(2021) 08 CESTAT CK 0074

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Miscellaneous (EH) Application No. 40127 Of 2021, Customs Appeal No. 387 Of 2011

M/s. Icomm Tele Ltd. APPELLANT

Vs

Commissioner Of Customs RESPONDENT

Date of Decision : 23-08-2021

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 7, 13, 30(2), 30(6), 31(1)
Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 37, 38, 38(1A), 39(4)

Citation : (2021) 08 CESTAT CK 0074

Hon'ble Judges : Sulekha Beevi C.S., J;P. Venkata Subba Rao, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The above early hearing application is filed by the appellant. It is submitted by ld. counsel that the company faced financial difficulties and an application was filed by one of the financial creditors under section 7 the Insolvency and Bankruptcy Code, 2016 for recovering debts owned by the company. The National Company Law Tribunal, Hyderabad Bench (NCLT) issued order dated 4.10.2019 for initiating Corporate Insolvency Resolution Process (CIRP) in regard to the company under section 13 of IBC. Accordingly, a Resolution Plan was floated by the Resolution Professional for approval of the Committee of Creditors. The same was approved on 29.6.2019. The Resolution Plan was submitted before NCLT as required under section 30(6) of the IBC. It was approved by NCLT vide order dated 17.10.2019 and the Resolution Plan is effective from this date which the NCLT Approval Date.

2. The Resolution Plan provided that all debts of the company would be fully and finally settled upon due compliance with the payment schedules stipulated therein. As per clause 7.4 of Chapter IV of the Resolution Plan all proceedings against the company in relation to any period prior to 17.10.2019 whether forming part of admitted claims or not shall stand extinguished by virtue of Order

dated 17.10.2019. Clause 1(f) in Chapter X of the Resolution Plan states that all claims prior to the NCLT approval date of governmental authorities in relation to all taxes which the appellant was liable to pay shall stand extinguished on the approval date. Clause 1(o) declares that any tax, duty and legal liability for the period prior to approval ate will be waived and extinguished. That the instant appeal filed in 2011 is a claim which existed prior to approval date and stands extinguished by virtue of Resolution Plan. The payment schedules described in the Resolution Plan have been completed. The dispute underlying in the above appeal stands settled under Resolution Plan and nothing survives. She prayed that appeal may be heard out of turn to record the approval of Resolution Plan by NCLT and the appeal may be disposed accordingly.

2. The learned AR Ms. K. Komathi appeared and argued for the respondent.

3. Taking note of the submissions, early hearing petition is allowed and the appeal itself is taken up for disposal.

4. The ld. Counsel has furnished a copy of the order of NCLT, Hyderabad in CP (IB) No. 462/7/HDB/2018 dated 4.10.2018. It is seen that the NCLT has approved the Resolution Plan. Para 34 reads as under:-

"In view of the foregoing discussion, the 'Resolution Plan' filed with the application meets the requirement of section 30(2) of the I&B Code, 2016 and Regulations 37, 38, 38(1A) and 39(4) of IBBI (CIRP) Regulations, 2016. The 'Resolution Plan' is also not in contravention of any of the provisions of section 29A. Hence, this adjudicating authority is satisfied that the Resolution Plan is in accordance with law. Therefore, the 'Resolution Plan' annexed with Application bearing IA No. 577 of 2019 filed in CP (IB) 462/7/HDB/2018 is hereby approved and forms part of this order. The said Resolution Plan shall be binding on the Corporate Debtor and its employees, members, creditors, including the Central government; any State Government or any Local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan including Resolution Applicant in terms of provisions of Section 31(1) of the Code."

5. Taking note of the fact that the NCLT has approved the resolution plan in the insolvency proceedings in regard to the company, we are of the view that the appeal does not survive any more. The appeal is disposed of accordingly.

(Dictated and pronounced in open court)

