791,51,92,070/- u/s 143(3)/148 of the Income-tax Act, 1961 (the Act) dated 28.12.2016 against returned income in a sum of Rs.7,51,92,070/-. The variation in returned and assessed income was in a sum of Rs.784 crores being the amount of GDR proceeds raised by the Company to augment its share capital. The assessee Company had preferred appeal against the assessment order before the Hon'ble CIT(A)-12, New Delhi against the following actions of the Assessing Officer:

1. initiating proceedings u/s 147/148 of the Act which was without jurisdiction and was merely on the basis of communication received from SEBI;
2. referring the matter of International transaction to TPO even though no international transaction had taken place with any associate concern;-
3. the assessment was barred by limitation and against the norms of natural justice;
4. the addition made by invoking provision of sec. 68 of the Act was wholly arbitrary and illegal as the communication received by the Assessing Officer contained the source of receipts by the assessee Company;
5. assessment order passed u/s 147/143(3) of the Act was itself illegal and unsustainable;

In appeal, the assessee made detailed and elaborate submissions. It was contended that the notice u/s 147/148 of the Act was



issued merely on the basis of communication received by the Assessing Officer from SEBI. The communication was that the raising of funds to GDR was in violation of sec.77(2) of the Companies Act, 1956. There was nothing in the communication against the source of receipt of money. Further, the reasons to believe were mechanically approved by the Jt. Commission of Income-tax without any application of mind. The assessee further objected to the reference made by the Assessing Officer to TPO which was wholly unnecessary and unlawful. It was contended that the assessment was barred by limitation.

On merits also, the case of the assessee was that the source of receipt of Rs.784 crores was through GDR issued by the Company and was from identified sources. The Hon'ble CIT(A), however, did not agree with any of the contentions raised by the assessee and dismissed the appeal vide order u/s 250 of the Act dated 25.09.2017 in appeal No.47/17-18.

The order passed by the Hon'ble CIT(A) being erroneous and unsustainable the assessee preferred appeal against the said order before the Hon'ble ITAT on 24/11/2017;

The assessment as framed had created a huge demand of Rs.586,02,81,490/- which is wholly disputed and just not payable. The assessee has a good prima facie case on merit.

It is also to be placed on records that the assessee company has been served an order on 23/11/2017 issued by National Company Law Tribunal, NEW DELHI BENCH in response to the petition filed by Operational Creditor u/s 9 of the Insolvency and Bankruptcy Code, 2016 wherein the BENCH has admitted the petition and Moratorium in terms of Section 14 of the Code has



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come into immediate effect. The copy of the order is enclosed herewith for your kind perusal. In this context, it is submitted that since the assessee company has virtually no assets and it is not in a position to pay the demand as no activity is being done in view of restrictions imposed by SEBI vide its order dated 31.12.2014.

Placed for the most favourable consideration.

DATE: 12.12.2017

2.1. Annexure-E to the Stay Application is the order dated 23/11/17, passed by National Company Law Tribunal, Delhi Benches, wherein the Hon'ble Tribunal observed and decided as under:

"11. This petition is, therefore, admitted. Moratorium in terms of Section 14 of the Code comes into immediate effect:

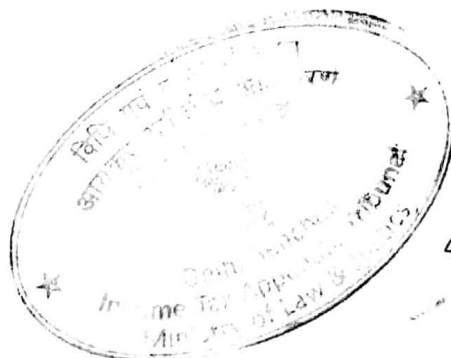
"Moratorium:

14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

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(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

It is further directed that:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

12. The Operational Creditor has not proposed the name of any Interim Resolution Professional. Accordingly, the matter is referred to the IB81 to recommend the name of an IRP to be appointed in this case within 10 days of communication of this order.

13. On confirmation of the IRP, he shall take all such steps as are required under the Code in terms of Section 15, 17, 18, 19 and 20 of the Code.

14. Be listed on 7th December, 2017 for awaiting recommendation of the proposed IRP by the IBBI.



2.2. From the above extract of the order, we are of the considered opinion that the *Moratorium* as per section 14 of Insolvency in Bankruptcy Code has come into effect as per which, continuation of any pending suits of proceedings against the corporate debtor, being assessee herein, including execution of any judgment, decree or any order in any Court of law, Tribunal, Arbitration Panel or other Authority has been prohibited. In view of which we are of the considered opinion that the present Stay Application becomes infructuous.

2.3. It is also observed by us that ~~as~~ assessee has been declared as insolvent, an IRP (Interim Resolution Professional), has been appointed by the Hon'ble Tribunal. Revenue is directed to find out the status of the case before the Competent Authority and may take necessary steps as per law.

3. On the basis of the above, we dismiss the present Stay Application *in limine*.

4. In the result the Stay Application is dismissed in limine. Order pronounced in the Open Court on th 16. March, 2018.

(L.P.SAHU)
ACCOUNTANT MEMBER

(BEENA A PILLAI) C.
JUDICIAL MEMBER

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

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TRUE COPY -

By Order,



[Handwritten Signature]

ASSISTANT REGISTRAR
ITAT Delhi Benches
सहायक पंजीकार
Assistant Registrar
आयकर अपीलीय अधिकरण
Income Tax Appellate Tribunal
नई दिल्ली / New Delhi